

**PRINCIPALS' UNDERSTANDINGS OF ASPECTS  
OF THE LAW IMPACTING ON THE ADMINISTRATION  
OF CATHOLIC SCHOOLS: SOME IMPLICATIONS  
FOR LEADERSHIP**

Submitted by

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## STATEMENT OF AUTHORSHIP AND SOURCES

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## **ABSTRACT**

This study explored the interface between the leadership of Catholic schools and the legal framework of the social/cultural context of Australian Society. Specifically, the study investigated the legal issues impacting on Catholic schools, principals' understandings of these legal issues and the sources used in gaining these understandings. The congruency between these understandings and the current interpretations of areas of the law were also examined, along with the influence legal issues have on principals; in particular, their perceptions of how these legal issues relate to carrying out their leadership roles aligned with the characteristics and ethos of the Catholic school. In this overall context, the influence of a number of variables such as school complexity, location, and primary and secondary school environments was also examined.

The study commenced with an examination of the development of Catholic schools within the Australian social/cultural context, an exploration of leadership as it relates to Catholic schools and a survey of the literature indicating the scope and nature of the legal matters impacting on schools within the Australian legal framework.

To gather data relevant to the purposes of the study, a Survey Questionnaire was constructed and distributed to principals of all systemic Catholic schools administered by the Brisbane Catholic Education Centre. The quantitative and qualitative data provided via this instrument was supplemented and corroborated by information gathered through discussions, observations, and reference to documentation and records.

The findings of the study confirmed that Catholic schools were involved with a wide range of legal issues, involvement being more pronounced in some areas than others, and like all legal issues within the Australian social/cultural context, those impacting on schools were subject to regular renewal and development. In

relation to the latter, participants identified emerging areas of the law which were starting to have an impact on their schools.

Principals' overall understandings of current interpretations of legal issues were not of a high standard. However, some understandings, particularly relating to statute law were more accurate than understandings of common law issues. Principals used a wide range of sources to gain legal understandings, and interactions with fellow principals and personnel within the Brisbane Catholic Education System who supported and supervised principals, featured prominently. However, access for principals to designated legal practitioners for advice on legal matters was a need revealed. Involvement of principals in formal and less formal professional learning experiences relating to legal matters was limited, and participation did not have a significant influence on developing more accurate understandings of legal issues. Nevertheless, the need for continued personal and professional learning with regard to legal issues was highlighted by this study, especially considering the continued renewal and development of the law, and the stress created by the lack of legal understandings.

The findings indicated legal matters were having a large impact on Catholic schools; 90% of participants experienced stress associated with legal matters, and 70% saw this as an increasing phenomena. While a number of variables inter-relate to form a cumulative effect contributing to stress, participants ranked the most prominent source of stress as lack of legal knowledge. The impact of legal matters was not confined to addressing legal matters per se, but a constant threat of legalism overshadowing principals in their leadership roles.

Overall, there was a high compatibility between the ethos of the Catholic school and the resolutions reached, and the process used in coming to a resolution of legal matters. However, participants were more confident in their perceptions of a high compatibility with the resolutions reached than with the processes used.

No one variable examined, had an overall significant influence on the understandings, involvement and impact of legal issues on the leadership of Catholic schools. However, a number of significant relationships were identified with particular aspects of the study. Surprisingly, the study did not reveal a significant relationship between the length of time spent as a principal in a Catholic school and the accuracy of understandings of legal issues impacting on schools.

It was suggested that the development of principals' understandings of legal issues could be closely related to the continued personal and professional learning and growth of leaders within Catholic schools, particularly within School Leadership Teams. Suggestions to support this growth and learning were offered as part of the overall development of leadership within Catholic schools.

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## **CHAPTER 1**

### **SETTING THE SCENE**

#### **1.1 Introduction**

The motivation to undertake this study grew out of a number of circumstances. As a principal in a Catholic school, I was faced with having to deal regularly with a number of legal issues. These issues ranged across a wide spectrum of the law, including what I now understand to be areas of common law; negligence, contract law and defamation law, and statute law; industrial law, family law, anti discrimination law, copyright law and criminal law. This involvement extended to threats of being sued, issues associated with staff, parents, students, local police, school suppliers, contractors and school neighbours, breaking entering and stealing, being involved in court cases and having to seek out information and prepare documentation for such cases. To support this aspect of my role as a principal, I had limited understanding of the law, its development and application, for I had not been exposed to this area of leadership of a school community in my preparation either as a teacher or for school leadership positions.

My limited understanding of the law had been gathered through dealing with issues that arose in my general contact with society as a whole, and in regard to education law (those legal issues impacting on education), my understandings were developed as I was confronted with issues that arose in my career as a teacher and educator. Understanding of the law in this context appeared to be something you learnt on the job. As indicated above, on taking up the role of principal in a Catholic school, these encounters with legal matters increased enormously. Consequently, I found myself seeking legal advice regularly from system authorities and persons whom I knew had legal backgrounds. As this was causing me concern, I then undertook a law degree as a part-time student while carrying out the role of principal.

What then occurred, was that I found myself being contacted regularly by other principals to discuss issues with which they were being faced, and issues that emerged from this study, and I was often asked to present aspects of the law as it impacted on schools, to staff meetings, principals' meetings, regional conferences and to senior school personnel undertaking particular units within leadership courses. My involvement with principals in this regard became more direct when I took on other positions as a system administrator, which supported principals in their roles, and assisted their continued personal and professional learning and growth <sup>(1)</sup>.

This involvement indicated to me that the impact of the law on leadership and management of Catholic schools was a major issue facing principals. My observations indicated that this impact seemed to be increasing, and causing concern and stress, particularly for principals in Catholic schools who were trying to bring a particular ethos to their leadership in school communities, and at times they perceived the law as working against their endeavours in this regard. Little was being done to address this issue and there was no research, of which I was aware, that gave an understanding of the extent of legal issues impacting on Catholic schools, or an understanding of the impact this area of leadership was having on leaders in Catholic schools.

At this time, I had also become aware of and involved with the Australian and New Zealand Education Law Association (ANZELA). Involvement in this association heightened my understandings of the extent and impact of the law on the leadership and management of schools, and exposed me to much of the literature available surrounding this issue. This involvement also acquainted me with a study being undertaken by Stewart (1996) which explored the impact of this phenomena on principals in Government schools in Queensland.

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1. The researcher held the following positions in the Brisbane Catholic Education System. Principal of a Catholic primary school from 1984 – 1994, District Education Officer 1994 – 1996 a position which supported principals in carrying out their roles (aligned to the Area Supervisor positions mentioned in this study) and Manager Staff Selection Development and Review 1997 – 1999, a position geared to the selection and continued personal and professional growth of senior school personnel.

One of the outcomes of Stewart's (1996) study was the need for similar research to be conducted across various school systems and legal jurisdictions. Hence my interest in undertaking this study.

## **1.2 The Research Setting**

This study was conducted within the Brisbane Catholic Education System. The participants were principals and personnel carrying out their roles employed by the Brisbane Catholic Education Centre (BCEC). At the time of the study, the BCEC administered over 130 Catholic schools as part of a system of schools; 26 secondary systemic colleges and over 100 primary systemic schools. The administration area of BCEC covers most of South-East Queensland, one of the fastest growing areas in Australia, and the region includes the developing coastal areas of the Sunshine and Gold Coasts. The area is centred around the State Capital of Queensland, Brisbane, where the BCEC is situated, but extends North of Brisbane to the rural town setting of Childers, (which is just south of Bundaberg), South to the New South Wales border, West to the rural town setting of Gatton and North West to the area around Kingaroy.

The physical and social/cultural diversity within the area administered by the BCEC, meant that there was access readily available to principals who were carrying out their roles in a variety of settings within the overall context of the study. These settings included primary and secondary Catholic schools with large and small student populations, a variety of local social/cultural environments ranging from inner city and city suburban environments to provincial cities surrounding the major Capital, Brisbane, and also small rural town locations.

## **1.3 The Research Problem**

Aspects of the research problem have been identified in the introduction to this chapter. The literature which began to appear in the late 1980's and 1990's (Chisholm, 1987; Ramsay & Shorten, 1996; Sungaila, 1988; Tronc, 1996b; Tronc

& Sleight, 1989), indicated that a wide range of legal issues were directly or indirectly influencing education and having an impact on schools. A number of factors had contributed to this. One of these factors, a focus on and much more awareness of individuals rights was fostered by developments within the United Nations. In Australia, this development was bolstered by the passing of various legislation such as anti-discrimination legislation, and by decisions handed down by the Australian High Court, especially while under the leadership of Chief Justice Mason (Lane, 1995b).

Besides this, Australians were beginning to follow the trend in the United States of America and become a more litigious society. As a result, persons were more inclined to take their grievances to the litigation stage. This was happening not only in Australian society as a whole but also in the school sector. As a result, during the 1980's and 1990's, a number of prominent cases such as *Commonwealth v. Introvigne* (1982); *Finn v. Minister of Education* (1995); *L v. Minister for Education for the State of Queensland* (1995); *Reynolds v. Haines* (1993); *Trustees for the Roman Catholic Church for the Diocese of Bathurst v. Koffman & Anor* (1996), came before the courts for adjudication, the outcomes of which challenged schools' policies and practices.

Also, the amount of legislation being enacted by both State and Federal Governments was quickly overtaking common law in defining persons' rights. Many aspects of this legislation were having a direct or indirect impact on schools. Legislation was being passed to amend situations created by common law decisions in the courts, new legislation was being introduced to meet particular needs within the Queensland jurisdiction itself, and the Federal Parliament was enacting legislation to deal with needs in Australia as a whole. For example, legislation in the areas of workplace health & safety, workers compensation and the rehabilitation of injured workers, copyright and anti-discrimination, were all having an impact on schools. The breakdown of families was also influencing schools through the application of new family law provisions.

Catholic schools were caught up in this increased legalism, as a new culture and structure of Catholic schools was emerging. Catholic schools in Australia originally developed as an independent system, when compulsory education was introduced around the 1870's and government funding was withdrawn from Non-Government schools by the states. Catholic schools in this era were staffed mostly by members of religious orders. This independence continued up until the 1960's, when a decline in religious began to take effect, and the financial strains of meeting educational expectations and the demand for Catholic schools increased. This brought the provision of Catholic schools to a crisis point, and as a result, the Federal Government of Australia began to provide funding to Non-Government schools.

The development of Catholic schools in Australia in the latter part of the 20<sup>th</sup> Century saw a new structure emerge, with the parish primary schools and many secondary colleges becoming part of Catholic School Systems based on diocesan geographical areas, and mainly staffed by lay teachers. This structure also brought with it more accountability measures. Catholic schools became subject to more legislative requirements, and the staff within them, who were subject to various employment legislation, became unionised and were advocating open and transparent processes and the application of natural justice principles to decision making. Lay principals and other lay staff, who were now taking on leadership positions within Catholic schools, were at the same time being asked to undertake personal and professional learning aligned with the ethos of the Catholic School as expounded in various documents on the Catholic school emanating from Rome.

While Catholic schools were always subject to the laws covering the development of rights within Australia, this new structure brought this fact more acutely to the fore. This was particularly noticeable when the issues of child abuse in schools began to emerge and Catholic School Systems were faced with the realisation that a number of their personnel had been involved in such practices. In many instances, it was the lay leaders in Catholic schools who had to deal with these



issues as they emerged. The personal and professional learning and growth required to meet the legal requirements associated with such criminal matters, and other legal issues confronting them, was very limited. Anecdotal evidence indicated that this situation was creating stress on principals.

Stewart's (1996) study had explored the impact of these legal issues on principals in Government schools in Queensland, but there was a gap in our understandings with regard to these issues as they related to Catholic schools, and in particular, the relationship between the impact of the law on those holding leadership positions in Catholic schools, who were being asked to lead and manage their schools aligned to a particular ethos and culture. One of the outcomes of Vatican II was a challenge for the Church, and particularly its leaders at all levels, including those in the Catholic schools, to engage with society of which the Church is part. Leading a Catholic school within the current legal framework of Australia's social/cultural environment is a direct encounter in this regard. Discovering more about this aspect of leading a Catholic school should help support this challenge stemming from Vatican II.

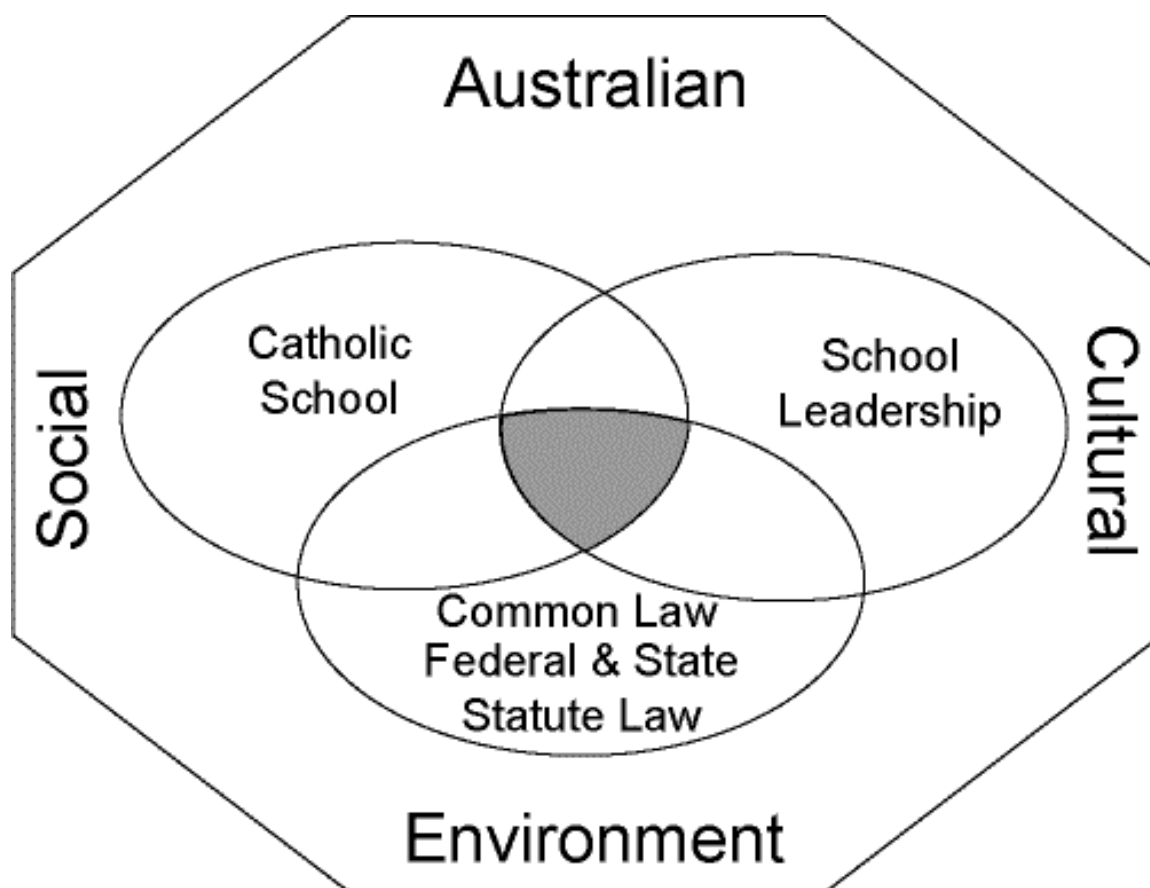
#### **1.4 The Purpose of the Research**

The purpose of this study, therefore, was to explore the interface between the leadership of Catholic schools, and the legal framework of the social and cultural environment of Australian society in which Catholic schools operate. Figure 1.1 gives a conceptual overview of the area covered by this study.

Specifically, this study set out to investigate the legal issues impacting on Catholic schools, the understandings principals of Catholic schools have of these legal issues, and to examine the influence this aspect of the social and cultural environment of Australian society is having on principals in carrying out their leadership roles within the ethos of Catholic schools.

**Figure 1.1**

**Conceptual Framework of the Interface Between the Leadership of Catholic Schools and the Legal Framework in Which Catholic Schools Operate Within the Australian Social Cultural Environment**



**1.5 The Research Questions**

A review of the literature surrounding this area of school leadership indicates that there is a wide range of legal issues emanating from state and federal legislation and common law decisions, including criminal issues, that are impacting on schools. The outcomes of Stewart's (1996) study confirmed this, as his study revealed there was a wide range of legal matters impacting on principals in carrying out their roles of managing Government schools in Queensland. Stewart's study also indicated that principals on the whole had limited understandings of the current interpretation of legal issues affecting schools, and that this was having a considerable impact on the stress levels of principals. The

introduction to this chapter, revealed that there was anecdotal evidence to indicate that a similar situation exists for principals of Catholic schools, and that there is limited opportunities for the personal and professional learning in this area for those occupying leadership positions in Catholic schools. For these leaders, the impact of the law could also have an additional dimension, for they are asked to work within an ethos and culture that might not be aligned to the dominant secular, social and cultural environment in which they operate, and in which the current laws develop (Day,1996; Hogan, 1993, McBrien, 1994). Taking into account the above considerations, three Specific Research Questions guided this study.

**Specific Research Question One:** What areas of the law are having an impact on the administration of Catholic schools?

As indicated above, the literature reveals that a wide range of legal issues are impacting on schools, and Stewart's (1996) study identified a number of these that were having a particular effect on Government schools in Queensland. The purpose of this sector of the study, was to explore the involvement principals in Catholic schools had with areas of the law, and to identify those areas of the law having most impact on the leadership and management of Catholic schools.

**Specific Research Question Two:** What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings?

The personal experiences of the researcher referred to in the introduction to this chapter, interactions the researcher had had with other principals and the results of Stewart's (1996) study all indicated that principals' understandings of legal issues are limited, and that their understandings of current interpretations of legal issues impacting on schools, is not of a high standard. The purpose of this segment of the study was to explore these issues; to gauge principals' understandings of prominent current legal issues impacting on schools, and with

limited formal opportunities available for the personal and professional learning of persons occupying leadership roles in Catholic schools relating to legal matters, to identify the sources principals used in acquiring legal understandings.

**Specific Research Question Three:** What impact do legal issues have on the administration of Catholic schools, and in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School?

The primary focus for leaders in Catholic schools is to provide quality learning and teaching within the ethos and culture of the Catholic School. Comments above, indicate that dealing with legal matters could be detracting school leaders from this primary focus, and at times work against principals' endeavours to provide the community environment which characterises the climate of a Catholic school. Duignan (2002) also suggests that at times, principals are faced with dilemmas, having to resolve situations where parties to a dispute seem to have legitimate but competing rights. Stewart's (1996) study also revealed that principals perceived they were spending considerable time on dealing with legal issues, that dealing with such issues was causing stress and that the impact of the law on managing Government schools was increasing. Specific Research Question Three focused on exploring these issues.

While directing attention to the Three Specific Research Questions, the study also examined the significant differences that might be attributed to variables such as the sex of principals, the secondary or primary school contexts, complexity of schools (which included the size of the schools) and the location of the schools within various community settings.

## **1.6 The Theoretical Framework**

The theoretical framework underpinning this study was based on a constructionist epistemology and the theoretical perspective of symbolic interactionism. This theoretical framework places an emphasis on the construction of reality

generated by interaction with the physical and social world from a cultural and situational perspective, and generated specifically through interactions with others in the world in which one lives and develops. These interactions have a set of symbols, particularly language based, from which meaning is constructed. The individual is therefore engaged in this development as an active participant in constructing meaning (Crotty, 1998; Denzin & Lincoln, 1994).

Symbolic interactionism is a prominent exponent of a constructionist epistemology. For the symbolic interactionist, through interaction with the world, and particularly through interaction with other persons, one develops an understanding of the world, or what Mead the father of symbolic interactionism calls a 'generalised other' of society (Charon, 2001; Meltzer, 1972). This journey of a social construction of reality has a historical component and a biographical component (Berger & Luckman, 1970). The historical component relates to the historical development of society into which one is born with its historical social and cultural development of traditions and norms, and the biographical component relates to the segmented portion of the world in which one lives out one's life. Sometime this biographical journey can be limited, and for others quite expansive.

This social construction of reality is not a static phenomena but is in a continual state of assimilating and accommodating new experiences, developing and renewing. One's generalised other of society, therefore, is continually changing and developing. In this encounter with the physical and social cultural world, one develops not only a generalised other, but how one fits into this generalised other; the development of a concept of me and self and how one plays out the roles one encounters in life (Blumer, 1972; Congalton & Daniel 1976). This journey encounters particular social entities, such as the extended family, school, media and in the current world, possibly the internet. The social construction of reality within this journey is very much influenced by interactions with significant and orientational others (Denzin, 1966) and how one defines the social/cultural situations one encounters (Charon, 2001; Thomas, 1972). These social entities

and the persons within them, are themselves influenced by society as a whole, as is the individual person within that society.

This theoretical framework was chosen to underpin this study, for it was considered that the development of a generalised other of society is closely linked to the legal framework of the society in which one lives out one's life. It was also considered that this development of understandings of the legal framework is closely aligned to the interpersonal interactions and encounters one has with persons with regard to their rights, and how one defines the situation when having to deal with and resolve legal matters. For principals in schools, this development of understandings is also closely linked to interpersonal interactions with significant others who support them in carrying out their roles. The context of this study with principals carrying out their roles within a system of schools aligned to a particular ethos, aligns itself to this theoretical framework. As well as these considerations, the notion that one's generalised other is not a static phenomena, but is in a state of continual change and development, also aligns with the changing nature of the law as it is developed and renewed to cater for the needs of the people it serves within various jurisdictions.

## **1.7 The Design of the Study**

The design of this study aimed at gathering as much information as possible and practical relating to the Specific Research Questions posed, and the influence relating to these questions that may have been attributed to the variables examined during the exploration of the areas under review. The purpose was to investigate the lived reality of the participants in their natural setting with regard to the areas under exploration (Jacob, 1988; Wilson, 1977), with the intention of gathering quantitative and qualitative data and combining and complementing the findings from each of these sources (Tam, 1993; Wiersma 1991). From this perspective, the research design aimed at obtaining a convergence of multiple sources of evidence (Yin, 1994) relating to the Specific Research Questions and applying triangulation to offset the criticisms from an objectivists point of view,

that scientific knowledge is difficult to ascertain from such research designs (Mertens, 1998; Stainback & Stainback, 1984).

A survey questionnaire, which gathered both quantitative and qualitative data, was developed along the lines of that used by Stewart (1996). Adjustments and modifications were made to Stewart's questionnaire to align it with the Catholic Education System, and to update it with regard to recent court decisions and new legislation. Administering a survey, allowed the collection of data relevant to the Three Specific Research Questions from a large number of respondents within their natural setting, over the same period of time. To achieve this, the instrument was mailed out to participants, and steps were taken to offset the short comings of adopting this method of distribution.

As well, an interpretative methodological approach was applied to diary records made by the researcher, and observations and discussions the researcher had as a participant observer with principals and others employed by the BCEC who supported principals in carrying out their roles. Reference was also made to relevant documentation, and of particular interest here was the Complexity of School Environment Index used to allocate school complexity index ratings to schools involved in the study. The original research design included a series of follow up semi-structured interviews. However, on examining the nature and extent of material provided via the open ended questions on the survey instrument, it was decided not to pursue this part of the research design.

The quantitative data gathered was statistically analysed, the qualitative data was reduced and tabulated, and the findings presented and discussed in relation to each of the Specific Research Questions posed in the study. The statistical analyses on the quantitative data gathered, which applied a significance level at the 0.05 level ( $p < 0.05$ ), and the comments from participants to the open ended questions on the Survey Questionnaire, are provided in Volume II of this study.

## 1.8 The Significance of the Study

This study has significance for a number of reasons:

- It is the first comprehensive study of its kind that has explored the nature and extent of legal issues impacting on Catholic schools, and the influence this is having on the leadership and management of Catholic schools in Australia;
- It has revealed that a wide range of legal issues are impacting on Catholic schools and that these issues emanate from state and federal jurisdictions and courts;
- It has indicated new areas of law that have the potential of impacting on schools. These areas of law are associated with ecological and environmental issues, and leaders at all levels should take note of the warnings of the possibility of professional negligence becoming a reality in certain circumstances;
- It has identified that dealing with legal matters is one aspect of leading and managing Catholic schools which is creating stress on principals, that this influence is increasing and likely to continue to increase, especially as legislation is poised to continue to expand and maintain a dominance in legal issues affecting Australian society;
- It has provided notice to System Authorities to address this aspect of stress on principals of Catholic schools, otherwise they may become exposed to litigation for failing to provide a safe and secure employment environment for principals;
- It has indicated that principals' understandings of legal issues impacting on Catholic schools is not of a high standard, particularly when it comes to common law issues, and this lack of understanding is one of the major causes of stress relating to this facet of principalship;
- It has highlighted the need for personal and professional learning and growth for school leaders with regard to legal issues impacting on schools, and this relates not only to principals, but others who support principals in their roles;



- It has highlighted the notion of applying reflective practices as a means of developing leadership in this area, and more accurate current interpretations of legal issues impacting on Catholic schools, for the study has indicated that involvement does not necessarily equate with development of more accurate understandings;
- It has highlighted the need for Catholic School Systems to have readily available for principals, legal practitioners from whom they can obtain up to date legal information in times of need;
- While this study indicates attendance at formal and semi formal personal and professional learning experiences did not equate with holding more accurate understandings of legal issues impacting on Catholic schools, there was a plea from participants for such courses to be provided. In this way principals may obtain the necessary information to put in place legal risk management structures as suggested by Stewart (1998). Catholic Tertiary institutions might take note of this finding and provide education law units which are up to date with current interpretations of the law in their teacher preparation courses, and particularly in their school leadership courses;
- While principals face dilemmas at times in dealing with legal issues, this study indicates that on the whole, resolutions reached when dealing with these issues are congruent with the ethos of the Catholic School. However, leaders at all levels need to be more conscious of applying procedural fairness processes when dealing with legal matters; and,
- Constructionism and symbolic interactionism provide an appropriate and convenient theoretical framework from which to explore this aspect of leadership of Catholic schools.

### **1.9 The Limitations of the Study**

One of the limitations of research approached from the theoretical framework underpinning this study, is the extent to which its findings can be generalised to other populations similar to the sample who take part (Mertens, 1998). This

limitation can be applied to this research, for the participants in this study were limited in scope, being employees of the BCEC as part of the Brisbane Archdiocese Catholic Education System. While the BCEC administration covers a substantial geographical area, and there is a variety of school settings within the geographical distribution of Catholic schools within that Archdiocese, there are five dioceses within Queensland, and each would have characteristics pertinent to their own administrative structure and support of principals.

Generalising the outcomes of this study to all Catholic school principals throughout Australia also needs to be applied with caution. This is the case, because the various states within Australia carry the responsibility for education within their own jurisdiction, as was agreed to in the distribution of responsibilities when Australia became a federation. Thus, there would be differences in laws applying to Catholic schools within the various state boundaries. Some of these differences are referred to in the review of legal issues impacting on schools in Chapter 4 of this study. However, the findings relating to federal legislation and common law issues in this study, could be more generally applied, for they have significance across the whole of the Australian social/cultural environment.

Having outlined these limitations, however, it should be noted that there are a number of similarities and parity of many of the findings in this study, with that of Stewart's (1996) study, which contained a sample of the population of principals from the Government school sector across the whole of Queensland. Therefore, while the findings of this study are pertinent to the sample who took part, there is evidence to suggest a degree of generalisation of the study that can be applied to Catholic school principals in general, across Queensland in particular.

Being a participant observer, and having close relationships with the participants in a research study brings into effect the possible bias of the researcher, and this is another factor which places limitations on the findings in this study (Guba & Lincoln, 1994, Mertens, 1998). However, the effects of this have been addressed to a large extent through the application of triangulation and the gathering of data

through a variety of means and processes, and the application of qualitative and quantitative methods.

The extensive use of data gathered by a one-off Survey Questionnaire, particularly one that is posted to participants, as was the situation in this study, has limitations. One of the limitations is that the data gathered is linked to a particular place and time, and another is that the data has a reliance on self reports. This has implications for this study, as the findings indicate that the law is in a continual state of flux, development and renewal. This is evidenced by issues such as having to redevelop the survey instrument from that used by Stewart (1996) in his study, which was developed only two years prior to the distribution of the Survey Questionnaire in this study. Responses to the survey instrument, therefore, could have individual situational and participant constraints embedded in them. Attempts to address these issues were undertaken by providing open ended questions in the survey instrument and by gathering data through other means across a longer time span.

### **1.10 The Outline of the Thesis**

While this chapter has provided an overview of this research study, the following chapters provide a more comprehensive outline and analysis of the issues involved.

**Chapter 2:** This chapter provides an outline of the development of Catholic schools in Australia and the historical circumstances which have brought about the current structure of Catholic schools in the present Australian social/cultural and legal context. This chapter also examines the characteristics which underpin the ethos of the Catholic school; an ethos in which leaders of Catholic schools in Queensland are required to undertake some formal study.

**Chapter 3:** This chapter explores the notion of leadership. It highlights some common perceptions of leadership and draws out three key concepts flowing

through these perceptions. A conceptual framework from which leadership can be examined is then provided, and an overview of the leadership of Catholic schools in light of the focus of this study is then outlined.

**Chapter 4:** This chapter gives an overview of the literature which indicates the legal issues impacting on schools and an analysis of the issues involved. It outlines the foundations and development of the legal framework which defines the rights of persons within the Australian context, and then examines the legal issues impacting on schools emanating from this framework. It traces the development of common law issues impacting on schools, and issues originating from state and federal jurisdictions, including in the Queensland context, the statute base for criminal law.

**Chapter 5:** This chapter identifies the theoretical framework underpinning this study. It follows the schema provided by Crotty (1998) from which to examine the various epistemologies, theoretical perspectives, methodologies and methods available to the researcher. It provides a more detailed explanation of the epistemology of constructionism and the theoretical perspective of symbolic interactionism, chosen as the basis of this study. An indepth analysis of the latter is presented, followed by an outline of the alignment of this study with the theoretical framework.

**Chapter 6:** This chapter articulates the research approach adopted for this study and gives an outline of the methods used. A detailed explanation of the development of the Survey Questionnaire used in the study is provided, including the modifications, and additions that were made to the survey instrument developed by Stewart (1996), the procedure undertaken to pilot the revised document and the further adjustment made before the survey instrument was distributed to the participants. This chapter also provides an outline of the other methods used in the study associated with the researcher as a participant observer and the documentation referred to during the study, and in particular an outline of the Complexity School Environment Index (CSE Index). This chapter

also provides details of the participants who took part in the study, an examination of the validity and reliability, ethical considerations associated with the study and an explanation of the data analyses applied to the information gathered.

**Chapters 7, 8, 9, 10 & 11:** These chapters provide a presentation and analyses of the data gathered in the study. Chapter 7 provides information relating to the demographic data gathered via Section A of the Survey Questionnaire. This data was used to examine the influence of particular variables when investigating issues associated with the three Specific Research Questions posed in the study, such as the sex of principals, secondary and primary school settings, and complexity of schools. Chapter 8 provides a presentation and analyses of the data relevant to Specific Question One. It highlights the legal issues with which respondents in the study had been involved and the influences of variables on this involvement. Chapter 9 gives an analyses of respondents' understandings of current interpretations of prominent legal issues impacting on schools as outlined in the Survey Questionnaire in Section B and C. It also provides an outline of significant influences on these understandings attributed to particular variables. Chapter 10 presents a presentation and analyses of the impact of legal issues on Catholic schools. These analyses cover such issues as the time principals perceive themselves as dealing with legal issues, the compatibility of the ethos of the Catholic school with the resolutions reached and the processes used in reaching resolutions when dealing with legal matters, and the stress involved in dealing with legal issues. Chapter 11 provides an outline of qualitative data and other evidence gathered in relation to the Three Specific Research Questions from other sources other than the Survey Questionnaire. This chapter outlines an analysis of the diary entries of the researcher over a period of forty two months and reference to other documentation, observations and discussions held with senior personnel employed by the BCEC.

**Chapter 12:** This chapter outlines discussions surrounding the results of the study. These discussions centre around the findings of the analyses of the data

from Chapters 7 to 11 as they relate to each of the Specific Research Questions. The chapter concludes with a summary of these results.

**Chapter 13:** This chapter provides a synthesis and review of the study. Based on the findings from the study, it provides an overview of the outcomes in relation to each of the Specific Research Questions. The findings of the study indicate, as was suggested by the review of the literature, that there is a wide range of legal issues impacting on the leadership and management of Catholic schools, that principals have limited understandings of the current interpretations of prominent legal issues impacting on schools, that very little formal and semi formal structured opportunities are available for Catholic school leaders to develop and to continue to update their personal and professional learning with regard to legal issues impacting on their schools, and as a result a wide range of resources are used to acquire these understandings. The findings of the study place a challenge before Catholic school authorities to provide opportunities to enhance principals understandings in this regard, for this is the main source of stress in dealing with legal matters, and increased awareness should support principals in putting in place legal risk management practices. Although principals perceive themselves as spending 10% of their time dealing with legal issues, the results of the study indicate that this aspect of leading and managing Catholic school communities is creating considerable stress, and this situation is set to increase. One positive outcome of the research was that when dealing with legal issues, the resolutions reached are very compatible with the ethos of the Catholic school. However, more attention needs to be placed on applying the principles of procedural fairness when addressing legal matters. Chapter 13 also provides a set of propositions relating to the study, outlines the limitations of the study, recommends areas for further research and highlights the conclusions to be drawn from the study.

**Volume II:** Volume II of the study presents an outline of the statistical analyses applied to the quantitative data gathered during the study. These analyses provide descriptive statistics of the data gathered, results of t-tests and individual

samples tests with Levene's test for equal variances, Analysis of Variances (ANOV) tests and post hoc Scheffe comparison tests where significant differences were identified, and results of Pearson Chi Square tests where they were applied to the data gathered. Volume II also provides a tabulation of the comments provided by respondents to the open ended questions on the Survey Questionnaire relating to legal issues canvassed in Sections A of that instrument, and also a tabulation of the general comments provided by respondents associated with common law and statute law issues explored in Sections B and C, and other general comments from participants relating to the focus of the study. This volume was provided to the thesis examiners to allow them to gain a full indication of the work undertaken by the researcher to meet some of the issues of validity and reliability raised in Chapter 6 of the thesis, 'Design of the Study'.

## **CHAPTER 2**

### **AUSTRALIAN CATHOLIC SCHOOLS: DEVELOPMENT, CHARACTERISTICS, ETHOS AND CULTURE**

#### **2.1 Introduction**

Catholic schools have been an integral part of schooling in Australia. Their early development had a historical basis grounded in European culture (Burn, 1990), and their establishment in Australia was closely linked to the concept of parish (O'Keefe, 1996); itself a European based administrative organisational structure. Initially, Catholic schools in Australia were run by the laity, (Griffiths & McLaughlin, 2001) with the first Catholic school opening on the banks of the Parramatta River in 1820 (O'Farrell, 1992). In Queensland, a Catholic school was established in 1845 on the corner of Elizabeth and Albert Street by Father James Hanly, the first priest stationed in Brisbane. This school was conducted under the guidance of Mr and Mrs Burke (Tobin, 1987a).

As the nature of Australian society has undergone development and change in character, culture, structure and administration, so too have Catholic schools. Despite this development and change, there are a number distinguishing characteristics to which Catholic schools aspire. As a new millennium commences, Catholic schools are facing increasing challenges in relation to their purpose and authenticity in an ever changing, complex, secular, more legalistic and pluralistic society (O'Chee, 1998).

#### **2.2 Early Development of Catholic Schools in Australia**

"The tradition of Church control over schools was well entrenched in England by the time of the establishment of British colonies in Australia" (Ryan, Brennan & Willmet, 1996, 34). This control was in the hands of clergymen, but schools were subject not only to the laws of the Church but also the state. Religious



Education taught in Catholic schools in these early days was based on “precise and literal beliefs formulated at the Council of Trent, called to conserve Catholic teaching against the depredations of Protestant free-thinking” (Furtado, 1998, 90). Catholic schools in Australia, therefore, did not develop in a vacuum, but were strongly influenced by their Christian European heritage (Burn, 1990).

Australia was originally a penal settlement and “in the early years of the penal colony education seemed scarcely relevant to the affairs of what was merely a prison” (O’Farrell, 1992, 139). However, as the colonies developed and the nature of Australian society changed, so too did the perception and need for education. As indicated above, the first Catholic school was opened in Parramatta in 1820. In 1833 there were approximately ten Catholic schools in the vicinity of Sydney Town. By 1883, there were 102 Catholic schools, with 12,500 of Sydney’s 15,200 Catholic school children attending them (O’Farrell, 1992). These early Catholic schools were staffed by lay teachers often recruited from overseas, and the schools were supported with funds from the government on a denominational basis (Croke, 2002a, 2002b).

As an understanding of the need for education grew within the colonies, there was a demand for public and secular education. This aroused a debate between the Catholic sector, particularly the clerical leaders, and the advocates for a new free and secular order about the purpose and nature of education. This resulted in a conflict that “became the centre for what was probably the most passionate, fundamental and continuing ideological conflict in Australian history” (O’Farrell, 1992, 138). The zenith of this conflict in New South Wales came when Henry Parkes, the Premier of New South Wales, in 1866, forced through Parliament his *Public Schools Act (NSW) 1866*. However, this conflict was not confined to New South Wales, as comparable arguments perpetuated across the colonies resulting in similar acts being passed. In fact, other states preceded NSW in setting up free, compulsory and secular education systems, with acts being passed in South Australia in 1851, in Queensland in 1860 and in Victoria in 1862 (O’Farrell, 1992).

With the historical settlement of Australia being an English penal colony, the majority of Catholics who came to Australia in those early days were convicts from Ireland. This relationship was to have a lasting effect on the early development of Catholic schools in Australia. There was a very close relationship between the Catholic Church in Ireland and the development of the Catholic Church in Australia (Croke, 2002a) and “ the domestic history of Catholicism in Australia followed the domestic history of Catholicism in Ireland” (Campion, 2001, 2). This influence was strengthened by the relationship with the ecclesiastical autocracy of Cardinal Cullen of Ireland, who appears to have had an influence on the appointment of bishops to Australia (O’Farrell, 1992). Many of the Australian Bishops were of Irish origin. Bishop Quinn, for example, the first Bishop of Brisbane, was Irish and encouraged Irish settlement in Queensland.

These bishops saw a close link between education and Catholicity, and they set up their schools on the European model based upon a partnership between parish and parents as a means to teach, nurture and hand on the Catholic Faith with all its Irish connotations (Hurley, 1997). These bishops also saw Catholic schools as a means of maintaining and increasing the numbers in the Catholic Church and as a means of preserving the faithful from a secular and frequently hostile society (Whiteman, 1984, O’Farrell, 1992). The debate over Catholic Education which developed during the demand for free and secular education during the 1800’s was bound up with the experiences the Irish had had in Ireland (where a similar debate over education was occurring) and also related to the Irish conflict with ‘Protestant’ England.

The Australian Bishops’ position was that “ ‘real’ education contained a spiritual dimension that was to be deliberately excluded from Government’s schooling agenda” (Quillinan & Ryan, 1994, 89). “Their argument was that religious education should not be separated from education in secular subjects. The only true education for a Catholic child was one in which the secular and the sacred were inextricably linked, and in which there was no dichotomy between faith and knowledge” (Griffiths & McLaughlin, 2001, 2). This perspective was still being

reiterated as late as 1929, when Pius XI expressed the opinion that the perfect and adequate education only existed within a Catholic Christianity (McLaughlin 2000).

As mentioned above, this debate reached its zenith in the clash between Henry Parkes, the Premier of New South Wales, and Bishop Vaughan of Sydney. This conflict resulted in the end of support for the denominational schools system and the withdrawal of funds to private school providers. This included the Catholic sector. The Catholic community under the forcefulness of the bishops took up the challenge to go it alone and set up their independent Non-Government schools. Archbishop Polding in New South Wales, for example, claimed that although financial assistance was withdrawn from Church schools “in conscience he could not let Catholic children attend [government] schools” (Tobin, 1987a, 11). Some of the bishops even went as far as prohibiting access to the sacraments for those parents who had Catholic education facilities available to them, but sent their children to other schools (O’Farrell, 1992).

In 1885, at their first Plenary Council, the bishops put forward their major pastoral strategy, which was for every parish to have a school, and in any new parish the first thing to be built was to be the school (Campion, 2001). The outcome of this historical context saw the emergence of Catholic schools that were mostly parish based, and which provided education for children who were mainly of Irish background and from the poorer socio-economic sectors within the community.

Catholic schools were established to educate the poor, primarily of Irish origin. They were staffed by the religious and were totally committed to improving the temporal and spiritual condition of the underprivileged in Australia. They were there to protect the faith and to maintain and increase the numbers in the Church. Their strength lay in the faith and prayer life of the religious community which flowed over into the classroom,...the teaching of religion was to be *the* distinguishing mark of a Catholic school (Whiteman, 1984, 4)

### **2.3 Religious Congregations**

The other important change that manifested itself with the withdrawal of government financial support and the decision of the Catholic Bishops to go it alone, was the almost total withdrawal of lay teachers and the influx of various religious orders to staff the Catholic schools. “In 1880 there were 815 teaching religious sisters in Australia; by 1890 more than 2,000; and by 1910 more than 5,000. So the parish school, staffed by religious, became the single most important element in the Australian Catholic story.” (Campion, 2001, 2). As indicated above, this was necessary to offset the lack of funds created by the withdrawal of state financial support to pay teachers’ salaries. The parishes ran the schools, subsidised by financial support from fund-raising ventures and support from parents through school fees.

A large number of religious nuns and brothers required to staff the Catholic schools were recruited by the bishops from religious orders which originated in Europe, with a large number coming from Ireland. These orders flourished in Australia, and as well, there emerged Australia’s own religious communities (Croke, 2002a; Zimmerman, 2000). The most notable of these ‘homegrown’ Australian religious orders were the Sisters of St Joseph founded by Blessed Mary MacKillop and Father Julian Tenison Woods, and the development of the Sisters of the Good Samaritan Order, which was founded by Archbishop Polding. At the time of Mary Mackillop’s death in 1909 there were nearly a thousand members in the Josephite Order. A particular goal of this order was to provide a Catholic education for the poor, with a particular mission towards those children in remote areas of Australia (O’Farrell, 1992; Tobin, 1987a, 1987b, 1987c). It is also worth noting that these religious orders which developed in Australia, also recruited members from overseas. Even as late as 1955, the Superior General of the Sisters of St Joseph visited Ireland and brought back eight Irish girls as postulants for their Order (D’Orsa, 1999).

The extent of the development of Catholic schools during this era can be gauged by what took place in the Maitland Diocese under the leadership of the Irish

Bishop, Bishop James Murray. Bishop Murray was a strong advocate for Catholic schools and the stance taken by Bishop Vaughan against Henry Parkes in his establishment of the system of secular state schools. In 1866, Bishop Murray arrived to take up his post as Bishop of Maitland. He quickly recruited the Dominican Sisters and the Sisters of Mercy from Ireland. By 1909, the latter had established ten communities through the lower and upper reaches of the Hunter Valley. The Catholic Education needs of the more remote and poorer settlements and communities were catered for by the Sisters of St Joseph. This particular community of St Joseph sisters was an offshoot of the original Josephite Order established by Blessed Mary MacKillop. By 1909, these sisters had established 17 primary schools staffed by 76 sisters. As well as this, boys education was catered for by recruiting Patrician Brothers from Ireland and Marist Brothers who originated in France (Zimmerman, 2000).

In Queensland, a similar pattern emerged as that experienced in the Maitland Diocese, particularly with the arrival of the Irish bishop, Bishop James Quinn. “Quinn’s religious impact was immense. On his arrival there were two priests, four schools, four churches and 7,000 Catholics. Ten years later there were thirty priests, twenty eight schools and thirty churches” (O’Farrell, 1992, 129). The increase in the number of Catholics in Queensland was in no short measure due to Quinn, for he encouraged Irish people, through his own immigration scheme to settle in Queensland and secure free land grants. So effective was this initiative, that some commentators believed the colony was becoming ‘Quinnland’.

In 1861, through the efforts of Bishop Quinn, the Sisters of Mercy arrived from Ireland to commence their apostolate in Queensland. Shortly afterwards, the Sisters of St Joseph and the Christian Brothers joined the Mercy Sisters in staffing schools. Under the successors of Bishop Quinn, Bishops Robert Dunne and James Duigh, the Sisters of the Good Samaritan, the Presentation Sisters and Marist Brothers also took up assignments in various communities throughout the state (Tobin, 1987a, 1987b) .

Cynics might say these religious sisters and brothers were cheap labour, used by the bishops for their own ends. At times, that observation might

have been correct, but it was not universal. Without those same religious, who could not have been anything less than completely dedicated to their work, considering the conditions under which they toiled, Catholic education would never have survived long after the passing of the Education Act in 1875. Church authorities in particular and the Catholic people in general could not have afforded lay teachers' wages (Tobin, 1987a, xi).

## **2.4 Emerged Structure and Administration**

The development of Australia saw both additional penal and free settlements establish colonies in a scattered pattern across the continent. When these colonies formed into a federation of states under the Commonwealth of Australia in 1901, the division of matters into federal and state responsibilities under s.51 of the Commonwealth Constitution, saw education remain one of the responsibilities of the states (Lumb,1986). As the Catholic Church developed throughout Australia, its administrative structures were based on a diocesan model (Griffiths & McLaughlin, 2001), but the diocesan boundaries did not cut across federated state boundaries as established by the Commonwealth. Therefore, Catholic schools established within dioceses became very much subject to particular laws and regulations that were pertinent to the state in which a diocese was situated. However, as the Commonwealth Government's position strengthened, federal laws began to impact on schools, particularly Non-Government schools.

Although most Catholic schools were parish based and catered for students at the elementary level of education, the 20<sup>th</sup> Century saw the growth and expansion of secondary education, and secondary colleges began to emerge within the Catholic Education sector. These secondary colleges, almost exclusively catered for students of a single sex, and in the main provided facilities for the education of male youth. For example, in the Sydney Archdiocese "in 1961 only 600 girls were due to sit for the Leaving Certificate (Year 11)" (D'Orsa, 1999, 49). This trend continued until educational reforms such as the Wyndham Scheme in the 1960's in New South Wales, advanced the development of comprehensive secondary education. The secondary colleges in the first instance were for the most part set up by the religious orders under the auspices of the local diocesan bishops, but

maintained a certain amount of administrative independence (Tobin, 1987c, 1987d, 1987f). These colleges also, were subject to the laws and regulations of the state, depending on the diocese in which they were established.

The structure and administration of Catholic schools, which grew out of this historical development settled into a tripartite system. “Though the bishop exercised nominal authority over parish schools in his diocese, the organisational responsibility for educational matters (staffing, curriculum, and conduct of schools) lay with the provincials of the religious congregations themselves” (Griffiths & McLaughlin, 2001, 3). While the diocesan boundaries did not cut across state lines, many of the religious orders operated across dioceses and states, which created administrative difficulties (Griffiths & McLaughlin, 2001).

The State and Commonwealth Governments being and off shoot of the English Westminster System were subject to the common law handed down from England, and the statute law acquired from England as amended through each the state’s own legislative power. As indicated above, on setting up the Commonwealth of Australia, education remained under the jurisdiction of the states. Therefore, Catholic schools came under regulations developed by the states, and as there were variations in relation to the governance of schools from state to state, the religious orders administering schools in different states had to comply with varying laws and regulations. The general picture of schools which emerged from this development could be summarised as follows:

- parish based and administered Catholic primary schools educating girls and boys in the infant and early primary grades, mainly staffed by religious nuns in the so called “convent” schools;
- most primary aged boys moving to single sex schools for middle and/or senior primary education, mainly staffed by religious brothers; and,
- secondary education facilities supported by single sex colleges mainly administered by religious orders with a degree of autonomy but under the auspices of the diocesan bishops.

These administrative structures remained fairly static until dramatic changes within society and the Church began to take effect in the latter half of the twentieth century.

## **2.5 Crisis of the Sixties**

The population increase, mainly resulting from the baby boom and the influx of migrants into Australia following the Second World War, increased the number of Catholics in Australia. As well as this, education reforms, particularly the demand for a comprehensive secondary education for all girls and boys, placed tremendous strains on parish communities and religious orders to provide Catholic Education for those who sought it. At the same time as this increase in clientele, came a decline in the numbers of religious. As a result, class sizes soared. It was not uncommon, particularly in secondary schools, for teachers to face classes containing up to a hundred students. In September 1957, in the Archdiocese of Sydney, where the pupil-teacher ratio for the State Education Department was 50 pupils per teacher, reported ratios for Catholic schools indicated “30 Classes with over 100 pupils, 120 Classes with over 70 pupils, 482 Classes with over 50 pupils” (D’Orsa, 1999, 42). Besides the numbers of students requiring Catholic Education, the financial strains to provide the facilities and staff brought the Catholic system to near collapse. The situation came to a head when the Bishop of Goulburn, following an adverse report from the State Education authority relating to the provision of toilet facilities, closed Catholic schools for a week, forcing students to seek their tuition at the local state institutions (O’Farrell, 1992).

At this time many aspects of Australian society were beginning to undergo re-evaluation and recommitment (Mackay, 1993). The effects of the World Wars, the momentum of the feminist movement, the increase in knowledge and understandings, particularly with scientific and technological advances, brought new paradigms and influences on the development of people’s perceptions and understandings of the world. Such influences not only made a contribution to



redeveloping the social construction of reality and the general understanding of society developed by individuals (Berger & Luckman, 1970; Charon 2001; Congalton & Daniel, 1976; Manis & Meltzer, 1972), but also brought with them expanding educational opportunities and a demand for additional resources for the education of students.

Within these changing circumstances and the crisis facing Catholic communities in trying to provide education for their youth, the Australian Federal Government under the leadership of Prime Minister Menzies, seized the opportunity to issue grants for libraries and science facilities, and eventually funding to support Non-Government schools. State governments soon followed in granting additional funds and resources (D'Orsa, 1999; O'Farrell, 1992; Tobin, 1987f). This funding was boosted by the Federal Whitlam Labor Government in the 1970's, and outcomes which flowed from the Karmel Report into education (Griffiths & McLaughlin, 2001).

The granting of financial support for Non-Government schools was challenged in the Australian High Court in 1980, in the so called Defence of Government Schools (DOGS) case (*Attorney -General for The State of Victoria (At Relation of Ian John Black and Others) and Ian John Black and Others v. The Commonwealth of Australia and Others*, 1981). The major argument against funding put forward in this case, was that the granting of government funds to Non-Government schools was contrary to the Federal Constitution, in particular s.116, in that the funds were supporting the establishment of a religion. With the majority of Non-Government schools at this time being Catholic schools, the argument was that the funds were supporting the establishment of the Catholic Religion. The High Court ruled that the challenge to the granting of government funds to Non-Government schools was not contrary to the Constitution and as a result the flow of funds to Non-Government schools continued. The funding of Catholic schools in Australia, like the non funding situation in America (Cooper, 1996), therefore is basically a legal one.

As at 2001, an analysis of the educational funding arrangements between the Federal and State Governments revealed that approximately 60% of the funds for Catholic schools were provided by the Federal Government and approximately 20%-25% from the state governments (Catholic Education Commission, New South Wales, 2001; Council of Catholic School Parents, 2001). These funding arrangements have remained fairly static over the past few years but the debate about funding of Non-Government schools, which includes the Catholic schools, is becoming a current issue (Bachelard, 2004; Johnson, 2004; Shearman, 2004).

## **2.6 Survival, Expansion and New Structures**

The financial support for Non-Government schools and the outcome of the High Court case, brought to an end the already dwindling sectarian debate based on earlier perceptions and prejudices, which were heavily influenced by the Irish perspectives and interpretations (Croke, 2002a). The funds that flowed, secured the survival and expansion of Catholic Education in Australia through the provision of new facilities and the upgrading of existing facilities with capital works programs, and through the provision of resources with such schemes as text book allowances and payment of teachers' salaries.

With a decline in the number of religious, the financial support to pay teachers' salaries allowed Catholic schools to increase the number of lay teachers, so that by 2001 most religious were replaced by lay professionals. This change in culture was dramatic. In 1970, 50% of teachers in Catholic schools were religious, and by 2001 they had diminished to 1% (Tannock, 2001). This trend saw the need to develop Catholic Teacher Training Institutions and Universities to provide teacher training for lay persons wishing to enter the teaching profession in Catholic schools. This was particularly the case with regard to the development and understanding of the ethos, cultural and symbolic aspects of Catholic Education for those persons taking up leadership positions (D'Orsa, 1999).

By 1996, there were over one thousand Catholic schools in Australia, as a result of the survival and revival of Catholic schools brought about by the changes outlined above. Approximately six hundred thousand students were enrolled in these schools, which meant that approximately one in five students were attending Catholic schools in Australia at that time (Ryan, Brennan & Willmet, 1996). This survival, revival, expansion and financial support for Catholic Education saw the emergence of a new structure and culture for Catholic schools (Dwyer, 1993, 1986). While the link between the parish and elementary Catholic school still existed, there was a move away from the parochial parish school administered by the parish and staffed by mainly religious. What emerged was the parish school being mainly staffed by lay teachers and administered as part of a Diocesan Catholic Education System.

The First National Conference on the Organisation and Administration of Catholic Education was held in Armidale New South Wales in September 1972. From this conference the following structure emerged. A National Catholic Education Commission was set up to oversee the needs of Catholic Education throughout Australia, which eventually established itself in Canberra, the Australian Capital. State Catholic Education Commissions were also set up in the various state capitals, to support the administration of Catholic Education within each state. As the Catholic Church structure within each state was diocesan based, Catholic Education at the local level became administered through various diocesan authorities. From this structure, Diocesan Catholic Education Offices were developed to administer Catholic schools within each diocese and in turn were subject to the jurisdictions of the state in which they were situated (Dwyer, 1993; D'Orsa, 1999; Flynn & Mok, 2002; Tannock, 2001). As the Commonwealth had now entered the education scene through various financial arrangements and grants, schools also became subject to various federal laws and regulations.

In this cultural change, some of the secondary colleges, which were set up by religious orders with a degree of autonomy continued to maintain a degree of administrative independence. However, as the number of religious continued to

decline, a number of these schools were restructured and amalgamated into the diocesan administrative authorities. The administration of many of the secondary colleges, which still remain outside the diocesan systems, has been restructured with the governance of their operation being overseen by Councils and Boards of Trustees. While some religious orders, such as the Christian Brothers, are attempting to set up their own system of schools on a national basis, the trend now is to provide new secondary education facilities of a co-educational nature within diocesan administrative structures.

These developments have brought a more centralised administration of Catholic schools. However, some inequalities have emerged, with country diocesan authorities finding it more difficult to provide support and facilities than their more populated metropolitan diocesan counterparts (Griffiths & McLaughlin; 2001).

## **2.7 Renewed Perspectives of Church and Catholic Schools**

The increase in the Australian population brought about by migration after the Second World War, also brought many Catholic people and Catholic families from a variety of countries and cultures. These people not only sought a Catholic education for their children, they brought with them perceptions and experiences of the Catholic Faith which differed from the previously dominant Irish perspectives and experiences. This Irish influence was already crumbling. The Irish dominance within the hierarchy of the Australian Catholic Church virtually tumbled with the deaths of Archbishop Mannix of Melbourne and Bishop Norton of Bathurst in 1963, of Bishop Duhig of Brisbane in 1965 and Archbishop Prendergill of Perth in 1968 (O'Farrell, 1992). At the parish level, Irish priests were being outnumbered by Australian born pastors, for the development of educational facilities had provided an opportunity for young men to study for the priesthood in Australia. The development of education facilities and opportunities produced a more informed, reflective and critical clientele and socio-economic mobility. The latter gave Catholics the opportunities and avenues to enter the professions and increase their involvement in the general community. This

placed challenges before many of the former Irish working class dominated Australian parish communities (O'Farrell, 1992).

The second half of the twentieth century also saw the Church itself undergoing significant change and an emerging uneasiness in the Church. This culminated with Pope John XXIII calling the Vatican II Council. This brought a changed perspective within the Church. Vatican II challenged the Church to relate more with the world of which it was a part rather than stand as part of, but somewhat remote from the society in which it existed (Campion, 2001; Flannery, 1996; Kelty, 1993). This resulted in many changes in perceptions and practices within the Catholic Church. "A new spirit of openness between the Church and the modern world was inaugurated" (McLaughlin, 2000, 32-39). This was clearly outlined in one of the documents of the Council *Gadium et Spes* (Flannery, 1996) and the Catholic School was to play a role in this new openness. "The character of the Catholic School shifted from protecting the faithful from a hostile Protestant majority to pursuing peace and social justice within an ecumenical and multicultural world" (Bryk, 1996, 30).

Despite these changes in structure over the years, there are a number of underlying elements and distinctive characteristics of Catholic schools. The authenticity of Catholic schools, as they meet the challenges outlined by Vatican II and engage with the pluralistic society in which they operate, can be evaluated by the way they measure up to these elements and characteristics. It is to an examination of these elements and characteristics that this study now turns.

## **2.8 Underlying Elements and Characteristics of the Catholic School**

Earlier, reference was made to the ethos and symbolic and cultural aspects of Catholic schools. Despite the changing structures and administration of Catholic Education within Australia as outlined above, there are a number of elements and characteristics to which Catholic schools aspire. These characteristics have been commented on by various authors (Dwyer, 1993, 1986; Fitzgerald, 1990; Flynn,

1993; McLaughlin, 1997, 1998; McLaughlin, O’Keefe & O’Keefe, 1996; National Catholic Education Commission, 2000), but their main source comes from official Church documents, notably: *Declaration on Christian Education*, (1965) in the Vatican II Documents; *The Catholic School*, (1977); *Catechesi Tradendae: Catechesis in Our Time*, (1979); *Lay Catholics in Schools: Witnesses to Faith*, (1982); *The Religious Dimension of Education in a Catholic School*, (1988); and more recently *The Catholic School on the Threshold of the Third Millennium*, (1997), and *Consecrated Persons and Their Mission in Schools*, (2002), (St Pauls, 2004). While the characteristics extrapolated from these documents may have received varying degrees of emphasis in the historical development of Catholic schools, they form a coherent perception of the Catholic School. The elements and characteristics which emerge from these documents are portrayed in a conceptual framework in Figure 2.1. These characteristics are not independent but are interdependent, linked to each other and centred on the person of Jesus Christ.

### **2.8.1 Ecclesial Identity**

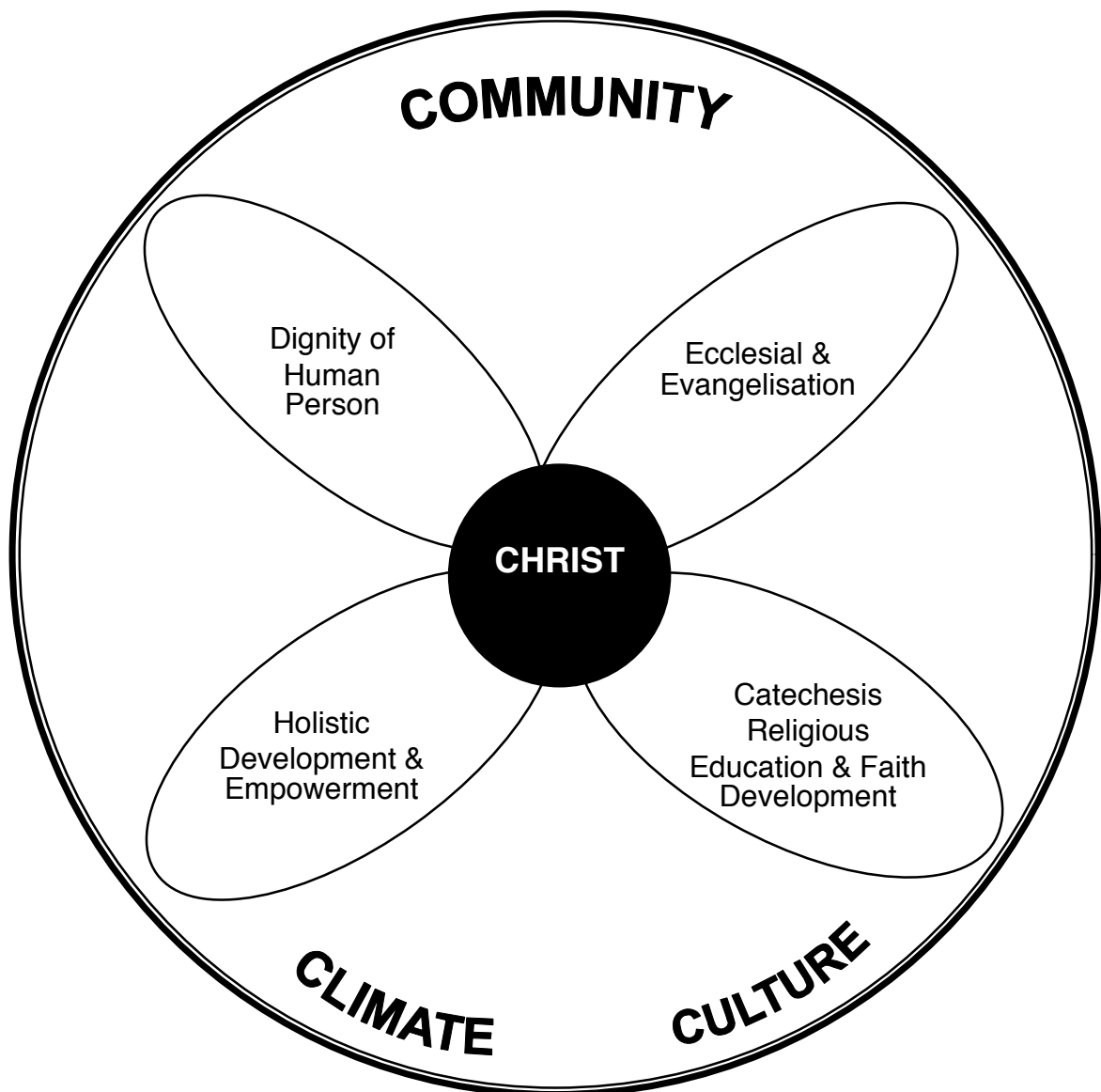
Catholic schools have been a part of the structure of the Catholic Church and an integral part of the Church’s mission for many years. Catholic schools are first and foremost religious schools and this is an identifying characteristic of them. “A school cannot claim to be ‘Catholic’ if it distances itself from the Catholic Church and its living traditions and worship. Indeed the purpose of a Catholic school is linked to the pastoral ministry of the Church” (Flynn & Mok, 2002, 15). The link between local parish is still strong for Catholic primary schools, and the secondary colleges run by religious congregations have a close relationship with the Church and the local diocesan authorities. Religious and Church symbols adorn the Catholic school buildings and surrounds, and the celebration of liturgical events and feasts is an integral part of a Catholic school’s yearly program. While this relationship and identity is a feature of Catholic schools, it is the living out of the Gospel values within the school community that is the

hallmark of the school's effectiveness and authenticity in attaining its place within the Church's mission and vision.

It is from its Catholic identity that the school derives its original characteristics and its 'structure' as a genuine instrument of the Church, a place of real and specific pastoral ministry. The Catholic school participates in the evangelising mission of the Church and is the privileged environment in which Christian education is carried out...in which faith culture and life are brought into harmony (Congregation for Catholic Education, 1998, 14).

**Figure 2.1** (2)

**Conceptual Framework of the Elements and Characteristics of a Catholic School**



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2. Devised by the Researcher

## 2.8.2 Evangelisation

The mandate given to the Church by its founder, Jesus Christ, was “to communicate the message of salvation, to preach the word of God, to transform the person and the world” (Dwyer, 1993, 18). “Catholic schools contribute to the Church’s mission to proclaim the Good News of Jesus Christ” (National Catholic Education Commission, 2000, 2). Evangelisation therefore, is an identifying characteristic of Catholic schools; in fact their “fundamental duty” (Congregation for Catholic Education, 1998, 6). Within the context of Catholic schools evangelisation takes on a dual role; a civil and apostolic perspective (Fallon, 1996; Sacred Congregation for Catholic Education, 1988).

The apostolic perspective comes in the mission to proclaim the ‘Good News’ of salvation, and to nurture and develop its clientele in the knowledge and understanding of God. There are three dimensions to this evangelisation, namely:

- continued evangelisation: deepening the understanding of those who are part of the involved community;
- re-evangelisation: being a source of reconciliation to those who are in the process of renewing their involvement; and,
- new evangelisation: being a source of invitation to those who have no understanding of the Christian message (Dooley, 1998; Treston, 1998b).

The civil perspective is closely linked to another characteristic of a Catholic school; the holistic development of the human person in knowledge, understandings, attitudes and values. The civil perspective of evangelisation does not only have a personal development component, but an interpersonal component. All human persons are seen as part of living communities, and as social beings are called to make a valuable contribution to the service of others and to the community in which they live (Barnes, 1996; Dooley, 1998; Grace, 1996; Hollenbach, 1996; Holohan, 1999; McLaughlin, 1997). These dual roles are not in themselves exclusive but are bound up in an integration of faith and



culture and a synthesis of faith and life. This integration is often referred to as the development of the Kingdom (McLaughlin, 2000).

The notion of Kingdom has a number of overtones such as “a future, other-worldly, heavenly kingdom, or as an interior spiritual and mystical kingdom; ... a political state or as a utopian vision of some future society” (Fiorenza, 1994, 5). Such perspectives are considered out of kilter with what evangelisation is really on about, and the title Kingdom itself has negative overtones for many because of its possible masculine interpretation.

The terms reign of God or presence of God are more currently used to describe this inculcation of life, culture and faith. Current understandings of this concept of the reign of God, link the concept to the culture and the world in which one lives. This aspect will be referred to in more detail later in this study. Thus, when reflecting on this concept in today’s world, dimensions such as inclusiveness, social justice, a place for those on the fringe of society, renewal, restoration and stewardship of creation, and a hope and belief in the future (though not necessarily from the point of view of progress as often perceived by the modern world), come to the fore (Fiorenza, 1994; Spry & Sultmann, 1997).

Thus Catholic schools:

share a common purpose with the Catholic Church, in bringing about the biblical concept of the ‘reign of God’ through the establishment of a personal relationship of each person with Christ. Such a relationship implies a working towards a transformation of person and society, characterised by relationships of justice, love and peace. Catholic schools aim to bring about this transformation by providing the embodiment of a relevant and coherent view about the meaning of human persons and of human life; by attempting to facilitate a holistic and integrated education acknowledging this; and by promoting religious and moral formation congruent with Kingdom values and the Catholic tradition (McLaughlin, 1997, 31).

### **2.8.3 Religious Education, Catechesis and Faith Development**

The religious characteristics of a Catholic school have already been mentioned above, and it has also been pointed out that one of the dual perceptions of

evangelisation, the apostolic perspective, is concerned with imparting the knowledge and understanding of God and the teachings of Christ. These two elements are brought to light more fully in the characteristics of Catholic schools which relate to religious instruction, catechesis and faith development (Holohan, 1999).

One of the central ways in which Catholic schools go about accomplishing their mission of evangelisation is by playing a major role, in partnership with the parish community and parents, in the development of faith through religious instruction and catechesis (Haldane, 1996; Sacred Congregation of Catholic Education, 1982). An important clarification here is to understand the link and the distinction between Religious Education and catechesis. Religious Education is one of the Key Learning Areas identified as part of the curriculum components in a Catholic school. As such its major aim is to impart knowledge of faith through systematic instruction, based on a set curriculum. This instruction in recent times is developed around the Catholic Catechism (Holohan, 1999).

The concept of catechesis, however, goes beyond just the imparting of knowledge, and refers to the development of understandings through being involved within a community that lives out the message that is being imparted. Thus, there is the link here between the parish communities in terms of the ecclesial character of Catholic schools mentioned above, and the culture and climate of a Catholic school commented on below.

There is a close connection and at the same time a clear distinction, between religious instruction and catechesis, or the handing on of the Gospel message. The close connection makes it possible for a school to remain a school and still integrate culture with the message of Christianity. The distinction comes from the fact, unlike religious instruction, catechesis presupposes that the hearer is receiving the Christian message as a salvific reality. Moreover catechesis takes place within a community living out its faith at a level of space and time not available to the school: a whole lifetime. (Congregation for Catholic Education, 1990, 61)

The distinction between religious instruction and catechesis does not mean that a Catholic school plays no part in catechesis; it does. The beliefs and values

outlined in religious instruction should be experienced within the school environment and permeate all that occurs within the school (Holohan,1999). Therefore, in Catholic schools the aim is for the instruction and knowledge gained in Religious Education, not only to be seen as some type of lip service in religious education classes, but something that relates to the whole day and contributes to the life and character of the school (Flynn, 1993; Flynn and Mok, 2002; McClellan, 1996; McLaughlin 2000). If this environment is not present the “religious instruction can become empty words falling on deaf ears, because the authentically Christian witness which reinforces it is absent from the school climate ”(Gallagher, 1996, 290).

This understanding of where religious instruction is infused within the school, is congruent with the essential principle laid down by the bishops of Australia in 1869 when faced with developing their own system of Catholic schools:

Education must take place in, and be infused by, a religious atmosphere, which would act upon the child’s whole character of mind and heart. This did not mean merely or even mainly, the direct teaching of Catholic doctrine: it meant the interpretation of a vital Catholic atmosphere in the school, its infusion with Catholic life and a spirit of prayer. By these standards, all schemes of secular education - including those which admitted religion as a separate addendum – were fundamentally defective (O’Farrell, 1992, 160).

Within Catholic school environments there are close links with the local parish and diocesan authorities, and the liturgical celebration and practices which are particularly linked to the Church’s Liturgical calendar (Groome, 1996). As indicated earlier, this generally forms part of a Catholic school’s yearly program. In this way, the Religious Education program links with the catechetical development of the students in Catholic schools, and students learn to understand and appreciate the Catholic Faith and the traditions of that faith (John Paul II, 1980; Paul VI, 1982).

While evangelisation, religious education and catechetics can be separated as concepts for analysis, they overlap, and Catholic schools play a role in the development and integration of each (Dooley, 1998; Holohan,1999). The

development of faith, which passes through stages as does other learning (Flynn 1993; Holohan, 1999), is the end product of this development and integration. This journey encounters the scriptures and liturgies; the creeds, dogmas, doctrines, spiritualities and theologies; the sacraments; the rituals, symbols, myths, gestures and religious language; the values and laws, and the expected lifestyles and so on. The goal of this integration and development goes beyond people knowing about values such as justice and compassion; its purpose is to get people to be just and compassionate. (Groome, 1996; Kean & Kean, 1997; Paul VI, 1982; Sacred Congregation for Catholic Education, 1982).

Thus Catholic schools, beside providing avenues for religious instruction through its Religious Education curriculum, also provide opportunities for lived experiences which are congruent with Gospel values. These elements link up with the local parish and Church, particularly its liturgical life, and social justice programs provide fertile ground for faith development. For the student, this is to inculcate an encounter with the culture and society in which the Catholic School exists. While Catholic schools have a partnership role to play in this development, along with the parish and family, it must be remembered that the school has a specific role in religious instruction, (Barry & Brennan, 1997a; 1997c; Holohan, 1999), and a distinguishing characteristic of a Catholic school, as was the case in the early days of Australia, is that Religious Education is an integral part of the school curriculum (Whiteman, 1984).

#### **2.8.4 Dignity of the Human Person**

The dignity of the Human person is a central element in the Catholic tradition (Flannery, 1996), and foundational to the nature and purpose of Catholic schooling (McLaughlin, 2000, 2002; Ryan, Brennan & Willmet, 1996). “The person of each individual human being, his or her material and spiritual needs is at the heart of Christ’s teaching: this is why the promotion of the human person is the goal of the Catholic school” (Congregation for Catholic Education, 1998, 12). The central aspect of this understanding is that “in becoming a human person in

Jesus, God transformed human nature and raised it to a special dignity and importance” (Flynn & Mok, 2002, 4). Consequently, from a Catholic tradition, human beings are seen as subjects, not objects, and deserving of absolute respect regardless of age, gender, religion, race or wealth (John Paul II, 2001). As well “society’s structures institutions laws and customs [should] exist for persons and for their full authentic development, not vice versa” (Australian Catholic Bishops Conference, 1992). In 1989 Pope John Paul II wrote:

The dignity of the person *constitutes the foundation of the equality of all people among themselves*. As a result all forms of discrimination are totally unacceptable, especially those forms which unfortunately continue to divide and degrade the human family, from those based on race or economics to those social and cultural, from political to geographical, etc. Each discrimination constitutes an absolutely intolerable injustice, not so much for the tensions and the conflicts that can be generated in the social sphere, as much as for the dishonour inflicted on the dignity of the person: not only to the dignity of the individual who is the victim of the injustice, but still more to the one who commits the injustice. As an individual, a person is not a number or simply a link in a chain, nor even less, an impersonal element in some system... In effect, the acknowledgement of the personal dignity of every human being demands *the respect, the defence and the promotion of the rights of the human person*... It is a question of the inherent, universal and inviolable rights. No one, no individual, no group, no authority, no State, can change - let alone eliminate them because such rights find their source in God himself...Respect for the dignity of the person, which implies the defence and promotion of human rights, demands the

This respect for the human person places a challenge before Catholic schools to be places:

- where the commitment to the human person places the individual above bureaucratic routines and school regulations (Kelty, 1993);
- where the goals are to develop a just and caring community (McLaughlin, 1997),
- where human rights are upheld and defended (Sacred Congregation for Catholic Education, 1982);
- where discrimination is eliminated;
- where an inclusive community culture is developed, particularly in providing a preferential option for the poor, for those families on the fringe of society, for those families who have broken up or who are fragile and experiencing

difficulties (Congregation for Catholic Education, 1998) and for those who are far from the Faith (Sacred Congregation for Catholic Education, 1977).

### **2.8.5 Holistic Development and Empowerment**

The commitment to the development of the human person brings us to another characteristic of the Catholic School; that of holistic education. While Catholic schools have a place in the mission of the Church and in playing a partnership role with the family and parish in faith development, they have a specific task of educating their students. “The Catholic school must first be a genuine educational institution that encourages excellence, the pursuit of learning and the care of all individual students” (Flynn & Mok, 2002, 13).

From the inception of Catholic schools, a characteristic of them has been that they have been places of learning and searching for the truth. The early Catholic bishops in Australia saw Catholic schools as one way the poor, mostly Irish poor, could raise their status in society and make a contribution to the communities in which they lived. This perspective also relates back to the notion of evangelisation as mentioned above, in that evangelisation has both a personal conversion aspect, and a civic context in the transformation and inculturation of society (Dooley, 1998; D’Orsa, 2002; Grace, 1996; Hollenbach, 1996). Therefore, since the establishment of Catholic schools in Australia, academic standards and achievement have been a high priority, as has the extension of cultural pursuits to as many students as possible (Tobin, 1987e). The importance of academic excellence and the provision of a wide curriculum, including Religious Education, are still central elements of Catholic schools, as is the social dimension of sharing responsibility for the social and cultural development of the communities (Congregation for Catholic Education, 1998).

The Congregation for Catholic Education cautions about reducing education to its “purely technical and practical aspects” (Congregation for Catholic Education, 1998, 12). The particular characteristic of Catholic schools is that what is learnt is

enriched through perspectives of what it means to be Catholic. In reality this means that Gospel values permeate not only curriculum in its narrow sense and influence the delivery and development of understandings within the Key Learning Areas, but also in the broader sense in influencing all that goes to make up school learning experiences (Haladane, 1996; Spry & Sultmann, 1999).

No curriculum can be value-free. Its foundation is always the belief system of those who conceptualise and develop it...the sort of curriculum we develop depends on what we believe, deep down, about the nature of human beings and the society in which they live, about what is really worth knowing and how people can gain such knowledge, about the purpose of schooling and, even, about the purpose of life and how it can be lived to the full (Dwyer, 1993, 78 -79).

By upholding the dignity of human beings and the subsequent commitment to the development of the human persons through a holistic education, Catholic schools guide and empower individuals to cope with, appreciate and value their material and social/cultural worlds, and help them gauge their involvement in and contribution to the communities in which they live (McLaughlin, 1996a).

#### **2.8.6 Christ the Central Element**

Catholic schools are Christian schools, and as such, Christ is the central focus, the constant that holds all the elements and characteristics mentioned above together. This is portrayed in Figure 2.1. “If a school proclaims itself to be Catholic and has an explicit Christian character, then the values that were lived and proclaimed by Jesus of Nazareth need to be the values that underpin the relationships, policies, practices and programs of the school ” (Ryan, Brennan & Willmet, 1996, 26).

Christ’s mission was to establish the Kingdom, the reign of God in the world (McLaughlin, 1998) and while Catholic schools have an ecclesial element and are linked to the institutional Church, their focus is on Christ (Whiteman, 1984) and the development of the values and covenantal relationships stemming from His teachings and example (Treston, 1997). This focus not only gives all “inalienable

human rights, but correspondingly... responsibility to defend and promote similar rights for all humankind” (Groome, 1996, 110).

These values and covenantal relationships are “not concerned with power, control or dominance” (Spry & Sultmann, 1994, 10) but call for a love of enemies, forgive those who offend, and to seek out and support those who are hurting in communities (Senior, 1993). These values and covenantal relationships place before administrators and leaders in Catholic schools the notion of servant leadership; not the seeking of power and authority over others.

Catholic schools which centre on Christ and his teachings and which strive to develop the elements and characteristics outlined above, should be special places; places which have a particular culture and climate, and where there is the development of community.

### **2.8.7 School Climate, Culture and Building of Community**

All social organisations have their own particular character or spirit; their own particular climate or culture. This culture of an organisation is bound up with the way a particular organisation meets the needs of its members, how it brings and expresses meaning in the lives of those who belong to it; culture and climate being a lived experience (Dwyer, 1993).

Catholic schools being social organisations have such a culture. While the characteristics outlined above contribute to and help describe the climate and culture of a Catholic school, it is not something that is distinct or easily defined. It is rather a dynamic and evolving phenomenon bound up with the interactions of those involved in Catholic schools (Spry & Sultmann, 1997) and the schools contact and interaction with the society in which it operates.

Flynn (1993) spent many years examining the culture of Catholic schools. He describes culture as “the core beliefs, values, traditions, symbols and patterns of behaviour which provide meaning to the school community and which help to



shape the lives of students, teachers and parents” (Flynn, 1993, 8). In short, culture is the quality of the interactions between people within the community and the way things are done and carried out around a school (Fullan & Hargreaves, 1991, Hargreaves, 1995).

As explained above, the underlying beliefs and values of a Catholic school are based on Christian values expounded in the person of Christ and the Gospels. Living up to these values and beliefs is aimed at bringing about the reign of God and the transformation of the world. However, as culture is a lived experience, the evolvement of culture in a Catholic school should be very much linked to the development of community through the quality of interpersonal relationships, interactions based on Gospel values, and in particular, how the dignity of the human person is upheld. In Catholic schools, therefore, an atmosphere of care, concern, belonging, respect, justice, openness and compassion should be a part of everyday relationships and interactions between all those involved; students, parents, teachers and others (McLaughlin 1998; Sacred Congregation for Catholic Schools, 1988, Spry & Sultmann, 1994). It is conceivable, therefore, that the rights of individuals portrayed through laws and court decisions would correlate with this perspective.

It is this development of community, which McLaughlin (1998) sees as the primary focus of Catholic schools. Where there is congruency and consistency between what is proclaimed and what is lived out, from the very moment a person enters a Catholic school environment, this climate and culture should be evident and a lived reality. (Congregation for Catholic Education, 1990; Edwards, 1987; Flanney, 1975; Kean & Kean, 1997). This notion of climate, culture and community is also enriched by expressions of the symbolic and traditional features of particular schools and the Catholic Church, and the liturgical and community celebrations which accompany them (Tobin, 1987e). The totality of the lived experience takes on a transformational aspect (Treston, 1998b) and as studies by Flynn (1993) and Bryk (1996) have shown, in this way Catholic schools can have a unique effect on the development of students.

## **2.9 Challenges Facing Catholic Schools at the Beginning of the New Millennium**

It was emphasised above, that while it was possible to extract the elements and characteristics on the conceptual framework for the purposes of analysis and explanation, the characteristics are interdependent. The linkage of these characteristics and elements to form a coherent community is an ideal description of the Catholic school. An examination by Catholic school communities to see how close they come to his utopia is an evaluation of their authenticity. For some communities this has become known as The School Renewal Process (Spry, & Sultmann, 1994; 1997).

As a new millennium begins, new challenges face Catholic schools as they strive to live out their vision and mission and demonstrate their authenticity (D'Orsa, 2002). Pring (1996), believes the distinctive view of human nature, the qualities, values, knowledge and understandings as portrayed in the Catholic school and as outlined in elements and characteristics above, are worth striving for. However, the extent to which these characteristics can be realised is bound up with the challenges facing the Church and society as a whole. Many of these challenges are a "result of a new socio-political and cultural context... a crisis of values... rapid structural changes, profound technological innovations...the globalisation of the economy...and a growing marginalisation of the Christian faith as a reference point" (Congregation for Catholic Education, 1998, 5). Providing a stable and loving environment for children and upholding the rights of others in this changing world, confronts school leaders with many social, psychological and legal challenges (Fauth, 1996; Holborow & Neville, 1999).

From the Australian perspective, these developments are coupled with a cultural change which Catholic schools have undergone in the latter part of the 20<sup>th</sup> Century. As mentioned above, this cultural change has transformed the local parish school serviced by the clergy and administered by religious, to a school which, while still having links to the local parish, is extensively government

funded, part of a diocesan system of schools serviced by a system authority and staffed almost exclusively by lay people (Dwyer, 1993; O'Chee, 1998). Despite reinforcing the secular nature of the laity in the ministry of the Church (Edwards, 1987; John Paul II, 1997), this cultural change in the Catholic School has been widely realised (Flanney, 1996; John Paul II, 1989; Sacred Congregation for Catholic Education, 1982; Treston, 1998a, 1995a, 1995b;). These changes have brought with them challenges for new models of leadership (O'Keefe, 1996) and a need for the Catholic School "to face the presence of secular attitudes to knowledge far more than before" (Kelty, 1993, 89). McLaughlin (2002) argues that the identifiable Catholic culture of the Catholic School of the past has evaporated and been absorbed into mainstream Australia. The Catholic School now faces new challenges different to challenges of survival that have been faced in the past.

McLaughlin (1998) summarises these challenges as follows:

- passing of the conduct of almost all Catholic schools from religious to lay Catholics;
- apparent demise of religious orders and the rapid decline in the number of clergy;
- major disenchantment among many Catholics with the institutional Church;
- almost total disappearance of any Catholic culture which was influential in the lives of previous generations of Catholics;
- evaporation of an Irish-Catholic, socio-political identity;
- absorption of the remaining Catholic identity into mainstream secular Australia;
- decline in the participation of young adults in worshipping communities;
- demise of traditional rationales for the purpose of Catholic schools with the decline of Thomistic and neo-thomistic philosophy;
- development of new theologies of the human person; and,
- recognition of the value of secular and concrete experiences of human life (24).

One could add to this summary an increased complexity of the administration of schools, an increased legalism in society and a push for individual rights, which have resulted in an increasing need for Catholic schools to meet civil and legal requirements. Within this changing environment, Catholic schools are faced with

having to engage with the society of which they are part, and at the same time demonstrate their distinguishing authenticity.

### **2.9.1 Engagement with a Secular and Pluralistic Society**

The Catholic School of today, while occupying an important part in the mission of the Church, is bound up with the Church's engagement with the world; a world in which society is becoming increasingly pluralistic and secular (Flynn & Mok 2002). In a pluralistic society, there are diverse views, opinions and understandings of the meaning and purpose of human life, the rights of people, the value of relationships and the commercial, economic, cultural and political aspects of society. There is a greater diversity of religious beliefs and practices and philosophies of life. Pluralism itself "springs not from a loss of value, but on the contrary, from an absolute respect for the neighbour and in this sense Christians are the original pluralists" (The Tablet, 1997, 131). "A pluralistic society, by definition, is one in which there is disagreement about the meaning of the human good" (Hollenbach, 1996, 89). The very existence of the Catholic School and the Catholic School systems attest to this understanding.

In this framework "both religion and state have a common goal in that they both seek the common good of humanity, although each emphasises a different aspect of that good" (Kelty, 1993, 154). Being part of and a product of the wider culture in which they exist, Catholic schools and the people in them are influenced by the values and attitudes of that wider social/cultural environment (Overberg, 1996). The Catholic School needs to reflect on this (Miller, 1995), and may need to confront some of these values and attitudes to maintain its integrity (Dwyer, 1993).

On the one hand, the Catholic school is a 'civil institution'; its aim, methods and characteristics are the same as those of every other school. On the other hand it is a 'Christian community', whose educational goals are rooted in Christ and his Gospel. It is not always easy to bring these two aspects into harmony; the task requires constant attention, so that the tension between a serious effort to transmit culture and a forceful witness to the Gospel does not turn into conflict harmful to both (Congregation for Catholic Education, 1990, 60).

The present Catholic school, therefore, cannot see itself as separate from other educational institutions, nor disengage itself from the political, economic, legal, social and cultural aspects of the society in which it exists. This is a considerable cultural shift from that experienced by those involved in the early Catholic schools of Australia greatly influenced by the Irish perspectives of the Catholic Faith and society. Today's Catholic school must engage with and promote respect for the society of which it is part, and observe that society's just laws (Congregation for Catholic Education, 1998). To this end, the Catholic School has as its base, social ethics which are embedded in “ *the dignity of the human person*, the central focus of the social order; *justice* , the recognition of the rights of the individual; *honesty*, the basic condition of all human relationships; and *freedom* , the basic right of each individual and of society (Congregation for Catholic Education, 1990).

While the elements of the Catholic School as outlined in this chapter may distinguish the Catholic School from its counterparts, the shift in perspective in seeing the Catholic School as an integral part of the society in which it exists, challenges those involved in Catholic schools to move away from an understanding of the relationship between faith and culture as a medieval synthesis of the natural and the supernatural world, to a perspective where faith is seen as a means of transforming the society in which one works and lives (Campion, 2001; Kelty, 1993). The challenge then is for Catholic schools to face the responsibility of fostering the widest possible reflection on the mission and characteristics and elements that should distinguish them, and at the same time being aware of the political, legal and social context in which they exist (Croke, 2002a, 2002b). This in turn requires a preparedness to critically reflect on and examine the historical development of Catholic schools, and their present structures and practices (Dwyer, 1993). “School Administrators need a clear grasp of this changed emphasis in order to make the best possible impact on the Catholic school system” (Kelty, 1993,170).

## **2.9.2 Authenticity: Vision and Reality**

Christ talks about the notion that by your fruits you will know them. (Matthew, 12,16-20; 12 33-35). Critical reflection may reveal actions and behaviours of the Church and of Catholic schools, or of members of the Church and of Catholic schools, as not being congruent with the ethos expounded above (West, 1994; 1996). One only has to reflect on the incidents of child abuse to acknowledge this (Catholic Leader, 1998; McKenna,1998; Murray, 1998; Oberhardt, 1998; Zachariah 2002). Another example is the inconsistencies that have been exposed between the Church's teaching on the rights of employees and the negotiations of their entitlements (Gregory & Russo, 1990; 1999; Russo, 1990).

Critical reflection may also acknowledge that many actions of secular authorities and institutions, and the attitudes of the people operating within them, correlate highly with the values outlined above. The Catholic School, through its historical development and present existence in Australia, is now more exposed and answerable to the civil and legal accountabilities of the society of which it is part. Within this context, a sizeable challenge is placed before the leaders of Catholic schools to bring the ideal; the vision, as expounded in the characteristics outlined above, as close as possible to the reality of every day life. From this perspective, it would seem feasible to believe that the present leaders of Catholic schools should not only have a grounding in the elements and characteristics of the Catholic school and education in general, but also have some understanding of the civil and legal accountabilities and expectations required by the society in which Catholic schools operate.

## **2.10 Summary of Chapter 2**

The development of Catholic schools in Australia has had a parish based perspective since their humble beginnings within a penal colony in Parramatta in 1820. At first, Catholic schools were part of the provision of schools in the various colonies spread across the continent, staffed mainly by the laity and

supported by government grants. However, this support was withdrawn with the advent of compulsory Public Education in Australia in the 1850s-1880's, and this saw the Catholic authorities set up their own Catholic schools. These schools continued to be parish based but were now staffed by religious and had a very Irish Catholic perspective, with a large number of the religious and Church authorities having close ties with the Irish Catholic Church.

This structure continued until the crisis of the 1960's which grew out of a changing social/cultural environment within Australia and the Australian Catholic Church, and the financial strains to meet the increasing expectations of education and demands for Catholic schools. This brought the return of government funding, and with the decline in the number of religious to staff Catholic schools, a new structure and culture emerged. Although Catholic schools still remained parish based, many were amalgamated into Catholic Education Systems administered on diocesan boundaries and staffed mainly by the laity.

Although Catholic schools in Australia were always subject to the legal requirements of the colonies in which they were established, this new structure and the development of Australia into a Federation, brought with it increased accountability and regulation. Despite this, the Catholic School has had a number of underlying attributes which have characterised its ethos and culture. These have been more formally documented in a number of publications associated with the Catholic School, emanating from Rome since the Vatican II Council. Vatican II itself, placed before leaders in the Church, including principals of Catholic schools, a challenge to engage with and help transform the increasing pluralistic and secular society into a place of justice and peace. One of the aspects of this changing pluralistic and secular society impacting on Catholic schools is the increased legalism and regulation. Within this environment, principals of Catholic schools are challenged not only to engage with the society of which the school is part, but also to maintain the authenticity of the Catholic School with this environment. Leadership within this context deserves some analysis.

## CHAPTER 3

### LEADERSHIP: A CURRENT CATHOLIC SCHOOL PERSPECTIVE

#### 3.1 Introduction

Leadership within organisations, conveys a notion that there is someone heading the organisation and leading others towards some goal or for some purpose. In recent years much has been written about leadership. In some instances discussions on leadership are contained in an examination of administration and how an organisation is administered, and references made to elements of management and leadership interchangeably (Fidler, 1997; Sultmann & McLaughlin, 2000). Covey (1989) makes a distinction between management and leadership. He portrays leaders as those high up in the trees surveying the forest, looking ahead viewing the big picture, while he sees managers as those down with the troops cutting through the forest and directing operations. This suggests that leadership is concerned with the long term and the future, and attends to the vision and the planning for what lies ahead of an organization (Kelly, 1990). On the other hand, management addresses the day to day issues, and “the development and maintenance of organisational systems which facilitate efficiency, provide accountability and support continuous improvement” (Sultmann & McLaughlin, 2002, vii).

While the terms administration, management and leadership may be identified for the purpose of discussion and analysis, there is a close relationship between them (Hodgkinson, 1991; Leithwood, 1994). Both leadership and management are essential for the successful operation of organisations, and there is a great deal of overlap between them, particularly with the respect to human resource management and focusing people on the purpose and goals of an organisation (Fidler, 1997). This is true of the school setting as with other organisations.



In the school context, the person designated as the leader, who directs operations towards some goal or for some purpose, is known as the Principal, or in some instances the term Headmaster is used. Being the key administrators, principals, within their roles, exercise elements of both leadership and management in the sense outlined above. In a number of instances, the Principal administers the school with the support of an administration team. This could include an Assistant Principal, or Assistant Principals, and others who have delegated responsibilities such as subject coordinators. This administrative structure is generally related to the size of the school, with the larger the school the larger the team. People within the administration teams carry out administrative roles and share responsibilities of a leadership and managerial nature. This notion of shared leadership relates to the concept of distributive or leadership density within an organisation. This allows subsidiarity within an organisation, where people with leadership positions at different levels within the administrative structure, carry out their role and responsibilities by making decisions about issues as close as possible to the situation requiring attention, and involving people in that decision making who are most likely to be affected by the outcomes.

It was mentioned above that leaders play a part in directing others towards some common purpose or goal. In the school context, this purpose has a learning focus (D'Arcy, 1996; Shaw, 2002). For the Catholic School, this goal and purpose should not only have a learning focus but a learning focus interrelated with the characteristics of the Catholic School outlined above, and the climate and culture resulting from bringing these characteristics to a lived experience. It is suggested that the effectiveness of a school in meeting its purpose, depends to a large extent, on the way leadership roles are carried out. (Angus, 1989; Beare, 1989a, 1989b Beare, Caldwell & Millikan, 1989; Bhindi & Duignan, 1997; Blackmore, 1996; Blase, 1993; Calwell, 1987; Dimmock, 1995; Sergiovanni, 1990; Silins, 1994;). Leadership, therefore, is important in bringing a school's vision as close as possible into a lived reality.

Understandings of leadership have undergone development and transformation over the years as has the role of principal as administrator, manager and leader (Hallinger, 1992). New understandings are emerging which point towards the types of leaders required to lead modern and complex organisations and which can bring about these organisations' effectiveness and success (Duignan & d'Arbon, 1998; Feeney, 1998; Gilley, 2000; Starratt 1993; Wheatley, 1999a). From a school context, what is appropriate for other modern organisations and institutions may not necessarily be appropriate for today's schools, as schools are indeed special places (Bottery, 1992; Brandt, 1992; Marshall, 1995; Sergiovanni, 1996). For Catholic schools, this has particular significance (Duignan & Bhindi, 1998, McLaughlin, 1996) because of the special place the Catholic School holds within the mission of the Church, and the particular ethos engendered by the Catholic School's culture and tradition as outlined earlier.

### **3.2 Some Perspectives of Leadership**

The following gives some commentary on various perspectives of leadership, some of the factors influencing perceptions of leadership today and the place of leadership in the Catholic School from a managerial and leadership perspective.

#### **3.2.1 Great Person Theory**

Leadership has been viewed from the perspective of the Great Man or trait theory,(Beare, Caldwell & Millikan 1989; Foster, 1986). This perspective is based on an examination of the personal traits and characteristics of leaders, usually males, whom others believe to be, or have been, effective and successful in their role. Montgomery (1961), devoted a whole text to this analysis. He saw leadership as "a battle for the hearts and minds of men" (233) and outlined a number of characteristics which he believed were necessary in accomplishing that objective. His characteristics included prudence, justice, temperance and fortitude. He also saw the need for leaders to have clear goals and to pursue them "with a clear conscience, courage, sincerity and selflessness" (13).

Montgomery further believed a leader had to be a person who understood human nature, and who could make the right decisions and stick to them. From this perspective, one could list a number of attributes that characterise a good leader, as did De Pree (1989) and Feeney (1998).

### **3.2.2 Leadership Style**

This perspective of leadership focuses on the behaviour of leaders, and categorises them from the point of view of how they behave in particular situations. This is akin to the notion of management style. Viewed from this perspective, the exhibited behaviours of leaders are considered to favour either a task orientated approach, or an emphasis on personal interactions and the concerns for the people involved in the tasks undertaken. Here it is considered possible to categorise leaders as task orientated, or as person and relationship orientated leaders, and that this leadership bias can be plotted on grids and charts. (Blake & Mouton, 1985; Caldwell, 1987; Fiedler, Chemers & Mahar, 1977; Gray & Pfeiffer, 1987). Notwithstanding that a leader may demonstrate a propensity for one of these orientations, depending on the particular issue being dealt with, the argument is that over a series of issues and events the leader displays a tendency towards one orientation when compared to the other. However, to categorise leaders on such a basis probably does an injustice to the full potential and overall development of people in leadership roles.

In some instances, it has been considered that these categorisations may be related to the stage of development of an organization. Thus, the style of leadership may reflect whether an organization is in its early developmental stage, expansion stage, consolidation stage or even in decline. On the other hand, a particular leadership style may be applied to keep an organisation operating as a vibrant concern within each of these stages of development, and provide the differing emphases and directions required (Sperry, 1989).

### **3.2.3 Leadership as an Art**

Leadership has been viewed as not just something learned by applying theory and managerial processes, skills and techniques acquired through reading and studying leadership, but something acquired over time by dealing with situations and experiences (De Pree, 1989; Duignan, 1987). From this perspective, leaders, having dealt with situations, evaluate the congruency of the organisation's value and beliefs with the processes used and the outcomes achieved, and how people involved in the organisation are affected. From this perspective "leadership is more tribal than scientific, more a weaving of relationships than an amassing of information" (De Pree, 1989, 3). Leadership here, contains a certain amount of "professional artistry" which is gained through a type of action research model, as leaders deal with situations in the real world, reflect upon the processes used and the outcomes achieved, and adjust or reinforce their behaviour patterns accordingly. From this perspective, reflective practice becomes an important element of leadership roles, and through these practices leaders develop themselves as well as developing a climate that empowers others (De Pree 1889; Duignan, 1987; Foster, 1986; Gordon, 1992; Sergiovanni, 1990, 1992 a, 1992b, 1996; Wheatley, 2004, 1999).

In practice, leadership as an art acknowledges and values different understandings and personalities of people within organisations, and their the gifts, talents, skills and contrary opinions. Here, developing respect for people within the organisation and nurturing positive interpersonal relationships are central to good leadership, and employment relations are viewed as going beyond the boundaries of a legalistic, industrial and contractual model to a framework centred on vocational and covenantal relationships (De Pree 1989; Treston, 1987).

Leadership here focuses on the continual renewal and maintenance of the organisation's culture, the linking of intrinsic values to the lived reality, peoples commitment to the organisation and the positive contribution the organisation

makes to the society of which it is part. This does not mean that the rights of individuals are treated indifferently. Indeed, paradoxes can be created by competing legitimate, yet not necessarily mutually exclusive rights of persons within an organisation (Dempster, 1997; Duignan, 1996, 2002). This notion of leadership as an art, also ties in with the cultural and symbolic perspectives of leadership, the notion of organisations as learning communities (Brown, 1994, Senge et. al. 2000; Senge et. al. 1994; Sergiovanni, 1990; Starratt, 1986), and the development of a social construction of reality and a symbolic interactionist perspective of society (Berger & Luckman, 1970; Charon, 2001; Congalton & Daniel, 1976; Manis & Meltzer, 1972).

### **3.2.4 Transformational Leadership**

Burns (1978) makes a distinction between transactional leadership and transformational leadership. Transactional leaders he believes, see “followers with an eye to exchanging one thing for another: jobs for votes” (4). He also believes the majority of interactions between leaders and followers fall into this category. Transformational leadership on the other hand he believes to be more complex and potent:

The transforming leader recognises and exploits an existing need or demand of a potential follower. But beyond that, the transforming leader looks for potential motives in followers, seeks to satisfy higher needs, and engages the full person of the follower. The result of transforming leadership is a relationship of mutual stimulation and elevation that converts followers into leaders and may convert leaders into moral agents ” ( Burns, 1978, 4).

Transformational leadership therefore, is more than just a focus on characteristics or task analysis (Sharpe, 1995), but more as a process that transforms organisations and institutions (McLaughlin, 1996). This perception of leadership is not divorced from the notion of leadership as an art, for an organisation’s values and beliefs are important elements in viewing leadership from a transformational perspective. Also, the ability of leaders to use a body of understandings gained from past experiences to solve problems, have been noted within a transformational perspective (Leithwood & Steinbach, 1993, 1991).

Others (Bennis & Nanus, 1985, Leithwood,1994, 1992a, 1992b; Leithwood & Jantzi, 1990; Senge, et. al. 2000; 1994; Sergiovanni, 1996, 1992a, 1992b, 1990, 1987; Silins, 1994; Sperry, 1989; Starratt, 1986) have explored this idea of leadership and a number of elements associated with transformational leadership have emerged. Two key concepts will be examined here.

### **3.2.4.1 Vision and Mission**

Vision and mission are two elements often referred to when discussing leadership from a transformational perspective. Vision is seen as something of “an ideal, a dream that is grounded in those fundamental meanings and values that feed a sense of human fulfilment” (Starratt 1993, 41). Mission on the other hand, is more the path way and process in working towards that vision.

The critical issues here are to clarify what vision the leader is working out of and what is the basis of that vision. In the school situation for example, the leaders “primary task [is] to articulate the school vision and the fundamental values which permeate and underpin it” (Gleeson, 1990, 102). There is also a need for a common and shared understanding of this vision and its foundational basis (Fullan, 1992; Olivero, 1966; Senge et. al., 2000). It is argued that this vision needs to be mindful of the underlying personal values and human rights of society, and that it can be influenced by distorted interpretations of these values and rights popularised by pressure groups, cultural wants and political expediency (Foster 1986). It can also be heavily influenced by a dominant world view at the expense of a diversity of thought (Sparks, 2001). However, where the vision is in alignment with the underling values of an organisation, it is suggested that a harmonious growth of the organisation can result (Starratt, 1986; Senge, et.al., 1994).

For the transformational leader, operating within such a fluid social and cultural environment, reflective practices provide a good indication of the alignment between the processes used and outcomes achieved, and one’s mission and

vision when dealing with situations and issues. However, being mindful of society's values, leading a Catholic school and making decisions based on values emanating from the characteristics of a Catholic school as expounded earlier, could create paradoxes for the transformational leader within an increasingly secular and pluralistic society.

Angus (1994; 1989) questions a number of issues regarding the application of transformational leadership to the education scene. While acknowledging the prominence of this perspective in relation to school leadership, he argues that it is questionable whether or not this type of leadership is capable of bringing about effective change in education. He bases this assessment on the fact that much depends on the leaders and their vision of education. He asks whether or not there is a true collaboration in the development of a shared vision, or whether it is a somewhat imposed vision because of the nature of power within the structures of administration, inherent in systems of educational administration. The leaders involved, he argues, are still very much the products of a bureaucratic structure of top down administration, who have particular power, authority and say about what goes on in schools and over the stakeholders involved.

Angus also raises the issue of whether the values, beliefs and principles underlying the vision and value system of an organisation are themselves the products of a social and cultural construction of reality; a reality which has entrenched injustices and inequalities. He sees these injustices and inequalities as part of the political and social nexus of administration that has a dominating effect on schools and school policy. He argues that the complexities inherent in present educational systems, and the influence of an increasing complex world on schools and school leaders, may pose a more demanding solution than that offered by a transformational perspective on leadership.

### **3.2.4.2           Distributive Leadership**

As with the notion of leadership as an art, leadership from a transformational perspective supports the notion of distributive leadership. In the literature, this is sometimes referred to as parallel leadership, shared leadership, or density of leadership. Here the energies of an organisation are focused on achieving group goals, and in doing so the contributions of others are valued and respected (Crowther, Kaagan, Ferguson, & Hann, 2002; Rolls, 1995). This is tied up with the idea of a shared vision and highlights elements such as consultation, collaboration, shared decision making, trust, reflective dialogue, discernment, subsidiarity and collegiality, (Casey, 1986; D'Arcy, 1996; McKinney, 1991, 1987; Senge, et.al., 2001, 1994; Sergiovanni, 1992b; Shaw; 2002). Leaders are not seen as the authoritative figures, possessing all the knowledge, but persons who develop their own gifts and talents and the gifts and talents of others (Burkert & Sofield, 1986), and who share their wisdom and work in an interrelated way with others in the organization, providing support, intellectual stimulation and sharing high performance and expectations.

It is suggested that from a transformational perspective, leadership, power and authority emerge from an acquired status. This acquired status evolves from the process of working with others in the organisation as it strives to achieve its goals, which themselves are aligned to the organisation's vision and mission, and not solely from an ascribed status related to position and title within a hierarchical or bureaucratic organisational structure. Thus, power becomes a notion of power with and power to, not power over ( Bennis & Nanus 1985; Covey, 1990, 1989; Duignan, 1997; Kuczarski & Kuczarski, 1995; Leithwood, 1992b; McCormick 1996; McKinney 1987; Senge, et. al., 1994; Sergiovanni, 1996, 1992, 1990; Starratt, 1993, 1986, Wagner 1989).



### **3.2.5 Ethical and Authentic Leadership.**

A number of authors (Bhindi & Duignan, 1997; Bottery, 1992; Duignan & Bhindi 1998, 1995; Kuczumarski, & Kuczumarski, 1995; Sergiovanni 1992, 1990;) have placed a focus on the value base of leadership, which they believe is manifested through moral and ethical behaviours and actions. The central point of this notion of leadership, is that leaders act from a shared value base, they practice what they preach, they 'walk the talk'. "By helping to negotiate and articulate a shared commitment based on core significant values, authentic leaders help create an authentic vision for their organisation" (Duignan, 1997, 22).

From this perspective, leaders are challenged to act authentically, being true to themselves, "deciding what is significant, what is right and what is worthwhile" (Duignan & Bhindi, 1998, 96). This perspective calls leaders to be people of credibility, to live up to the values, beliefs and principles underpinning the organisation and the organisation's systems in which they operate, and to see that the organisation and systems themselves reflect these ethical and moral perspectives in their policies, structures and practices.

Ethical and authentic leadership focuses on the care and support of people, of building positive relationships and encouraging partnership and interdependence. This is a broader based perspective of leadership than one based on a prescribed, legalistic or judicial authority (McCormick, 1996), but one strongly related to the idea of servant leadership and service to others (Greenleaf, 1977; Senge, 1995; Wheatley, 1999b). It is argued that leadership of this nature can break down some of the cynicism about leaders and leadership, provide more productive and positive workplaces and increase the quality of life for those within organisations (Bhindi & Duignan, 1997).

From an ethical and authentic perspective, the behavioural aspects of leadership and the moral basis and substance upon which leadership rests, become important (Beare, Caldwell, & Millikan, 1989; Covey 1990; Senge, et.al., 1994;

Starratt, 1986). This may bring leaders to encounter a re-evaluation of the way they see the world, their social construction of reality, their generalisation of society as outlined above and involve a paradigm shift, a personal journey and transformation (Covey, 1990, 1989; Fong, 1996; Kuczmarski & Kuczmarski, 1995; MacNeill & Silcox, 1996; Rolls, 1995; Senge, et.al., 1994; Sergiovanni 1996, 1990; Weintraub, 1995).

### **3.2.6 Some Other Perspectives on Leadership**

Some other perspectives from which people have viewed leadership include examining leadership from the point of view of leading and managing organisations within a bureaucratic structure, and from the point of view of psychological, political or power base conceptual frameworks (Burns, 1978, Foster 1986). Also, in schools, leadership has been examined from the point of view of depicting principals as instructional leaders to bring about effective change in learning and teaching. This latter perspective places an emphasis on managerial aspects of leadership (Hallinger, 1992), with a focus on “hierarchy, supervision, and technical solutions to problems of instruction and management” (Lee, 1993, 2).

### **3.3 Influences Which Have Brought About Changing Perspectives of Leadership**

In the previous section, it was pointed out that changes in society have brought about a re-examination by the Church of its place in the World. This is also true of understandings on leadership. The perspectives on leadership outlined above have reflected the development of society and an attempt to understand leadership within society’s changing environment.

### **3.3.1 Complexities of the Modern World**

Traditional world views and ideas of leadership have been challenged by the continued industrial development and urbanisation of the 20<sup>th</sup> Century, globalisation, the development of a global economy and the emergence of new economic powers, such as China and Japan. The amalgamation and restructuring of companies and organisations to present flatter, less hierarchical and bureaucratic administrative structures, have also had an impact. The spread of mass education to many communities, which has brought a more informed and educated public, and the emergence of new paradigms especially from the Eastern Countries to challenge peoples western dominated mental maps, have all contributed to this re-examination of traditional views of the world.

Coupled with this, the massive advances in science and technology have brought with them not only an explosion of knowledge and information, but reliable, convenient and fast means of disseminating and transferring that information. In the biological and medical science areas, these developments are producing situations and dilemmas of an ethical nature, which are placing challenges before society that is stretching its ability to comprehend and effectively resolve (Hepburn, 1996; Preston 1996).

The days of one leader knowing all the answers or acting from a predominant style have had to give way to a more flexible and reflective approach, which involves many more stakeholders having input into decision making than in the past, (Duignan, 1987, Senge, et.al; Ryan, 1995). Leaders are being required to develop effective interpersonal and communication skills to support these new complex environments (Bolton, 1987; Covey, 1990; MacNeill & Silcox, 1996; McKay, Davis & Fanning, 1983; Senge, et. al., 1994). It has also been suggested that part of developing these interpersonal skills to help operate effectively in this increased complex environment is to acquire a degree of emotional intelligence (Goleman, 1996.). The suggestion here is that emotional intelligence supports leaders acquire self-control and empathy, gives rise to a more positive and

hopeful outlook and helps develop a moral purpose within organisations (Goleman, Boyatzis & McKee, 2002). It is believed that this helps leaders view the concerns and uncertainties of others as part of the social environment in which they operate, and allows them to build open collaborative cultures (Druskat & Wolff, 2001; Fullan, 1997; Goleman, 1996).

### **3.3.2 Holistic Perspectives and Mental Models**

In recent times there has been a cry for a more holistic approach to problem solving, including system thinking (Senge et. al. 2000) and an examination of the moral and ethical aspects associated with decision making (Evers, 1992). These developments are related to ethical perspectives on leadership mentioned above.

The increasing understanding of the human brain and how it works has brought a more holistic approach to learning (Atkin, 1994, 1993; Lepani 1995), the very basis of knowledge is being challenged (Aspin 1996; Moore, 2000) and there is also an increasing recognition of the interconnectedness of all creation (Mink, et.al., 1994). As never before, the basis of understandings, attitudes, values, beliefs and behaviours are under continual scrutiny, and a more reflective and considerate view of the social and physical world is being called for. As mentioned above, the rise of other cultures and economies to challenge the dominant European culture and perspectives of society, particularly from the Eastern and Asian parts of the globe, have brought with them a re-examination of mind sets and paradigms (Angus, 1994; Bennis & Nanus, 1985; Beare 1989b; Lepani 1995; Ogilvie, 1995; Senge, 1995; Senge, et. al., 199; Starratt, 1993; Sungailia, 1992; Treston, 1994, 1992).

However, human persons are social and cultural beings, and the ideas and views they have about the world, their mental maps, are seen to be very much influenced by the social and cultural context in which they live, and the constraints of their socialisation (Angus, 1989; Aspin, 1996; Kofman & Senge 1995; O'Malley, 1993; Scheurich, 1994; Wheatley, 1999a). Human persons

appear to be very much the products of their socialisation process, influenced greatly by their own history and biography. Their history relates to the era in the development of the world into which they are born and socialised, and their biography is that path of individual experiences and socialisation within a culture in which they live out their lives (Berger and Luckmann 1970). It is argued that persons need a generalised other, “a personal philosophy of life, a character that provides a framework for all [they] do, and a fundamental norm when it comes to making choices” (O’Malley, 1993, 20).

Our mental models are not like pieces of clothing that we can put on or take off. They are basic constitutive structures of our personality. For all intents and purposes, most of the time, we are our mental models (Kofman & Senge 1995, 38).

It appears this generalised other, personal philosophy of life and mental maps, are very much a social and cultural construction of reality influenced by one's history and biography. It is feasible, therefore, to believe that with persons' interpretations of the world being greatly influenced by their socialisation, the ideas of leadership and the ways they experience leadership will be influenced by person's lived reality and socialisation (Angus, 1989; Burns, 1978; Limerick, 1999; Scheurich, 1994). This could also be applied to the Catholic Church, the Catholic School and leadership within the Catholic School (O’Malley, 1993).

If today's world requires a more holistic approach, traditional mindsets and mental models developed in the past, may not sustain leaders in today's complex organisation, and leaders acting out of these mindsets could be limiting their effectiveness (Mink et al, 1994; Sergiovanni, 1992; Senge, et. al., 2000, 1994). On the other hand, it is argued that persons need to spend some time looking at the influence of the social context of their choices, to evaluate how much their choices are a product of a much larger world or their own personal experiences, and to see that their choices are not just manipulated by being a slave to a world being shaped by powerful forces (Angus, 1994, 1989; Miller, 1995).

The holistic approach to dealing with an increasing complex world has also brought with it a need for leaders to become life long learners, and focus their

organisations on becoming learning communities. This highlights leaders responsibilities to provide personal and professional development opportunities geared to the individual needs of members within organisations, and which are congruent with an organisation's purpose, vision and mission (Beare, 1989b; Chapman, 1996; Colman & Waddington, 1996; Day, 1994; Kofman & Senge, 1995; Mortimore, 1996; Starratt, 1993).

### **3.3.3 Increased Recognition of Peoples' Rights**

In the latter part of the 20<sup>th</sup> Century, the concept of Human Rights has become a more prominent issue than in the past. The formation of the United Nations and that Body's declarations on various individual rights of people, have contributed greatly to bringing this issue to the fore. These declarations include the Convention on the Rights of the Child, which could be argued as being the most important document in the social history of human persons (Turner, 1995, 1992). The application of this convention has had an impact on education (Ludbrook, 1996; Stewart, 1991).

In relation to Australia, the era of the retired Chief Justice of the High Court, Sir Anthony Mason (1987-95), gave this "new emphasis on individual rights a solid foundation in legal doctrine and a rationale for public debate" (Lane, 1995b, 26). This momentum has been maintained by recent decisions of the High Court of Australia, such as those that have recognised the common law right to land of the indigenous people, and has generated a debate for a Bill of Rights (Koch 1998).

This emphasis on individual persons' rights, challenges leaders to re-evaluate their perspectives on leadership and their interactions with others (Davies, 1996). Leaders are now confronted with a community more acutely aware of their rights and the rights of others, and leaders decisions are being exposed to more intense scrutiny in relation to the opposing rights of those involved (Flannery, 1996).

### **3.3.4 The Feminist Movement**

The feminist movement has brought with it a re-examination of a number of issues (Crotty, 1998), including perspectives on leadership (Limerick, 1999; Olivero, 1996). In the latter part of the 20<sup>th</sup> Century more women entered the workforce and took up leadership roles, particularly middle management positions, (McGrath, 1992). From this development a number of issues have arisen in the workplace, such as affirmative action and sexual harassment, and these have been supported by legislative frameworks (Ramsay & Shorten, 1996). Issues such as these have brought with them to all organisations, including schools, a questioning of the prevailing patriarchal styles of leadership such as the 'Great Man' theory of leadership, leadership structures, and ways of looking at and interpreting the world (Doohan, 1986; Jansen, 1995; Kelly, 1990).

### **3.4 School Leadership Within This Changing Environment**

School leaders are faced with presiding over educational organisations within this increasing changing and complex world (Beare, 2001; Gilley, 2000; Johnson, 1996; Wallace, 1995; Wheatley; 1999a). It has been suggested that approaching leadership from a hierarchical bureaucratic perspective or from a basis of psychological reward, may not be sufficient to lead a modern complex educational institution. A more professional and value based approach to leadership may need to be required to meet the conflicting demands of all stakeholders within present educational enterprises (Davis, 1996; Jansen, 1995; Sergiovanni 1996, 1992a, 1992b; Starratt, 1986).

In the perspectives of leadership outlined above, three characteristics seem to be constant in examining leadership within organisations. While these characteristics may be identified independently, they are interrelated and interdependent. These characteristics are:

- that leadership is in some way associated with guiding people and organisations towards some *purpose*; in more recent times this is linked to vision and mission;

- that leadership involves dealing and interacting with *people* so that interpersonal relationships, people skills and communication skills become important; and,
- that it involves *processes* in decision making, which reflect others and their rights. In more recent times this is linked to consultation, collaboration, discernment and distributive leadership within organisations geared towards building learning communities.

From the above evaluation, it is possible to argue that one perspective on leadership is no more a compelling explanation of leadership as compared with another, and that aspects of one perspective are related to and/or embodied within the other. However, there does appear to be a recent trend to examine leadership more from an ethical and value based perspective (Blackmore, 1996).

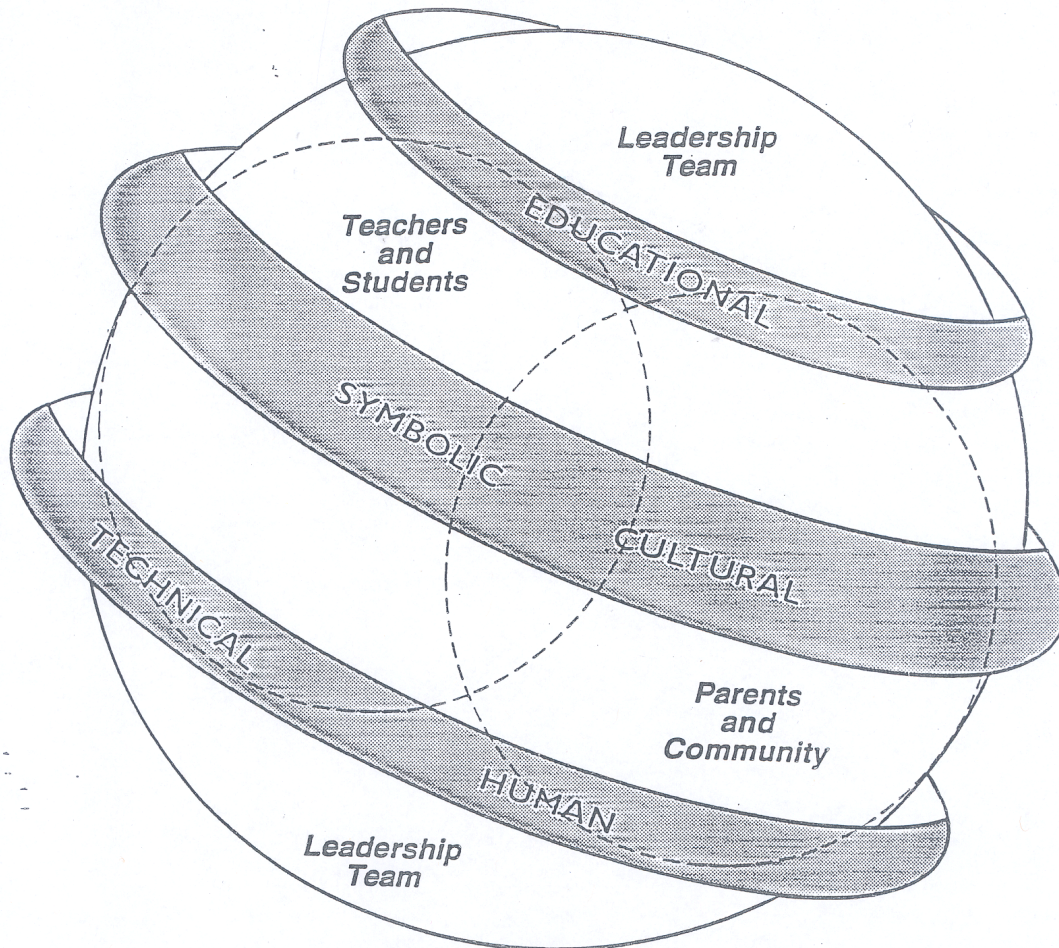
### **3.5 Leadership Conceptual Framework**

Models, metaphors and conceptual frameworks can be a valuable means of examining organizations (Boyd, 1996), and a number of suggested metaphors and models have been applied to schools (Kefford, 1996). The words used in such representations are important, for they “are not merely figures of *speech* they are figures of *thought*” (Bethanis, 1995). A conceptual framework (Figure 3.1), entitled a Collaborative Climatological Leadership Framework, is provided here, from which it is suggested the various perspectives on leadership outlined above can be viewed, and leadership within the school context can be explored, in particular, the context of leadership within the Catholic School. This framework highlights the three characteristics of people, purpose and process, and incorporates five forces which have been identified as operating within the school environment (Sergiovanni, 1987).



Figure 3.1 (3)

### Collaborative Climatological Leadership Framework



These forces are:

- the *symbolic* force, which focuses on the modelling of important goals and what is valued in the school setting. This aspect refers more to the non-managerial aspects of leadership highlighted above, and referred to in the perspectives of leadership as an art, transformational and ethical leadership;

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3. Devised by the Researcher

- the *human* force, which relates to dealings with the people in organisations and is concerned with the interpersonal relationships and needs of the school community. This element can be associated with both leadership and managerial aspects and links closely with the perspectives of a person orientated leadership style, leadership as an art, transformational and ethical leadership and traits expounded in the great man theory;
- the *educational* force, which is concerned with the curriculum and its delivery. This element has both managerial and leadership aspects. It is linked to the central purpose of educational institutions, and as such has links to the visionary aspects of leadership as portrayed in leadership as an art and transformational leadership and the elements of instructional leadership; and,
- the *technical* force, which is associated with the planning and organisation of the school. This is particularly linked to the managerial aspects of leadership and a task oriented leadership style, but does not exclude other aspects of leadership such as dealing with people within organisations.

The conceptual framework in Figure 3.1 depicts a Leadership Team as a central core around which the stakeholders in the educational enterprise collaborate and interact. This relates to the notion of distributive leadership, which appears to be necessary to help meet the increasing complexities of modern organisations. The conceptual framework displays the stakeholders overlapping and intersecting, which depicts interaction, interpersonal relationships, sharing of decision making and partnership within the organisation. It also indicates a relationship between the school and the community in which it serves. All this allows those within the organisation who have a prescribed status and those who have developed an acquired status to be involved in decision making. This also reflects back to the points raised by Angus (1994, 1989), concerning the relationship between an organisation's vision, mission and purpose, and the society and community of which it is part.

While Sergiovanni (1987) in identifying these forces, places a pyramid type structure to these elements, the framework outlined here depicts a type of fluidity and dynamism operating within these forces in the school setting. This depicts a flexibility of leadership in relation to these forces and stakeholders, allowing leaders to respond to needs within the complexity of school communities within present society (Fullan, 1997; Fullan & Hargreaves, 1991; Sachs; 1996). Within the present environment “leadership is about managing change and uncertainty, being flexible and fluid, and being a facilitator, coordinator and meaning maker, and cultural leader” (Blackmore, 1996, 1).

As the movement of the sun between the tropics on a global basis underpins climate and regulates the seasons, so too within this framework, the symbolic and cultural aspects of an organization give direction and underpin the climate and ethos in a metaphorical sense, of that organisation (Wagner, 1989). It is suggested that focusing on these aspects can bring about effective change (Miller, 1987) and can help to break down boundaries within organisational structures (Bethanis, 1995). Thus the framework is termed a Collaborative Climatological Leadership Framework, and depicts an interconnectedness of the forces and stakeholders. While the technical, educational and human forces are important, the symbolic and cultural forces permeate the organisation and jell together this interconnectedness, and influence the organisation’s policies and practices.

As with global climate, high and low pressures move across the surface of the earth within the larger seasonal changes, so too in the organisation, it would be expected that periods of low and high pressure will surface within the forces and from the stakeholders depicted on the framework. The leader would need to deal with these pressures as they arise. However, in dealing with these within this dynamic and fluid environment, it is suggested that the symbolic and cultural aspects underpin the way leadership is carried out within the organisation.

Using this framework leadership within school settings can be examined in relation to the interrelatedness between the stakeholders and other forces at work. For example, one could focus on the human factor and how leaders and the leadership of a school community deal with people. This factor could be analysed in light of relationships within the Leadership Team, the interpersonal relationships between the Leadership Team and staff, relationships between staff, students, parents and the larger community, and the communication between all these people. A deeper analysis would then place more focus on these aspects in light of the cultural and symbolic aspects underpinning the educational community, and evaluate the alignment of these relationships and communication with the values, beliefs and principles which underpin the school.

### **3.6 Leadership of the Catholic School From This Conceptual Framework Within a Changing Environment**

Leadership within the Catholic School can be examined from this Collaborative Climatological Leadership Framework. The Leadership Team, found in most Catholic schools and around which the forces and stakeholders operate and interconnect, highlights the notion of distributive leadership discussed earlier, and the characteristics surrounding this concept such as collaboration and consultation. It is this team which carries the prescribed status of leadership within the school and the principal as the chief executive officer of that team.

It is suggested that the purposes and mission of an organisation are embedded in the symbolic and cultural aspects of that organisation (Duignan, 1987). For the Catholic School these cultural and symbolic forces are those elements and characteristics outlined earlier; viz the ecclesial and evangelical aspects, the catechetical Religious Education and faith development dimensions, the empowerment and holistic development of people, upholding the dignity of the human person, and through this, building community within a particular climate and culture. As indicated above, these are centred on the person of Christ as the symbolic and cultural leader.

Christ showed various characteristics of leadership. He had a direction, a goal; the kingdom of which he spoke frequently. He was a symbolic leader, not being above the vision, which he proclaimed, but manifesting it in his actions. His leadership was a leadership built on relationships, he inspired others to follow him and his cause, he empowered his closest friends to carry on his work, he identified with people and responded to their needs. Christ's leadership style was one of servant leadership and this was developed amongst his disciples by building understandings through his preaching and teaching, and having them experience such leadership, as when he described servant leadership (Matthew, 20: 24-26), and demonstrated it at the Last Supper (John, 13: 4-17). He also felt the loneliness of leadership, being deserted and left to experience a lonely death by crucifixion (Walker, 2001). To reflect on Christ as a leader resonates not only with the great person theory but with many of the perspectives of leadership outlined above.

For the Catholic School, its central purpose and focus, is the development of quality learning and teaching within a Catholic ethos and culture (Clark, 1991; Dwyer, 1997). Like all schools, learning is fundamental, but for Catholic schools the building of a generalised other of society is based on Gospel values. As a feature of this development is the emphasis placed on the dignity of the human person, the building of community and the search for justice, it could be expected that leadership of a Catholic school would place relationships at the core (Burford, 2002) and a bias towards a person orientated leadership style (Blackmore, 1996).

With the amount of material available to clarify the characteristics and elements of a Catholic school, and with the development and structure of Catholic schools that has taken place in Australia, it could be considered that there is a consistently defined shared vision and mission for those leading Catholic schools. Most dioceses and schools for example, have published vision and mission statements, and therefore, it would be reasonable to suspect, a high congruency between the cultural and symbolic base and the policies and practices manifested

in dealings with the forces operating in a Catholic school, and in interactions with the stakeholders, as depicted on the conceptual framework. Such an analysis fits neatly with the notion of leadership as an art, and the transformational and ethical perspectives of leadership outlined above.

However, as also indicated above, with the Church and the Catholic School becoming more engaged and answerable to an increasingly secular and pluralistic society, leaders of Catholic schools could see themselves operating out of this conceptual framework and being confronted with paradoxical situations. Actions do not always match the rhetoric and the pressure of the social and cultural context in which they exist, and this places great demands on leaders to be authentic. Instances arise where the rights of the individual seem at odds with what appears to be the common good, and often leaders are faced with having to resolve situations in a just and equitable manner where various stakeholders, for whom one has responsibility, perceivably have legitimate but conflicting rights and expectations (Duignan, 2002; Walker, 1995).

### **3.7 Summary of Chapter 3**

While various perspectives on leadership highlight particular characteristics, it appears that leadership is more than just possessing personal traits and a bias to a particular style of leadership. It is suggested that leadership is to do with people, the purpose of organisation and the processes used in dealing with people to meet these goals. This involves leaders becoming emersed in the cultural and symbolic aspects of the organisation they lead. It is suggested that leadership entails clarifying, articulation and sharing an understanding of an organisation's purpose, vision and mission, and the values and beliefs underpinning these, and then carrying out responsibilities in an authentic and ethical manner congruent with them.

It appears that embedded in leadership is the continual personal and professional learning and growth of leaders themselves, including the development of

emotional capabilities, despite the fact that a certain amount of artistry may be associated with developing as a leader. It is advocated that leadership involves the development of more covenantal rather than contractual relationships, a realisation of interdependence, collaboration, consultation, and the development of distributive leadership within organisations. For some, this may require challenging one's mental maps, and making paradigm shifts and adjustments to one's generalised other of society, and particularly one's mental models of leadership itself.

In terms of the administration of schools, it is suggested that leadership is an important element in schools meeting their purpose, and that within the school setting, leadership encompasses both managerial and non-managerial aspects. A conceptual framework developed around the forces operating in schools as suggested by Sergiovanni has been provided here, from which it is suggested leadership within schools can be examined. This framework places an emphasis on the symbolic and cultural forces highlighting the visionary aspects of leadership, but also incorporates many of the elements of other perspectives of leadership examined.

For the Catholic School the characteristics and elements as examined earlier provide a basis for the cultural and symbolic forces as depicted on the conceptual framework. Central to this is the symbolic and cultural leadership of Christ and the centrality of the dignity of the human person. While the development of Catholic schools in Australia has been subject to various administrative and structural change, there are elements and characteristics which form a base to this cultural and symbolic heart to which the Catholic school adheres. This is despite the evidence that reality does not always reflect the vision and mission. It is suggested that the framework provides a means of evaluating the authenticity of leadership within a Catholic school. The current structure sees most Catholic schools part of a system administered through Diocesan Catholic Education Offices, staffed mostly by lay people who live and interact directly with the society of which the school is part.

It is argued that developments within society have provided a more knowledgeable and complex environment, and this has placed increasing demands on leaders and generated a re-evaluation of leadership. One of the aspects increasing this complexity for leaders in contemporary society particularly in the Western world, is the increase in regulation (Mackay, 1993), the understanding of and demand for individual rights and the development of a more litigious society. This development has received impetus in Australia, particularly towards the end of the 20<sup>th</sup> Century, ushering in a host of legal issues imposing on organisations and the leadership within them. Schools, being one of the important socialisation components in society in the development of young people, have been caught up in this increased legalism (Nolan & Spencer, 1997; NSW/ACT Independent Education Union, 2003; ) and the resulting paradoxes and dilemmas (Davies, 1996; Duignan, 2002; Walker, 1995). Recent debates about public liability in Australia, and the need for statutory reform in this area to counteract the extent of pay outs under common law decisions, is one public display of this complexity (Ford, 2003; Muhlbauer, 2003).

It was pointed out earlier, that one of the changes brought about by Vatican II was to have the Church engage in a closer relationships with, and be more responsive to the society of which it is part. Catholic schools, being an integral part of the Church and of the society in which they operate, have encountered this increased legalism and insistence on human rights. This closer relationship with society and the impact of legal issues and legalism, have had an impact on the Church in Australia. The reflection on the issue of child and sexual abuse referred to earlier highlights this (Catholic Leader, 1998; McKenna, 1998; Murray, 1998; Oberhardt, 1998).

This increased legalism is one of the inhibiting effects on potential school leaders taking up leadership positions within Catholic schools (Australian Catholic University, 2001). Not just Principals, but Assistant Principals see these legal and legislative requirements as creating increased pressure and stress in their roles as leaders (NSW/ACT Independent Education Union, 2003). Like leaders in



the Government school sector (Stewart, 1996), Catholic school leaders are being asked to develop legal risk management strategies to accommodate this increasing demand. At the same time Catholic schools, like all other schools, being places of learning and teaching have had to meet other increased demands being exerted on them by society, governments, and the stakeholders outlined on the leadership framework provided above.

The Principal and members of the leadership teams, exercising their roles as leaders in Catholic schools are caught up in dealing with all these issues, while at the same time operating out of the symbolic and cultural forces within the Catholic ethos. Vatican II emphasises that when Catholics as citizens, engage in activities within the society either individually or collectively, they should not be satisfied with meeting the minimum legal requirements associated with these activities, but should be striving to become truly proficient in this area (Flannery, 1996). Discharging leadership in this melee, places increased demands on leaders, for often leaders are faced with making decisions, which are not clear-cut situations. More often than not, leaders and teachers are being confronted with paradoxes where there are competing yet seemingly legitimate rights, justifiable claims, and legal or ethical positions to be satisfied (Duignan, 2002; St James Ethic Centre, 2001, 31). From this perspective, an examination of the major legal issues impacting on leadership within this school environment deserves analysis.

## CHAPTER 4

### LEGAL ISSUES IMPACTING ON AUSTRALIAN SCHOOLS: A REVIEW OF THE LITERATURE

#### 4.1 Introduction

The law as it applies to various countries and states has a situational, cultural and social foundation, development and context. One only has to reflect on travel throughout the world to understand this, for as one steps off a plane into the social cultural world of another country or state, one becomes subject to the laws and regulations operative within that jurisdiction. For Australia, the social and cultural basis of the law has its foundations in the Westminster System of law and governance. This system was transported to Australia by the British settlement of New South Wales, and to other parts of Australia through the establishment of other colonies around the continent, and the break up of New South Wales and parts of the country into separate states and territories.

The Australian colonists brought with them so much of the legislation and case law of England as was applicable to the fledgling colonies. In time courts and parliaments were established which mirrored those in England and which continued to develop the inherited laws (Morris, et al., 1985, 6).

Eventually, each of the colonies had constitutions established which set up parliaments and gave these governing bodies the authority to legislate “for the peace, order and good government” (Hanks, 1985, 2) of those within their jurisdictions. This development accelerated the situational aspects of Australian law.

In 1855, legislation was passed in England which gave the authority for a northern portion of New South Wales to be set up “as a separate colony, and this was effected in 1859 when an Order-in-Council established the colony of Queensland with a system of government substantially the same as that of New South Wales” (Hanks, 1985, 2-3). As Australia developed, the colonies, including

Queensland, continued to develop laws to meet the needs of the people living within their particular social/cultural environments. However, as the social, cultural and political context emerged and changed, there was a call for a federal system of government, especially to deal with issues of a common concern impacting on the continent as a whole. This eventually led to the development of a constitution which established the Commonwealth of Australia, commonly known as Australia, and the establishment of a distribution of powers between the federal and states jurisdictions, and the associated parliaments and court systems, to continue the development and establishment of laws and regulations to define the bounds of freedom and extent of persons' rights. Figure 4.1 gives a general conceptual framework of the legal structures resulting from this development within Australian society, and the areas of person's rights identified in the literature resulting from this system which have some impact on the administration of schools.

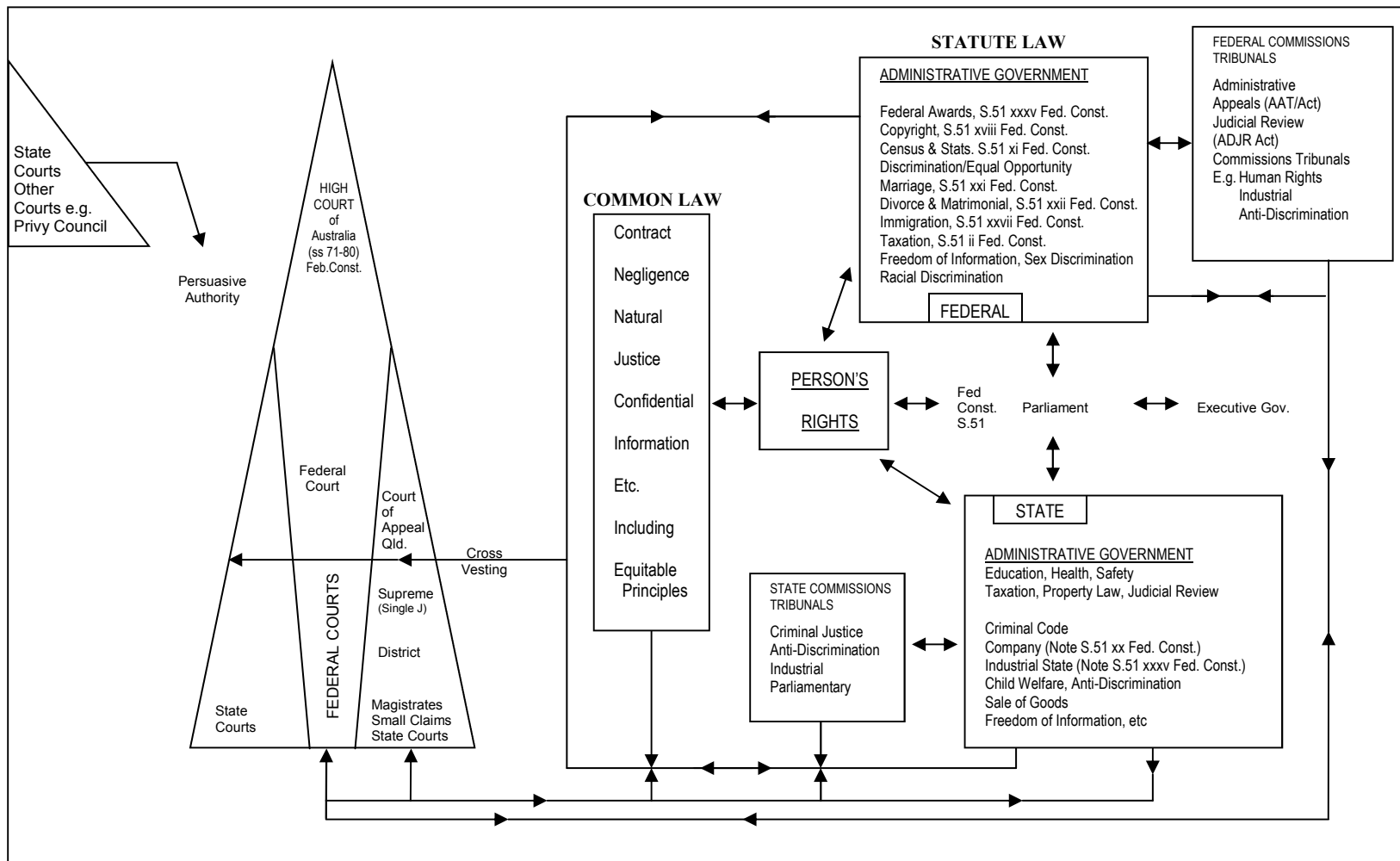
## **4.2 Common Law and Statute Law**

The law as it applies to the Australian context and which has developed from these traditional foundations and links, has both a common law and statute law perspective. Common law is that law developed from case law when judges outline rules (that are not part of legislation) to be applied in resolving particular disputes.

After the decisions of the early courts were recorded in law reports, they began to achieve an authoritative status as precedents. By the mid-nineteenth century the basic principles of the doctrine of precedent were settled. Under this doctrine, the law expounded in an earlier case is followed in later similar cases. The rules derived from case law, therefore, are the sum of the rules in the cases on that subject decided to date. ...Some cases (and the principles of law derived from them) carry more weight than others. Courts are arranged in a hierarchical structure. Decisions of those courts at the top of the hierarchy, such as the High Court of Australia, have greater weight than those further down the hierarchy, such as those of a single judge of a State Supreme Court (Morris, et al., 1985, 7)

Figure 4.1 (4)

Conceptual Framework: General Overview of Areas of the Law and Judicial System Influencing School Administration in Australia



4. Devised by the Researcher.

In contrast, statute law is that law derived from Acts of Parliament. The broader term legislation is often used in the literature and this “covers both statutes and delegated legislation such as rules, regulations, ordinances and by-laws” (Morris, et al., 1985, 11). In many instances, acts passed by parliaments delegate legislative powers associated with particular acts to specific persons or bodies such as Ministers of the Crown within a government, or a statutory body such as the Queensland Board of Teacher Registration (Jensen, 1998). Originally, legislation was less important than common law, but in the present regulatory climate, legislation holds a more prominent position and it covers a wide range of issues. For example, a publication outlining the legislation applicable to Queensland contains over fifty pages of references to Acts of Parliament and associated legislation (Queensland Government, 2004).

Legislation is enacted to respond to the needs of people within the jurisdiction served by the particular Parliamentary Government. It can be used to modify common law understandings, it takes precedence over case law and can be amended or changed where and when respective parliaments require to do so. A good example of this is the response in recent times in Australia to the blow out in payments for successful negligence claims, where most state jurisdictions have enacted legislation (*Civil Liability Act* (NSW) 2002; *Civil Liability Act* (Qld) 2003) to reform the law of negligence, to shift more responsibility on to people to take care of themselves and to limit the quantum in payouts for injuries (Ford, 2003).

## **4.2 Persons' Rights**

In recent years, the consciousness of persons in relation to their rights has been raised. This has been the result of a number of factors. The general movement throughout the world to respect persons' rights, particularly after World War II, has been articulated through bodies such as the United Nations (Healey, 1994), and a number of countries and organisations have made calls to respect human rights and peoples' just claims for self determination. This has been demonstrated in Australia's part of the world by the events in East Timor (Michel,

1995) and the eventual resolution of this issue through a referendum and subsequent violence.

Governments have taken up the challenge of an increasing awareness of individuals' rights, and through legislative and regulative changes have extended and clarified the rights of persons in relation to a number of issues. In Australia, this has been true of both State and Federal Parliaments, and in particular with the election to power of Federal Labor Governments in the 1970's, 1980's and 1990's, a number of acts were passed by the Federal Parliament which highlighted this development (*Administrative Appeals Tribunal Act* (Cth) 1975; *Administrative Decisions (Judicial Review) Act* (Cth) 1977; *Freedom of Information Act* (Cth) 1982; *Human Rights Commission Act* (Cth) 1981; *Human Rights and Equal Opportunity Commission Act* (Cth) 1986; *Racial Discrimination Act* (Cth) 1975; *Sex Discrimination Act* (Cth) 1984). Australia has signed a number of international conventions, including the Convention on the Rights of the Child (Funder, 1996; Ramsay & Shorten, 1996; Stewart, 1991; Turner, 1995, 1992), and in Queensland, the State Parliament has enacted various legislation in line with this movement to recognise individual rights, with acts such as the *Anti-Discrimination Act* (Qld) 1991, *Child Protection Act* (Qld) 1999, *Freedom of Information Act* (Qld) 1992 and *Judicial Review Act* (Qld) 1991.

This movement to define the rights of people also received a particular advance with regard to the situational perspective of the development of the law in Australia, with the passing of the *Australia Acts (Request) Act* (Cth) 1985. This act terminated the right of appeal from Australian State Supreme Courts to the British Privy Council, which until this act took effect, was the apex of the court system operating within the colonies inherited from the English context. The act and the associated legislation passed by other Australian State Parliaments and the British Parliament, installed the Australian High Court as the final adjudicator on matters of Australian law. This change, placed decisions handed down by the Privy Council and the rulings underlying them, on to a basis of persuasive

authority rather than a set of principles, based on the notion of precedent, to be followed.

This did not mean a complete overhaul of the legal basis for the Australian way of life, but it did leave a degree of flexibility open to the High Court to manoeuvre and interpret the law to more appropriately align it with the present development of Australian society. New enlightened interpretations of the law and decisions by the High Court brought about by this change, by virtue of the hierarchical structure of the courts and the principle of precedent (Morris, et al., 1985), became binding on all courts in Australia, because the High Court now became the apex of the Australian court structure.

The most notable change in the law brought about by this realignment to determine person's rights within the Australian situation, has been the right given to Indigenous Aboriginals to claim land title to tracks of land under specific circumstances. However, other aspects of persons' rights have also undergone change through the High Courts influence, particularly under the leadership of Chief Justice Anthony Mason (now retired). Most legal academics believe Mason did "the court and society a great service by giving its new emphasis on individual rights, a solid foundation in legal doctrine and at least the beginnings of a public rationale" (Lane, 1995b, 26). However, some would argue along with Sir Garfield Barwick (Lane, 1995a), that this change in emphasis could pose a threat to democracy, with the rights of the individual overriding the benefits of the common good. Some have even argued that this movement has brought an imbalance with regard to parents and children's rights in favour of children's rights and :

A growing feeling that parents have been disenfranchised from the education of their children by "experts" and heavy-handed bureaucrats, [and] led many to call for legislation that will protect the right of parents to make independent decisions about the education and discipline of their offspring" (Klicka & Phillips, 1997, 81)

### **4.3 Government Structures and Their Influence on the Laws Impacting on Schools**

The parliamentary governmental structures emerging from the development of law and order within Australian society also have played a role in influencing the development of laws which impact on the leadership and management of schools. As stated above, Australia has a mixture of federal and state structures of government, both based on the Westminster System. While this system espouses the separation of legislative, executive and judicial arms of government, it is not a strict separation as is the case in the United States structure, where members of the executive arm of government are appointed, not elected. In the Australian parliamentary system, legislative laws and associated subordinate legislation and regulations are administered by Government Ministers, who are themselves members of Parliament, and who through their portfolios, rule over large bureaucratic departments including the various Departments of Education set up within each jurisdiction (Ramsay & Shorten, 1996). As such, the legislative and executive arms of government are not divorced from each other as a true separation of powers would envisage. This has implications for educational policy, educational administration and the administration of schools.

Legislation of an educational nature and other legislative changes that affect educational institutions are, therefore, subject to shifts in emphasis, depending on what party has the majority of power in the legislative body and how responsive that body is to pressure groups within the community who elaborate on educational matters. Besides the educational philosophies and paradigms held by those in power, the philosophies and perceptions of education held by other influential groups within the community, who can bear considerable influence on the electorate in deciding whether or not a particular party can maintain power or gain power at the time of an election, can also have a distinct bearing on policies affecting education. The media is a good example of this.



Education, educational institutions and educational policies have been issues of concern at a number of parliamentary elections in Australia in recent years. Some power groups have been calling for changes to education systems, particularly as a tool to meet employers' demands for skilled workers, and as a means of stimulating Australia's economy (Employment and Skills Formation Council, 1992). Others, like the Defence of Government Schools (DOGS) have run strong campaigns to try to eliminate and/or reduce the amount of funds allocated to Non-Government schools (*Attorney-General for the State of Victoria (At Relation of Ian John Black and Others) and Ian John Black and Others v. The Commonwealth of Australia and Others*, 1981). Besides this, there are still others who have been advocating the setting of benchmarks to increase the accountability for public funds outlaid on education (McGraw 1995; Pascoe 1995; Wilkins & Doyle, 1995). Thus statute law and its subordinate regulations tabled by Ministers in Parliament and which have an effect on education administration and the administration of schools can be subject to the fluctuating political climate.

The Australian governmental structures have even more complex influences on education because of the division of powers in the Federal System of governance. The Federal structure set up through the *Commonwealth of Australia Constitution Act 1900*, and in particular by s.51 of that act, separated powers into areas which became the responsibility of the Commonwealth and the Federal Parliament, and areas which remained within the control of the states. Under this structure education remains in the hands of the states. However, over time and particularly through financial arrangements which were required in the war years, the Federal Government has gained a strong hold on the collection of taxes and the appropriation and distribution of funds to the states (Edwards, 1997). This has allowed successive federal governments to reimburse the states from taxes collected, and in many cases give additional grants to the states under strict guidelines for particular projects and purposes. The Commonwealth Government has entered the education arena in this way, giving financial support,

and gaining a deal of control over such areas as Tertiary Education, Aboriginal Education and Special Education, and has set up its own department and controlling body with regard to education; at present under the Department of Education, Science and Training. As explained in Section 2.5, even more specific involvement has come about by the Commonwealth Government providing financial assistance to Non-Government schools through a complex arrangement of distributing funds to schools on a needs and socio/economic basis.

Further influence has come about by the Commonwealth Government using its external powers under s.51(xxix), and the so called doctrine of implied immunities under s.51(xxxv) of the *Commonwealth of Australia Constitution Act 1900* (Edwards, 1997), and placing pressure on states to recognise and uphold the rights of people under Australia's standing as part of a world community by entering into International Treaties and agreements. This position was upheld by the High Court in *Koowarta v. Bjelke-Petersen* 1982 where the rights of Aboriginal people under the Commonwealth's *Racial Discrimination Act (Cth) 1975* were upheld against State intervention.

Besides this, s.109 of *Commonwealth of Australia Constitution Act 1900*, states that “where a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.” Thus laws of the Federal Parliament coming under that body’s jurisdiction within the confines of the constitution, and laws, as determined by the Australian High Court as coming under the umbrella of powers within that constitution, prevail over state laws where there is inconsistency, or where the intention in the legislation is that the Federal Parliament’s laws are to cover the area in question.

This has implications in such areas as industrial matters where federal awards can sometimes over ride state awards. However, this was not the situation with regards to anti-discrimination legislation, where the Federal Parliament

specifically stated that the intention of the Commonwealth act was not to prevent the states from enacting their own statutes (s.4 *Human Rights and Equal Opportunity Commission Act* (Cth) 1986; s.6A *Racial Discrimination Act* (Cth) 1975; s.10 *Sex Discrimination Act* (Cth) 1984). Thus, as is the case with anti-discrimination, school leaders and the administrators of education find themselves under scrutiny from both state and federal legislation.

#### **4.4 Court Systems and Their Influence on the Laws Impacting on Schools**

Besides the statutory impositions on the administration of education and schools, the courts also play a part in influencing the leadership and management of education. Figure 4.1 indicates that the defining of persons' rights is also governed by common law, and therefore influenced by decisions handed down in courts in common law cases. Courts also have their influence by adjudicating on the rightful application of laws within the limits of authority invested by the various constitutions and separation of powers, and/or through their interpretation of statute law which has been passed by either the Federal or State Parliaments (MacAdam & Smith, 1985, Morris et al., 1985).

Sometimes rights arising out of legislation are applied and interpreted by commissions, boards or tribunals. In a number of instances these issues are resolved at that particular level, but on other occasions a party to a dispute brought before these quasi-courts might challenge that body's findings in the official courts' structures. The latter situation occurred when a student took a school to the Victorian Equal Opportunity Board claiming discrimination when he was suspended from school because of the length of his hair (*Cope v Girton Grammar School Ltd*, 1995). The Board ruled in favour of the student, but the interim order emerging from the hearing was suspended for a week to allow the school authority to appeal against the decision to the State Supreme Court (*Girton Grammar School Ltd v. Cope*; 1995; Hawkes, 1995).

More recently, from a Federal perspective, the authority of tribunals and commissions to enforce penalties has been challenged in the High Court (*Brandy v. Human Rights and Equal Opportunity Commission*, 1995). The High Court has ruled that these tribunals and commissions do not have the extent of power to impose penalties as do courts established under the Constitution, and therefore penalties handed down in decisions are not enforceable. This is to be contrasted, however, with agreements reached between parties to a dispute brought before such tribunals and where such agreements have been witnessed by these tribunals. In the latter cases, these agreements would appear to have the same legal basis as any agreement, and be subject to the common law principles of contract law.

#### **4.6 Areas of Common Law Identified in the Literature as Impacting on Schools**

Figure 4.1 indicates the main areas of common law and statute law identified in case law and legislation impacting on schools. A number of issues relating to these areas of the law have been clarified by disputes coming before the courts and quasi-courts, and by the decisions being handed down by various judges within these courts, and others, such as commissioners, who hold office within the various quasi-courts (Brown, 1986). These decisions will always remain the primary source of law, however, statutes and subordinate legislation, particularly in the form of regulations, are acquiring a more prominent status in regulating rights and interactions within society.

In more recent years, a number of texts, have emerged (Boer & Gleeson, 1982; Chisholm, 1987; Edwards, Knott & Riley, 1997; Hopkins 2000; Knott, Tronc & Middleton, 1980; Ramsay & Shorten, 1996; Stewart & Knott, 2002b; Tronc, 1996b; Tronc & Sleigh, 1989), and these have provided understandings and commentaries on cases and legislation impacting on schools. As well as this, commentaries on legal issues as they apply to the school context, have begun to appear in educational journals such as the *Practising Administrator*, and the Australia and New Zealand Education Law Association (ANZELA) has begun publishing its own *Education Law Journal*.

The purpose of the following sections in this chapter is to provide a brief outline of the issues relating to the development of persons' rights depicted in the prominent areas of common law and legislation that are identified in the literature as impacting on schools, and which have emerged from this melee of courts, quasi-courts and parliaments. There are a number of current and emerging legal issues and areas of the law impacting on schools (Stewart & Knott, 2002a). In relation to common law matters, the areas of negligence, contract law and natural justice (often referred to as procedural fairness), are the most prominent issues appearing in the literature. Some other areas have a limited exposure.

#### **4.6.1 Negligence**

The most prominent common law area mentioned in the literature as having an impact on the leadership and management of schools that emerges from court decisions, is the area of negligence. When speaking of negligence in the educational context one is usually referring to the tort of negligence which emerged from the decision in 1932 in the famous ginger-beer case *Donoghue v. Stevenson* (1932). The decision in that case imposed a duty on people to take reasonable care to avoid acts or omissions which are reasonably foreseeable and which are likely to cause injury to others. A person within an educational authority or an educational authority itself can, therefore, be found negligent by a court, by carrying out some action, or failing to carry out some action. In *Donoghue v. Stevenson, 1932*, Lord Atkin outlined that this duty extended to those persons who are so closely and directly affected by others' acts, that those carrying out the acts or failing to carry out the acts, should reasonably have had the other persons within their contemplation as being so affected, when they were directing their minds to the acts or omissions which are called into question (Morison, Phegan, Sappideen, 1985).

In the day to day operation of schools this is one of the most prominent legal concepts in the minds of school leaders, and is often referred to as the duty of care (Langford-Brown, 1994). However, the duty of care is very important, but

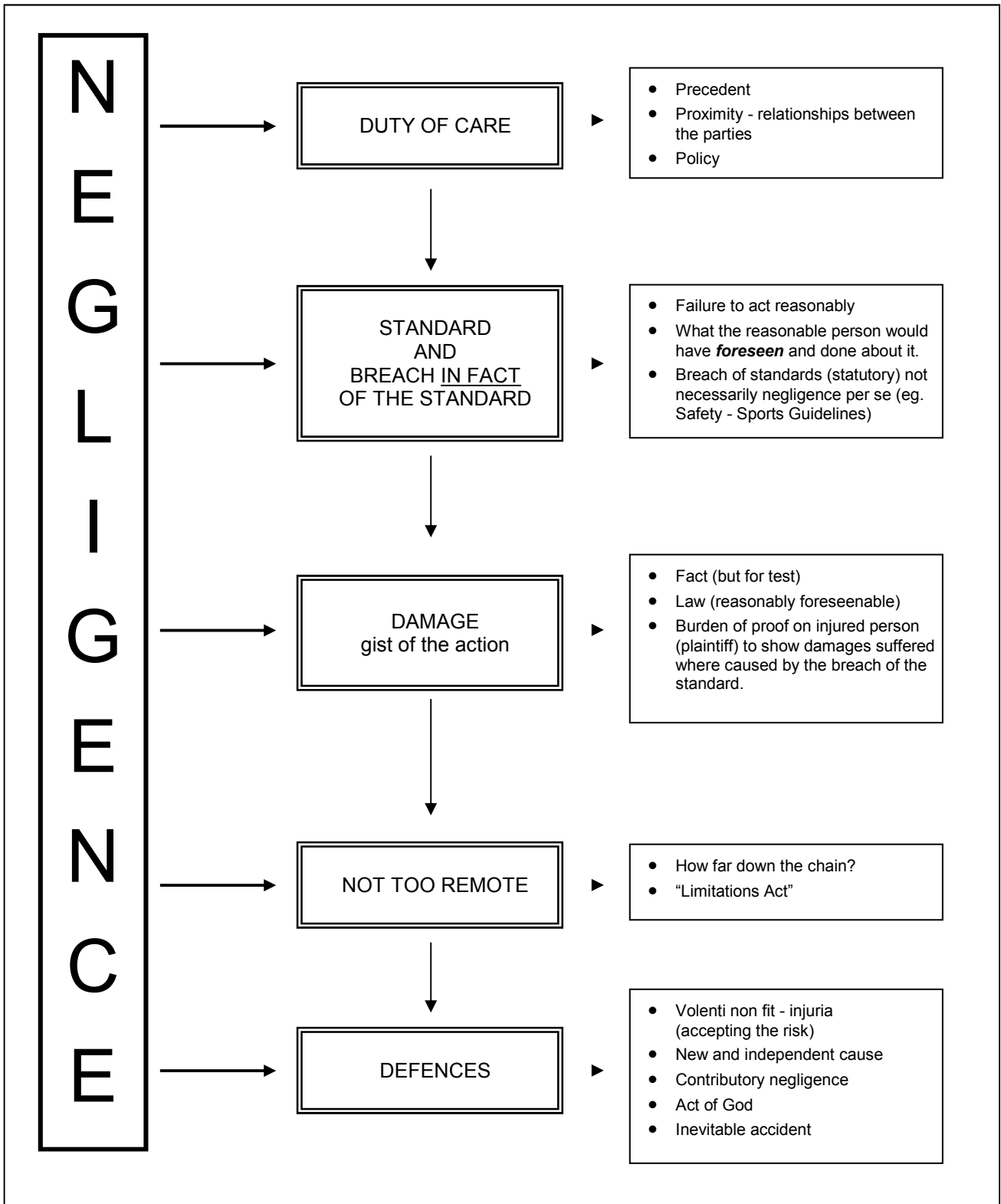
only one aspect of negligence. If a person in the eyes of others fails to exercise a duty of care, it does not necessarily mean that person has been negligent. The court room is the forum which decides whether a person or entity has been negligent. In some cases, actions brought under the heading of negligence are settled out of court. Just because this occurs and, for example, an insurance company pays out a plaintiff for injuries received, it does not automatically follow that the defendant has been negligent.

Negligence involves a number of elements of which the duty of care is only one element. Damage is the gist of the action for negligence, and the person who is injured or who suffers damage has to prove negligence. To do this, a plaintiff has to prove that a duty of care exists, that the facts of the situation, based on the standards of probabilities, indicate that the acts or omissions breached the standard of care created by that duty of care, that the damage suffered was a result of that breach of the standard, that the person or entity being sued is not too remotely associated with the actions or omissions the subject of the breach, and that the action is brought within the limitations allowed by law.

Figure 4.2 gives a conceptual framework from which to examine negligence and as indicated there the defendant may be able to rely on some of the defences listed, and in particular that the plaintiff contributed to the damage suffered. If the latter circumstances form part of the analysis, the judge may find the defendant negligent, but apportion damages on the basis that the plaintiff in some way contributed to the damage suffered (*Beck v. State of NSW & Anor*, 2001; *McHale v. Watson*, 1964; *Nally v. McWilliam and Association of the Franciscan Order of Friars Minor*, 1981). Over the years this doctrine of negligence has undergone a deal of judicial application, explanation and clarification. The Australian High Court, with its acquired prominence as the apex of the Australian Court System, has examined numerous negligence cases, for example, *Jaensch v. Coffey*, 1984, *Stevens v. Brodribb Sawmilling Co. Pty. Ltd*, 1986, and *Wyong Shire Council v. Shirt*, 1980, and others emanating from educational settings such as *Geyer v. Downes*, 1976 and the *Commonwealth of Australia v. Introvigne*, 1982, and placed

Figure 4.2 (5)

Conceptual Framework: Elements of Negligence



5. Devised by the Researcher.

its interpretation of negligence on Australian law.

The first element in dealing with negligence is to establish a duty of care. In the Australian context, the courts have established this duty where precedent or policy dictates that a duty exists. However, the most prominent test applied in terms of educational settings in establishing a duty of care, is to decide whether or not, what the courts terms, a proximate relationship exists between the parties. In the educational context, in most cases, this would be establishing a teacher-pupil relationship. When such a relationship exists, then a duty of care applies. Speaking of negligence in terms of physical injuries Ramsay & Shorten (1996) comment:

The relationship of teacher and student must have come into existence at the time of the incident, otherwise there can be no duty to take reasonable steps to prevent foreseeable harm. That the school is acting *in loco parentis* (that is, in place of the parent) is not significant legally. The basis of the school-student relationship is not that the school is acting as a temporary guardian, but arises by virtue of legislation which initiates the relationship by compelling students of a certain age to attend school (175).

Where this teacher and student relationship is established, school authorities would have to have a situation of very exceptional circumstances for a duty of care not to exist.

This duty of care established by the concept of a proximate relationship does not only apply to the times students are in classrooms or involved in direct instruction (*Barker v. South Australia*; 1978; Blake, 1998). The courts have brought down decisions which have indicated this duty extends to supervision in all areas of the playground (*Haines v. Warren*, 1987; Stewart, 2005; Williams, 1996b), before and after school (*Commonwealth v. Introvigne*, 1982; *Geyer v. Downs*, 1976), during sporting activities (*Nally v. McWilliam and Association of the Franciscan Order of Friars Minor*; 1981; *Thomas v. South Australia*, 1992), on excursions and camps (*Beck v. State of NSW & Anor*, 2001; *Nicholas v. Osborne & Ors*, 1985; Scott, 1994), distribution of medicines (Fahey, 1995), and even to staging school formals (Tronc, 2001). In *Reynolds v. Haines*, 1993 and *Trustees for the Roman Catholic Church for the Diocese of Bathurst v. Koffman & Anor*, 1996, the courts



have indicated that this duty could easily extend beyond the school grounds to where children are approaching or leaving the school premises, or catching school buses, and to areas near a school over which the school has extended its authority for use as play and recess areas or for sporting activities. There are suggestions that this duty of care may be breached if students are required to carry heavy backpacks of books and other materials to and from school, and suffer spinal damage as a consequence (Dawson, 2002).

In America, the courts have extended this duty of care to security staff performing their duties within the school surrounds (*Peterson v. Doe*, 1994) and to school authorities when hiring teachers (*P.L. v. Aubert*, 1995). The duty of care placed on the employing authority in the latter situation, was a responsibility to scrutinise the possible engagement of likely employees in injurious conduct to students in previous employment, to ensure students' welfare was not being jeopardised by employing persons in schools with such backgrounds. While these American cases are only looked at as persuasive authority, they give an indication of the scope to which this duty of care can be extended.

In Australia in the educational context, this duty of care created by proximate relationships is not confined to the pupil/teacher relationship, but also applies to employer/employee relationships and even to others such as volunteers asked to participate in school activities. Thus the employing authority was found negligent for injuries sustained by a university student who was invited to accompany a group of children on a snow trip and help with the activities on the excursion (*Beck v. State of NSW & Anor*, 2001).

This proximate relationship also extends to those people who have a special relationships with others and part of that relationship involves giving advice (*Hedley Byrne & Co. Ltd v. Heller Partners*, 1964), and where persons hold themselves up as having particular knowledge or skills, and give information or advice knowing that the person to whom it is given is relying on that guidance or counsel (*Mutual Life and Citizens' Assurance Co. Ltd v. Evatt*, 1971; *Shaddock &*

*Associates Pty Ltd v. Parramatta City Council*, 1981). In the leadership and management of schools, this has implications where students and parents are given advice, and in particular, in secondary schools where career advice is given (King, 1994). Failure to exercise due care in such circumstances, for example, when giving advice on choosing subjects results in a student failing to gain the prerequisites to enter a chosen university course and career, could result in an action for damages.

Having demonstrated that a duty of care exists, the second element of negligence that has to be established is that the defendant breached the standard of care. This standard, however, can vary depending on the circumstances. The test used here is the reasonable person test. This test relates to what a reasonable person would have foreseen and would have done to rectify the situation. This test "is really the embodiment of community standards of justice and fairness" (Coulsen, 1994, 21-22). In the school setting, the courts have clarified the reasonable person test, so that the level of scrutiny now applied would be that of the reasonably qualified teacher in the circumstances under consideration (Wake, 1994). For example, reasonably qualified pre-school teachers would be aware that a pre-school child could be easily attracted to a BBQ hot plate at a school celebration and as a result suffer severe burns (*Miller v. South Australia*, 1980). However, just because some damage is considered possible by the expansive and indefinable limits of foreseeability, it does not mean that the defendant has breached the standard of care. Mason J "calls for a consideration of the magnitude of the risk and the degree of probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have" (*Wyong Shire Council v. Shirt*, 1980).

The key issues school personnel should consider with regard to this element are:

- The Risk Factor: Where there is a higher risk such as when young students are throwing shot puts there is a higher standard of care required (*Thomas v. South Australia*, 1992), and when a young adult of an

inappropriate physique is placed in a rugby scrum and suffers injury, the standard is breached, particularly if that standard has been highlighted by recent events and publications (*Watson v. Haines*, 1987);

- Anticipated Actions: Associated with the risk factor is the anticipated actions of the possible plaintiffs. In the context of the leadership and management of schools one could expect that the experience of administrators and teachers would give them a greater anticipation of the actions of students to particular situations in the educational settings, as was explained above in the case, *Miller v. South Australia*, 1980, or on excursions in particular environments (*Nicholas v. Osborne & Others*, 1985);
- Precautions: This relates to what precautions one might take to minimise the possibility of the injury occurring. Some risks are so minimal that precautions are not justified, while others may require precautions being put in place and constantly reviewed. Thus, where an adequate teacher supervision duty roster was in place, where students were given adequate warnings about running in corridors, where policing of corridors was carried out to reinforce the rules regard running and the storage of materials into lockers, and where school administrators were dealing with children of an older age who were at the developmental stage of accepting some independence and responsibility for their personal safety, and a student after running, tripped and fell through a glass door injuring himself, a court ruled that the standard of care was not breached (*Gaetani v. Trustees of the Christian Brothers*, 1988). The High Court gave a similar ruling more recently when a student was pulled from a flying fox structure within school grounds. In that case the school authorities had in place a 'hands off' policy and had policed and reinforced the policy (*Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn (As St Anthony's Primary School) v. Farrah Hadba by her Next Friend and Father Nouhad Hadba*, 2005);
- Were the Actions Justifiable? In some instances the risk may be justified. In emergencies for example, actions taken may be justified, where as in

normal circumstances such would not be the case. Similarly, where a special education teacher had planned an appropriate educational game in which a student was injured, the actions were considered justified in the circumstances and the standard of care was not breached (*Kretchmar v. The State of Queensland*, 1989).

Two other issues need to be raised here in this analysis of the standard of care. The first of these is, statutory and other standards. There are a number of statutory regulations and standards that are gazetted and which refer to particular standards, and which affect the leadership and management of schools e.g. Guidelines for Risk Assessment for Physical and Out Door Activities (Brisbane Catholic Education, 1992). The failure of a person or educational institution to meet these published standards or guidelines does not necessarily mean that the standard of care has been breached per se. However, when such regulations are written, very strong evidence is probably required to rebut these as the standards required (Dowsett, 1994).

The documentation of procedures has caused a deal of concern regarding sporting and physical education activities, and especially where a school system's governing authority has published guidelines relating to such activities. This has placed pressure on teachers and school administrators to the extent that school leaders have been reluctant to continue to be involved, or to become involved in certain activities. Over night excursions are one such activity, and the range of sporting and physical activities have been reduced e.g. frosby flop high jump and gymnastics are infrequent events performed in physical education classes. It could be argued, therefore, that system authorities should not issue guidelines that do not reflect the legal reality (Coulsen, 1994). However, school leaders and teachers can take some heart from the sentiments expressed by Derrington J, that within reasonable limits, sporting activities carry some risks that are justifiable and even desirable (*Kretchmar v. The State of Queensland*, 1989). This is in line with the defences as portrayed in Figure 4.2, relating to accepting the risk involved.

The second issue associated with breaching the standards, relates to professional standards. The accepted practices recognised by a particular profession and supported by a body of opinion within that profession may not necessarily be sufficient to meet the standard of care required (*Rogers v. Whitaker*, 1993). Such practices may be persuasive evidence, but it is the courts who are charged with the responsibility of deciding what is a breach of duty of care and what is not. This has been a noticeable development relating to breaches of standards in the sporting arena. Up until about the 1960's one could have relied fairly comfortably on the defence that the participants accepted the risk (*volenti non fit injuria*, Figure 4.2). However, in more recent times, the courts have indicated that each player has a duty of care to others in the game, and injuries sustained outside the rules of the game could bring actions before the courts. Thus, despite the rules and guidelines of judiciary committees or proclamations made by sporting administrators, the courts will decide what is acceptable conduct (*Roots v. Shelton*, 1976; *Condon v. Basi*, 1985).

This has implications for coaches, managers and officials at school level, placing a responsibility on them to see that such guidelines are in line with legal reality (McNee, 1996; Williams, 1993). This also places an added burden on coaches who may be required to have more knowledge than just how to play the game (Rossouw, 2004). Additional knowledge regarding first aid, anatomy, diet, physiology and training methods among other things may be required. As is the case in more recent times in sporting clubs, if one person cannot meet all these requirements, a team approach is taken with the appointment of specialists in a number of these fields. This perspective is not only applying to senior sport but the issues are becoming more prominent in school sport (Catholic Church Insurances, 2000; Smith, 2002; Wells 1994). For example, in a Melbourne Children's Court a Magistrate:

placed a 14-year-old boy on a six month good behaviour bond after he pleaded guilty to a charge of assault arising out of an incident in a school netball game. The offender kneed another player in the groin and ruptured the victim's testicle, resulting in its partial loss. The teacher who umpired the game had not thought any undue violence had occurred but the magistrate found the school's attitude extraordinary (Sheehan, 1996, 1).

The final element to examine in bringing an action based on negligence is the notion of remoteness. One of the issues to be considered here is closely associated with the previous discussion concerning the causal link between the damage sustained and the incident that caused the damage. In other words, is there a direct link or have other issues intervened. For example in the school situation, complaints regarding physical injuries of a student may be linked to intervening incidents on the way home from school, and not directly related to what might have happened at the school.

The second issue here is whether or not the action for negligence is being brought within the guidelines of the Statute of Limitations. There are some legal technicalities associated with this aspect of the law, but the general rule is that physical injuries have a limitation of three years, and other issues a limitation of six years (*Limitations of Actions Act* (Qld) 1974, s.10, & s.11). These limitations are activated from the time the plaintiff is eligible to bring an action, which is usually at the time the damage occurred. However, with regard to school students, their ability to sue arises when they reach the age of eighteen, so in most cases students' time limits are substantially extended. This element of negligence places considerable responsibility on leaders in schools to have good processes and systems in place for recording incidents, and the keeping and storing of these records.

Other considerations to be examined here are the link between the person whose actions or omissions contributed to the breach of the standards, how closely others might be associated with that person at the time of the breach, and whether the other associates also can be implicated in an action for damages. For example, could a school authority be held responsible for the actions of a teacher relating to sporting events outside school hours with children closely associated with the school and using the school name and colours for the sporting team, or for a supervisor's conduct in a boarding house adjacent to a school and the charter of the boarding house is linked to cater and care for students who attend the school as boarders.

This issue of remoteness, also associated with the notion of vicarious liability and non delegable duty of care discussed below, was examined in *S v. The Corporation of the Synod of the Diocese of Brisbane*, 2001. This case involved sexual misconduct of a boarding master associated with a school, and was heard before a jury. In determining vicarious liability of the principal and school authority in relation to the actions and behaviour of the boarding master, the jury was asked to consider whether the link between the boarding master and the principal and employing authority was sufficient to implicate them in the misconduct, and whether the actions and behaviours of the boarding master were sufficiently connected with duties he was authorised to carry out within the scope of his employment.

The final component relating to negligence portrayed on Figure 4.2 relates to the defences a defendant can use when facing a charge of negligence. These have been dealt with in the above discussions, or are self explanatory.

Another aspect of negligence which requires some discussion here is the notion of professional negligence. One is probably familiar with the notion of professional negligence, sometimes expressed as professional malpractice, as it applies to practitioners in certain professions such as the medical and legal professions. In the educational arena, negligence in this sense relates to “when a student suffers harm as a result of incompetent or negligent teaching” (Ramsay & Shorten, 1996, 292). To date there has not been a case of educational negligence successfully argued before an Australian Court. However, some are starting to emerge (Sheehan, 1996). There have been some movements towards recognising limited liability in Britain (*E (a minor) v. Dorset County Council*, *Christmas v. Hampshire County Council* and *Keating v. Bromley London Borough*, 1993), while some notable cases have come before courts in the United States (*Donohue v. Copiague Union Free School District*, 1979; *Peter W v. San Francisco Unified School District*, 1976). A number of commentators have examined this issue (Hopkins, 1996, 1995; Lane & Lansdell, 1996; Purvis-Smith,

1998; Ramsay & Shorten, 1996; Riley, 1997; Williams, 1996a, 1995a) and similar sentiments arise from their discussions.

The basis of arguments against educational negligence put forward by the courts are associated with public policy considerations. The courts have pointed out that their rooms are not the appropriate forums from which to debate the intricacies of various educational practices, and learning and teaching theories. As well, the courts have argued that if plaintiffs successfully achieve a ruling of educational negligence this would open the floodgates, particularly for imagined claims. This would place undue burdens on school authorities and systems, not to mention the court systems themselves. It is also argued that successful claims could have a detrimental effect, stifling educational innovation, and bring educational standards to the lowest common denominator to minimise the likelihood of successful claims.

Conversely, supporters of claims for educational negligence argue as suggested by Kirby J, that the teaching profession, like other professions should not be excluded from having to have their practices subjected to scrutiny within the courts, and that such actions would enhance education for all students and make education authorities and systems more accountable (Tronc & Sleigh, 1989). This move towards more scrutiny of professional performance in education may not be confined to the school setting, for there are suggestions of a similar push in tertiary institutions, including universities (Davies, 1996).

The courts have not ruled out the possibility of establishing successful negligence claims while applying the elements and principles of negligence as outlined earlier. This was the situation when the cases referred to above were brought before the House of Lords in Britain, and the court was asked to decide whether there was a cause of action in law which could be tried. The three cases were brought before the court together, and all the cases related to students who had special education needs. The claim put before the House alleged that the educational authorities responsible for these students' education had been



negligent when diagnosing, offering educational advice and putting in place strategies to meet their educational needs. While the findings of the House of Lords are not binding on Australia and are valued as persuasive authority, it is worth noting that the following comments were made as part of the judgment:

A school which accepts a pupil assumes responsibility not only for his physical well-being but also for his educational needs. The education of the pupil is the very purpose for which the child goes to school. The head teacher, being responsible for the school, himself comes under a duty of care to exercise the reasonable skill of a headmaster in relation to such educational needs. If it comes to the attention of the headmaster that a pupil is under performing, he does owe a duty to take steps as a reasonable teacher would consider appropriate to try to deal with such underperformance. To hold, that in such circumstances, the head teacher could ignore the matter and make no attempt to deal with it would fly in the face, not only of society's expectations of what a school will provide, but also of the fine traditions of the teaching profession itself. If such head teacher gives advice to the parents, then in my judgment, he must exercise the skill and care of a reasonable teacher in giving such advice.

As educational theories develop, educators' abilities to meet the learning needs of students improve, and as educational psychologists become more proficient and accurate at diagnosing and developing intervention strategies to overcome learning difficulties, educational negligence could become more than an emerging area of educational law.

As stated above, there have been some moves to bring actions for professional negligence before the courts in Australia. Two former students at Swansea High School in NSW, sued the Department of Education "claiming a failure on the part of their teacher and principal to teach adequately the HSC Art curriculum" (Sheehan, 1996). However, at the present time in Australia, the probability of a plaintiff successfully claiming damages through education negligence is low because:

there are numerous and significant hurdles which effectively preclude recognisance by the courts. Recognition of a general duty of care to educate would place an unreal expectation upon schools and be impractical to enforce because it would equate failure to learn with failure to teach and ignore the numerous influences interacting on the teaching and learning process (Riley, 1997, 135).

Nevertheless, where students have suffered possible damage due to incompetence or negligent teaching, especially where such damaged is suffered in schools outside the government sector, this does not exclude the possibility of actions being brought before the courts under contract law or section of the *Trade Practices Act (Cth) 1974* (Hopkins, 1995; Ramsay & Shorten, 1996; Riley, 1997).

#### **4.6.1.1 Vicarious Liability**

The law of torts, of which negligence is a part, is a process where persons who have suffered some loss or injury as a result of another's breach of a duty, take court action to remedy the situation. "The usual remedy awarded by the court is damages, although in some cases other remedies such as injunctions are available" (Queensland Law Reform Commission, 1995, 3). The latter may be imposed for example in a defamation action to prevent the publication of material. The question then arises as to who is responsible for meeting the cost of the damages. Persons can be held personally liable, employees can be held responsible, or as occurs in many cases, the employing authority can be held vicariously liable for the actions or omissions of their employees (Fleming, 1983; Queensland Law Reform Commission, 1995; Trindade & Cane, 1986). To offset this risk, most people and employers enter into insurance contracts to cover their personal and professional liabilities (Williams & Hepple, 1984). In the light of possible liabilities under the non-delegable duties of school authorities (discussed below), Knott (2001) called for Non-Government school authorities to have their insurance policies checked to ensure they covered possible liability under those circumstances. In the context of schools, the liability might lie with the teacher, the principal, other members of staff, or the school system (Nolan & Spencer, 1997). In many instances a number of defendants are listed on the writ. Also, as discussed above in some instances, the plaintiff may be held partly responsible through contributory negligence.

The general position of vicarious liability relating to employee/employer situations, is that the employer is vicariously liable for the wrongs, actions or omissions of an

employee committed in the course of employment. This notion of vicarious liability has been examined in a number of cases including, *Kooragang Investments Pty Ltd v. Richardson & Wrench Ltd*, 1982; and *Stevens v. Brodribb Sawmilling Co Pty Ltd*, 1986. The outcomes of such cases indicate, whether a person, persons or entity bears the liability, depends on the nature of the breach, the actions or omissions that caused the breach of the standards which resulted in subsequent loss or injury, and the connectedness between the employer, employee relationship.

In the school context, if teachers or school leaders breach the standard causing injury, by being involved in actions and behaviours outside their employee/employer relationships, contrary to stated regulations, or on a “frolic of [their] own” (*Joel v. Morison*, 1834), there is a strong argument against the employer being vicariously liable. A number of tests have been used to establish the degree of relationship between the action or omissions and the employer/employee relationship. These have involved such issues as what control the employer has over the employee (the control test), what financial relationships exist between the person and the employer, whether the relationship was one of an individual contractor and in such circumstances who provided the equipment, tools of trade and so on (the organisational test). However the approach taken by most courts in Australia:

is to consider the totality of the relationships that exist between the parties, relying on a combination of factors, including the control and organisation tests not as alternative but as cumulative factors, as well as other indicia (Queensland Law Reform Commission, 1995, 23)

The notion of vicarious liability is also related to what is termed in the literature a non-delegable duty. The latter is explained thus:

If A owes a non-delegable duty of care to B, A cannot escape liability for breach of the duty simply by “delegating” performance of the duty to C. A’s duty is not discharged unless C in fact provides the reasonable care which A is required to ensure is taken. If C through failure to take reasonable care, causes damage to B, A will be liable personally to B. This liability applies whether or not A and C are employer and employee (Queensland Law Reform Commission, 1995, 16).

While the notion of strict liability, as expounded in *Rylands v. Fletcher*, 1868, has now been absorbed into the principles as they apply in general negligence cases (Queensland Law Reform Commission, 1995), the decision in *Burnie Port Authority v. General Jones Pty Ltd*, 1994, confirmed that this non-delegable duty is part of Australian law. In the school situation this has been applied, and the courts have been reluctant to allow school authorities to delegate their responsibility to others and distance themselves from the welfare of students, unless there is clear and unequivocal evidence to the contrary. This was the case in *Commonwealth v Introvigne*, 1982, where the High Court found the school authority liable when a fitting from the top of a flagpole dislodged as a result of students swinging on the halyard, and fell injuring a student. The court's ruling placed a non-delegable duty on the school authority, not only to take care of the students, but to ensure that adequate steps were taken to meet this responsibility. A similar stance was taken by the House of Lords in Britain when a County Council, as an educational authority conducting an infants school, was held responsible, and not the teacher, for the death of a plaintiff's husband, who steered his vehicle into a pole in the process of avoiding an infant. The infant had strayed on to the road from the school through an unsecured gate (*Carmarthenshire County Council v. Lewis*, 1955).

One of the crucial issues relating to vicarious liability and non-delegable duty of care is whether these two concepts extend to criminal matters such as the sexual abuse of students. This issue was examined by the High Court when leave was granted for an appeal to that court from the lower court decisions in the cases *New South Wales v. Lepore*, *Samin v. State of Queensland & Others*, and *Rich v. State of Queensland & Others*, 2003. All these cases involved sexual issues of a criminal nature against students. In these cases the court ruled that "although the education authorities owed a non-delegable duty of care for the safety of the students concerned, the scope of the duty did not extend to criminal acts" (Stewart & Knott, 2003, 24), nor were the educational authorities found vicariously liable, for the acts of the teachers were seen to be too far removed from the standard duties of teachers. However, the High Court sounded a

warning to school authorities on the question of whether vicarious liability, and a non-delegable duty of care would ever extend to acts of a criminal nature, by indicating that the response by the Court may not always be no (Knott, 2004; Stafford, 2003; Stewart & Knott, 2003). Thus:

School authorities need to ensure that they put in place systems to detect abuse of students by staff and others. Such systems will need to include policies and procedures that provide protection by ensuring the backgrounds of potential members of staff are fully investigated. The systems in place need to ensure a school culture that encourages full and frank disclosure of suspicions about abuse by staff and students (Stewart & Knott, 2003, 24).

Also in the school context, leaders should be careful to ensure that employees understand the limits of their employment, and that they scrutinise the involvement of their employees in extra curricular activities that might be associated with schools. Some system of supervision could well be required, particularly if these activities are carried out in situations that could be seen as being closely affiliated with the school, such as using school facilities. Examples of such activities could be, teachers undertaking activities outside normal school hours, such as academic or sport coaching of students, teaching music and instruction with musical instruments, teaching speech and drama etc. If teachers are conducting such activities on the basis of an independent business, it would be prudent for principals to inform staff involved in such activities to ensure they have the appropriate insurance cover for professional and public liability . School leaders should make it clear to parents whether such activities are part of the normal schooling of the students at the campus, or are carried out on an independent basis.

#### **4.6.2 Contract**

Issues relating to contract law appear in the literature as impacting on the leadership and management of schools, particularly in the non-government sector. As school communities in Australia gain more independence from centrally controlled bureaucracies, employment and other contractual negotiations are being formulated closer to the coal face. With this dissemination

of authority in a number of matters, especially relating to the employment of staff, comes the realisation that in some instances the school leader is acting as the agent for the central controlling body. In such circumstances, it is important also that school administrators have a basic understanding of contract law as it relates to agency. Of particular importance here is an understanding of the notions of actual, apparent and ostensible authority (*Freeman and Lockyer v. Buckhurst Park Properties (Mangal) Ltd*, 1964).

The recent moves by the Federal Parliament to try and impose contractual workplace agreements on almost 85% of the work force in Australia, could make the understanding of contract law even more important. Again this refers particularly to leaders of schools in the non-government sector, as the legislation proposed by the Federal Government is going to bring organisations and businesses subject to the Commonwealth Corporations Legislation under the umbrella of the new proposed workplace reforms (Independent Education Union, 2005). It seems logical, therefore, that school leaders understand the basic elements of contractual law such as offer, acceptance, counter offer and consideration.

School leaders need to be aware that negotiations involving agreements and contracts carry with them legal implications, that the rights of people are at stake and that failure to recognise these factors can lead to unpleasant disputes and even court actions. When negotiating agreements, school leaders need to have a clear understanding of who the parties are that will be involved in the final contract, the particular terms of the contract and the importance of having things in writing. In relation to the latter, one of the areas of concern is to realise that verbal agreements can be binding on parties, particularly if the verbal agreement has been partly performed.

A frequent example of this is where school administrators enter negotiations and make agreements with other parties beyond their actual authority. The parties receiving the offer can sometimes, on the basis of these discussions, make

commitments, particularly of a financial nature, or performs acts in partial fulfilment of agreements, before a written document is signed, only to find that the person making the offer did not have the actual authority to make the offer, or to give the go ahead for such partial fulfilment of the agreement to occur. This can create problems if the behaviours of the person making the offer beyond their actual authority, demonstrates that they have the ostensible authority to finalise such agreements. An occurrence of this is where teachers are employed on a casual or fixed term basis beyond the guidelines set by central administration. In such instances the partial performance of the agreement could warrant specific performance of the contract or provide grounds for possible damages (Guest, 1984; *Ogilvie v. Ryan*, 1976; *Regent v. Millett*, 1976).

Another aspect of contract law outlined in the literature which could have applications to the educational arena, is the notion of unenforceable contracts. Contracts entered into to defraud another, contracts entered into by minors, who do not have the capacity to enter such legal relationships, contracts made for illegal purposes (e.g. gambling) and contracts entered into under duress or undue influence, can run into difficulties in terms of being enforced. The latter is of particular importance in the employment of teachers and the appointment of principals where the negotiations of, or terms of a contract may be stacked strongly in favour of one party.

For the non-government sector, the law of contract has further implications in that the relationship between student and school authority can be viewed as one of contractual agreement (Duncan & Duncan, 1986; Henderson Trout, 1989; Tronc & Sleight, 1989). In this school sector, the elements of contract outlined above appear to be present. It is generally accepted that these schools outline their specific goals, mission and educational perspectives in prospectuses or through other means, parents choose to enrol their children in such schools on the basis of this information, and then pay fees to have their children educated within that particular educational climate. It is important, therefore, that school authorities, school boards, school councils and school administrators examine their

prospectuses carefully and ensure that they do not contain unachievable goals. For example, a school's recent mission statement claimed among other things that the school "will develop the whole individual to his/her full potential". This could have implications in relation to contract law with regard to negligent teaching as was canvassed above.

The term of the contract may vary from case to case. To ascertain what the terms of the contract are it is necessary to examine the documents passing between the parties and the general course of dealings between them. School prospectuses and other documents exchanged at or before the time of the contract being formed will be very important. Many private schools devote great care to this documentation because of its vital significance (Knott, 1997a, 210).

While actions against teachers or school authorities for malpractice or failing to meet their professional responsibilities in relation to their stated perspective are not common in Australia (Whalley, 1986; Williams, 1996a), there have been instances where such action has been threatened. A writ was filed in the Brisbane District Court against a Church Corporation for, among other things, negligence, breaches of the *Trade Practices Act* (Cth) 1974 and the breach of the contractual agreement between the parties. The claim in relation to contract was, that the contractual agreement which claimed "the worth and dignity of each student would be recognised and the school would provide a Christian environment of care, and students would receive reasonable care and protection during residency," was breached (Courier Mail, 1992, 2). With Australia now being the second most litigious country in the world (Tronc, 1996b) and associated with this the increase in litigation within Australian Education settings (Nolan & Spencer, 1997), and the development of more accurate and sophisticated methods of measuring not only academic progress, but also psychological aspects of students' growth, actions against teachers, school leaders and educational authorities for not meeting expected objectives of a mental and moral nature may become more likely than not (Dowsett, 1994).

The contractual basis between student and parents, and the school authority in documents setting out the aims and objectives of schools may not be sufficient grounds to negate possible actions under statute law which protect students



rights. This position was brought home to educational authorities where dress standards of an independent school were challenged under the *Equal Opportunity Act of (Vic) 1984*, (*Cope v Girton Grammar School Ltd*, 1995). The outcomes of such actions could result in much more scrutiny by independent schools of their prospectuses and agreements in relation to their authority to set particular standards in all areas affecting schooling (Hawkes, 1995).

#### **4.6.3 Natural Justice/Procedural Fairness**

The notion of natural justice, or as is referred to more frequently in recent times, procedural fairness, has three main elements:

- a person has a right to be heard before that person's case is decided;
- the decision maker must be independent and unbiased in dealing with the matter to be decided; and,
- decisions must be based on logical probative evidence.

In areas of general law these factors apply to legal or proprietary rights (*Malloch v. Aberdeen Corporation*, 1971; *Ridge v. Baldwin*, 1964) and where there is a reasonably based legitimate expectation that a certain course of action will be taken (*FAI Insurance Ltd v. Winneke*, 1982). In relation to the leadership and management of schools, procedural fairness would seem to apply to a number of areas such as students' suspensions and exclusions (Knott, 1997a, 1993; Tronc, 2004b), and where assessment of behaviour, performance or attitudinal considerations are made and recorded, and which are likely to affect the future career or livelihood of students or their reputations (Schetzer, 2000; Wake, 1993).

In the past those aggrieved by administrative decisions in Queensland had to take out common law prerogative writs such as certiorari or mandamus to challenge the actions of decision makers. In the commonwealth sphere recourse to decisions by government officials have undergone closer scrutiny with the passing of legislation such as the *Administrative Appeals Tribunal Act (Cth) 1975*, (Allars, 1990), and Queensland has followed a similar path by enacting the

*Judicial Review Act* (Qld) 1991 (Electoral and Administrative Review Commission, 1990; Knott, 1997a). Such acts apply to educational authorities and school administrators within government education systems. Education Departments, therefore, are now looking more closely at procedures for behaviour management, suspension and exclusion to balance the rights of those accused of breaching school rules, and those whose learning and school life is affected by such breaches. It could well be that some of the procedures adopted by school administrators might need closer scrutiny to ensure they do comply, not only with the principles of natural justice but also current legislation (Mackie 1995).

In relation to Government schools the application of the process of natural justice in relation to issues surrounding suspension and exclusion are well settled:

It has now been judicially determined in a number of countries, including Australia, that students have a right to be heard prior to a decision about suspension and exclusion being made. This does not mean a “trial” is required. The emphasis is not on formalities or technicalities but upon the principle that the student must be clearly told what the allegation is and given the opportunity to reply. That reply must be taken into account by the school authorities before any decision is made. Exactly what procedure is appropriate will vary from case to case. If the school authorities act reasonably and honestly and with an open mind, and if the effect in general terms is to give the student a fair opportunity to know what is alleged and to answer it, then the courts are unlikely to strike down a decision on the grounds that the procedures were unfair (Knott, 1997a, 216).

In relation to bias in decisions that are made, school leaders need to be aware of biasness that can occur in both the investigations themselves and the processes followed in coming to decisions. During the investigation the use of language is important. Ford (2004) suggests that in order to support impartiality, “it would be better not to use terms like “victims” and “perpetrator” or even “alleged perpetrator or offender” as they give a suggestion of bias against the person being investigated” (36). In terms of processes used, if the person making a decision regard an issue, such as suspension and exclusion of a student, also has had a number of dealings with the student and carries out the role of investigator and decision maker, questions could be legitimately asked as to

whether the principles of procedural fairness have been complied with fully in making the decisions (Ford, 2004; Mackie, 1995).

While it is fair to say procedural fairness should be applied to the areas as those mentioned above (Wake, 1993), and while there is now legislation covering much of this area, the application of these principles to Non-Government schools from a legal perspective is still debatable. However, as Knott (1997a) points out, although it is not strictly legally necessary, it is probably prudent and desirable that Non-Government schools apply the sentiments expressed by Brooke J in *R v. Fernhill Manor School ex parte A*, 1993, and “have in place procedural rules designed to ensure that pupils receive fair treatment in accordance with the principles of natural justice” (217). As already indicated above, those in Non-Government Schools, who are aggrieved by such decisions, may also redress the situations by challenging the contractual agreements between the parties rather than by asking that the principles of procedural fairness be applied. Other avenues may be found through anti-discrimination legislation (Hawkes, 1995, Knott, 1997a, 1993).

Sectors such as Catholic School Systems by their very nature, may, on the grounds of authenticity, demand adherence to natural justice principles irrespective of whether legislation requires their application. This is the case within the BCEC, for in their Administrative Handbook a detailed set of procedures aligned to natural justice principles are to be followed before a student can be excluded (Archdiocese of Brisbane, 1994). In this instance, the Director of the system has the sole authority to exclude a student from schools under that system's administration, and this authority is to be exercised on the recommendation of the principal only if the procedures based on natural justice have been followed. Such a process overcomes some of the concerns relating to the notion of bias discussed above.

#### 4.6.4 Others Areas of Common Law Identified in the Literature as Impacting on Schools

Two other areas of common law which often appear in the education law literature relate to confidential information and defamation. Actions against breaches of confidentiality involve the application of equitable principles, and therefore can only be pursued in courts which have equitable jurisdiction. This jurisdiction applies mainly to superior courts and therefore the pursuit of such an action can be an expensive operation. For a plaintiff to succeed in an action for breach of confidentiality three elements must be present:

- the information has the quality of confidence about it (*Saltman Engineering Co. Ltd v. Campbell Engineering Co. Ltd*, 1948);
- the information is imparted in circumstances inducing an obligation of confidence (*Coco v. A.N. Clark (Engineers)*, 1969); and,
- there has been an unauthorised use of the information.

From the point of view of leadership and management of schools, access to personal information relating to students and their families is becoming more commonplace with the demand that teachers and school administrators meet students' individual needs. This is particularly the case, with the move to integrate children with special needs into the normal classroom and with the increasing number of students experiencing social and emotional stress brought about by family situations and the strains of socio-economic circumstances. Where there is a relationship of mutual trust and understanding and information is given that is of a particularly personal nature, the courts are disposed to imply an obligation of confidence (*Argyll v. Argyll*, 1967; *Moorgate Tobacco Co. v. Phillip Morris No:2*, 1985). In the educational setting, one of the key issues here is that information is often given for a specific purpose e.g. the educational well being of students. If information is given for such a purpose then that information can be only used for that purpose (*Interfirm Comparison (Australia) v. Law Society of N.S.W.*, 1975) and if another gains that information by accident or through illegal means they should not disclose it (*Franklin v. Giddins*, 1978).

There are a number of dangers here for educational and school administrators. Administrators need to develop some process and structures for the dissemination of information necessary for the educational development of students that provides the necessary information to those who require it, but which at the same time protects the confidentiality of that information where that is necessary (Nolan & Spencer, 1997). Staff should be made aware of the principles involved with regard to confidential information and have pointed out to them that infringements of these principles can bring court action and possible damages and/or injunctions awarded against them. As well as this, consent forms for access to information from such personnel as guidance officers, therapists and medical practitioners should be drawn up and signed by the appropriate authority and used on all occasions when seeking information. Staff members themselves should not disclose information regarding any member of their educational institution without such authority.

Like many areas of common law, legislation has adjusted and added to the principles outlined in court cases, and the area of confidential information is a good example. The passing of the *Privacy Amendment (Private Sector) Act* (Cth) 2000 has brought the Non-Government schools under its umbrella (Riley & Duncan, 2002) and “set minimum standards on the collection, security, storage, use, access, correction and disclosure of personal information” (Board of Studies NSW, 2004, 103). Similarly, the records kept by teachers once considered sacrosanct on the basis of them being the professional records of the teachers (Tronc, 1996b) have become subject to freedom of information acts and associated regulations passed by various jurisdictions (*Freedom of Information Act* (Qld) 1992; *Freedom of Information Act* (Cth) 1982). The Non-Government sector may not be directly affected by these latter acts, as they apply basically to government departments. However, should documentation from Non-Government schools find their way into the files of students transferring from a Non-Government school to an educational institutions subject to government

regulations, such as a public university, then these documents may be come subject to the legislation.

One of the dilemmas which educators face with regard to confidential information, and this also relates to the privacy legislation, is when circumstances could warrant the disclosure of information. School counsellors are often faced with this dilemma as well as school leaders. Ford (2005), examined these situations and indicates that certain circumstances warrant disclosure of information, especially if it relates to mandatory reporting of child abuse, where a warrant has been issued, and when crimes and fraud are involved. In such circumstances school authorities would want to co-operate with authorities, and where there is uncertainty, school leaders should seek advice.

The responsibility to provide and disclose documentation to a court is an onerous one, and while information may seem confidential to school leaders, there is a need to disclose documents if subpoenaed to do so. A letter sent to a school principal in 1997 requesting documentation relating to a school incident included the following:

The onus upon you to make full discovery is a heavy one. The notice requires you to disclose, by sworn affidavit, all documents in your possession or in your power relevant to the issue as defined in the pleadings, copies of which are enclosed for your information. Not only must the documents at present in your possession be revealed, but you must also refer to those over which you have power (such as documents in the possession of your agents, e.g. solicitors and accountants), but additionally, to those which are not presently in your possession and which have been disposed of by you. As to those documents which have been disposed of, you must reveal their present whereabouts together with the circumstances under which they left your custody or power. Similar particulars must be provided in relation to documents which have been destroyed. It must be emphasised that the scope of discovery is wide, but is limited to the requirement that discoverable documents are only those that relate to a matter in question between the parties.... Discoverable documents for the purpose of the Rules are now no longer restricted simply to paperwritings. All forms of information storage such as audio, tapes, video tapes, magnetic tapes, computer discs, microfilm, etc should be regarded as discoverable.

A letter such as this gives ample warning to school leaders to be careful in recording documentation and if such “records are to be kept, then they should be compiled in an objective and rational fashion. Such records should never merely be the opportunity... to blow off steam by making unrepeatable comments about [a] child’s nonachievements, poor background, and dubious parentage” (Tronc & Sleight, 1989, 19).

Documentation is also a relevant issue when considering defamation. “It is a person’s reputation which is protected by defamation law. Reputation is the esteem in which others hold a person. A defamatory statement tends to adversely affect the person defamed in the eyes of ordinary members of the community” (Stafford, 2000), and this influences others to shun or avoid that person or hold that person in contempt or ridicule (Farr, 1998). Defamation has two sides to its interpretation; one is libel and the second slander. Libel refers to permanent defamation in documentation, such as defamatory comments published in writing, or on audio, video or computer storage, while slander refers to defamation of a more temporary nature such as that experienced in verbal conversation such as debates, dialogue, gossip and the like. In defamation there is also an element that the material published is false (Walker, 1995), for “the ultimate defence for defamation is truth” (Farr, 1998, 23). In compiling documents therefore, the warnings outlined above are relevant here; statements should be accurate, and broad subjective statements and over generalisations should be avoided, (Poulton, 2001; Tronc & Sleight, 1989; Williams, 1994).

One aspect of defamation which confronts school leaders is when parents defame teachers. This calls for a degree of emotional intelligence on behalf of school leaders, an aspect of leadership identified in Section 3.3.1 when discussing elements of leadership. If such behaviour persists, often a letter to the parents via a solicitor or through the educational system itself can assist. It is recommended that proper advice is sought in this regard, and if teachers are members of a union such support is usually available through the access to legal representation of that body.

One of the emerging areas of concern in this regard relates to the use of computers, email and the internet (Poulton, 2001; Stewart & Knott, 2002a, Tronc, 2003; Williams & Dillon, 1998). Using the internet and text messages to spread insults and inappropriate information about teachers and fellow students has become a concern in America (Conn, 2004b), and is beginning to create concerns in Australia (Rose, 2005). Such use of the internet and other associated technologies highlights issues already discussed above associated with privacy and the use of confidential information (Squelch, 2005), and could well relate to contractual arrangements entered into by staff and students in use of school facilities and the access schools have to the internet (Bednall, 2005). This appears to be an area of the law where there will be an increasing concern and involvement for school leaders. The NSW Parliament has recently enacted legislation (*Workplace Surveillance Act* (NSW) 2005) to place some legal boundaries around these issues. The advice of Conn (2004b) in this regard, is for school leaders to begin the process of building up a relationship “with a competent Internet-savvy lawyer” (304).

#### **4.7 Legislation Identified in the Literature as Impacting on Schools**

The outline that follows in this section examines the prominent areas of legislation identified in the literature as impacting on schools. The objective here is not to attempt to examine in detail the statutes and subordinate legislation involved, but to identify those areas of the legislation which the literature reveals as having an impact on schools and education, and to highlight the issues emerging from that influence.

As pointed out above in Section 4.2, there is an increasing array of statute law which is impinging on the administration of schools and educational systems. In some instances these have been referred to already in the examination of common law issues. This is not unusual, because as already explained, statutes are often enacted to reinforce or enhance issues arising in case law, or to overturn or modify the common law. In analysing any legal matter confronting a school, like analysing any legal matter, it is customary to gather all the



information and identify the issues, examine the issues in relation to the relevant areas of common law and then consider the effects various legislation might have on that position (Morris; et al., 1985). The structure of legislation, and the application and interpretation of particular statutes in accordance with the way they are drafted, is a study in itself (MacAdam & Smith 1985), and while that is not the purpose of this review, the effect of a particular statute on education and schools may well depend on the interpretation of certain pieces of legislation.

Figure 4.2 outlines the main areas of legislation influencing the administration of education at a system and school level. The process generally followed in developing pieces of legislation is that an issue arises, discussions are held, particularly at the executive government level, a draft bill of the proposed legislation is prepared, then the bill is debated in the respective parliaments. Having passed through the various conventions of the Houses of Parliament and being signed by the Governor on behalf of the Queen, the legislation becomes law. In Queensland, with that state having a unicameral government, having abolished the Upper House in 1922 (Hanks,1985), the legislation is debated only in the Lower House, The Legislative Assembly. The new law or laws relating to the passed legislation become operative on the date the bill is signed by the Governor, or on a date stated in the legislation itself, which indicates the date on which the legislation is to come into effect.

In the Westminster System, Government Ministers through their bureaucratic departments bear the responsibility of administering the law. As explained above, accompanying many acts of parliament, there is listed various subordinate legislation e.g. regulations and supporting documents, powers and structure of boards, tribunals etc which are set up to help implement legislation. This process is put in place so that the laws can be implemented and administered without having to return to the Parliament to have each decision or issue verified or clarified. If the latter applied, governing would become almost impossible. However, various statutes are now in place in many jurisdictions (*Administrative Appeals Tribunal Act (Cth) 1975; Administrative Decisions (Judicial Review ) Act*

(Cth) 1977; *Judicial Review Act* (Qld) 1991) to give persons aggrieved by such administrative actions, an opportunity to challenge the validity of such decisions made by these bodies and the personnel within them (Allars, 1990).

#### **4.7.1 Federal Legislation Impacting on the Administration of Schools**

As outlined in Section 4.4, Australia has developed a federal structure of government and as such Australian educational institutions, including Catholic schools, come under the influence of both state and federal legislation. Education is basically a state matter. However, in recent years the allocation and appropriation of funds through the taxation reimbursement system and use of other powers assigned to the Federal Parliament through s. 51 of the Constitution, the Federal Government has increased its influence on education. As well as this, there are both state and federal laws which affect persons in education just as they affect any other citizen living within the jurisdictions of Australia or a particular state. However, as also indicated above, via s.109 of the Constitution, where a state law is inconsistent with a law of the Federal Parliament, the commonwealth law prevails and the state law to the extent of the inconsistency becomes invalid. Besides this, where the Federal Parliament has the authority to legislate in areas and intends to cover the field, federal laws override state legislation dealing with the same issue (Hanks, 1985). Out of this structure and sharing of powers a number of pieces of federal legislation have come to influence schools .

##### **4.7.1.1 Copyright**

Copyright legislation is designed to protect, encourage and reward the creativity and intellectual endeavour of persons, to uphold the rights of the creators, artists and authors established by copyright and to safeguard their livelihoods. Because of the pirating of works and resulting loss of sales, some editions and publications of our cultural heritage have been lost to our community, and our world is the poorer because of this outcome (Coss, Paine, & Watts, 1991). Under s.51 (xvii)

of the Commonwealth Constitution, the power to make laws governing copyright was entrusted to the Federal Government, and through that power the Federal Parliament has enacted legislation with the present rights and responsibilities being outlined in the *Copyright Act (Cth)* 1968 and as amended.

Contrary to some beliefs there is no system of copyright registration, and therefore protection of a work does not depend on its publication. Copyright is free and automatic. However, it is suggested that authors and composers place the correct copyright symbol as a warning to would be poachers (Australian Copyright Council, 1989). Copyright protection operates from the time the work is created until fifty years from the date of the first publication or fifty years from the year of the author's death (*Copyright Act (Cth)*, 1968, s.s. 33-35). The most likely scenario is the latter.

Copyright covers the original literary, dramatic, musical, artistic, film, sound recording, broadcast and published editions of works. Original means not copied from another source but being a product of the author's independent skill and labour. Thus a similar idea which may not be considered unique or novel may be classified as original and be protected under the act. Copyright therefore, protects the expression or form that the idea takes. This leaves ideas, concepts, techniques and systems not protected by copyright (Australian Copyright Council 1989; Baulch, 1995).

Copyright gives the author rights, which include a right of redress against those who make unauthorised use of the work and a right to negotiate rewards for the authorised use of the work. Such rights operate with regard to reproduction, publishing, publicly performing (non-domestic situations), broadcasting, cable transmission and adaptation of such works. Persons who infringe by any of these means could well find an injunction placed upon them, or find themselves subject to an action for damages or an account of profits. The copyright owners, however, can agree to the use of their creations. In such instances, the principles and issues raised above with regard to contract law would be applicable.

The general rule is that the creator owns the rights to copyright. However, it may be important to clarify who the creator is in particular instances. For example, a piece of music may have a number of artists involved; the composer of the music, the author of the lyrics, the artist who created the cover design, the publisher and so on. In other circumstances, where an employee produces a work as part of his usual employment duties, the employer might well hold the copyright rights. This is particularly pertinent to educational institutions and the outcome might rely on the employment arrangements entered into by the parties. This is a very pertinent point with so many documents now being produced through computer generated publications, and most employers having regulations governing the creation and rights for the development and production of such documents. Again, this raises issues relating to employment contractual arrangements and a need for an understanding of contract law (Baulch, 1995).

From the above brief outline, it is conceivable that copyright has far reaching implications for leadership and management of schools at both a system and school level. The details affecting the administration of education systems and schools are outlined in the Australian Copyright Council publication "A Teachers Guide to Copyright" (Baulch, 1995) and associated publications by that Council. The governance of copyright issues in most educational institutions and schools within system authorities, government and non-government, are characterised by various licence agreements which come under the act. These apply "in situations when obtaining the consent of every copyright owner would be impractical" (Australian Copyright Council, 1995, 7). Sometimes these take the form of voluntary licence agreements. Again these agreements are subject to the body of contract law. These agreements allow the copying of material without infringing copyright for specific purposes, and the licences outline the restrictions and conditions governing such copying.

The licence agreements are revised from time to time and the revision in 2003 affecting schools and most educational institutions, basically covered the

following areas:

- Audio-visual Copyright Society (AVCS), which is administered under the statutory scheme and allows the copying of material broadcast on radio and television;
- Australian Musical Copyright Owners' Society (AMCOS), and Australian Record Industry Association (ARIA) Licences which is a voluntary licence arrangement and allows the copying of sheet music and the recording of music material under special conditions.;
- Australian Performing Right Association (APRA), is also a voluntary licensing arrangement and offers licences for the public performance of music. This group should be contacted when ever a public performance involving music is being considered. The latest agreement covers the use of music in most in-school musical activities. However, any major production for which an entry fee is charged does not usually come under the agreement and individual advice from APRA should be sought in such circumstances; and,
- Copyright Agency Limited (CAL), is a voluntary licensing arrangement which allows the copying of printed material.

It is not the intention, here, to go into details with regard to these licence agreements, but to emphasise that educational administrators should be aware of the agreements under which they operate. Basic understandings of these agreements can usually be obtained by contacting the controlling body of their educational system, State Department of Education or the State Catholic Education Commission, because the licences are generally negotiated between the controlling body and the association representing the particular copyright area.

It should be emphasised that these agreements cover the operation of educational endeavours within the system in which one operates. They do not cover private operations, unless such activities are for private study associated with the educational institution in which one works or attends, nor do they cover activities outside the educational endeavours of the institution. In relation to the

latter it is important to note that the AMCOS agreement does not cover the copying of music for the local parish liturgical celebrations even though a school covered by the agreement may be the local parish school (Australian Copyright Council, 1995).

It is important for leaders of schools to familiarise themselves with these agreements, particularly with regard to warning signs being placed in prominent positions in accordance with 39A(b) of the act where copying is carried out. School leaders need to: understand that copying printed and other material has legal implications, have a clear understanding of what the various licence agreements cover and do not cover, ensure their staff are well informed of their boundaries of operation and procedures, conduct regular reviews of copyright operations within their schools. Ignoring the requirements under copyright law and the licence agreements can have potential legal consequences (Dawson, 2003a).

#### **4.7.1.2 Anti-Discrimination and Equal Opportunity Legislation**

Legislation opening the way for redress against discriminatory practices began to substantially appear after the election of the Federal Labor Government in the mid nineteen seventies, (*Human Rights Commission Act (Cth) 1981; Human Rights and Equal Opportunity Commission Act (Cth) 1986; Racial Discrimination Act (Cth) 1975; Sex Discrimination Act (Cth) 1984*). This movement was in response to Australia's position as a member of the world community having become a signatory to various conventions and declarations, and the Federal Government's enactments pursuant to the authority vested in the External Affairs powers (Federal Constitution s.51 (xxix) ). The United Nations made declarations regarding mentally retarded persons 1971, disabled persons 1975 and declarations regarding the rights of children in 1989 (Healey, 1994), and Australia had become a signatory to other Geneva conventions such as those concerning the discrimination of persons in employment and relating to civil and political rights (*Human Rights and Equal Opportunity Commission Act (Cth) 1986*).

The signatory of particular treaties and conventions does not necessarily place Australia under any particular law per se, but highlights a recognition of these rights in international law. What signing these conventions does do, is place a commitment on Australian law makers to take these matters into consideration when drafting new legislation, and to incorporate into that legislation where applicable, the principles and purposes underlying the rights expounded in the conventions. This has been done in relation to a number of areas of law, as witnessed by the acts listed above. This movement has brought with it the necessity for system and school educational authorities to examine procedures and structures that might contravene persons rights highlighted by international law and incorporated into Australian jurisdictions. Of particular importance here in relation to the leadership and management of schools, is for school leaders to review their enrolment and employment procedures.

The *Sex Discrimination Act* (Cth) 1984 attracted liability for discrimination on the grounds of sex or sexual characteristics (s.5), marital status (s.6), pregnancy (s.7) and family responsibilities (s.7A). This was brought home to educational authorities in 1984 where the Brisbane Catholic Education Office was brought before the Human Rights Commission concerning a discrimination action based on marital status associated with employment procedures (Independent Teacher, 1986). In many statutes there are exceptions to the provisions within the acts, and this is the case with the *Sex Discrimination Act*. (Cth) 1984. Under s.38 of that act, discriminatory practices may operate in good faith to avoid injury to the religious dimension of educational institutions. This has allowed religiously based operated educational establishments to continue discriminatory practices on some grounds, but leaving other bodies and education systems subject to the provisions under the act. This act also allows single sex schools under s.21 (3).

The movement against discrimination has also challenged system and school authorities to examine their stance on segregated educational provisions and the availability of facilities for the integration of children with special needs into the

regular classroom. Exclusion on the basis of race, colour, and descent or national or ethnic origin has been made unlawful (*Racial Discrimination Act (Cth)* 1975, s.9), as was discrimination on other attributes. The break down of the segregation of children with special educational needs into special self contained educational institutions received impetus in the early seventies through advocates of normalisation (mainstreaming, integration) such as Dunn, (1973) and the passing in America of the *Education for All Handicapped Children Act (PL 94-142)*. The move to integration spread rapidly throughout many jurisdictions, and legislation accompanying this exposed school authorities to court actions on the grounds of discrimination, and this stimulated the debate about the most appropriate placements in educational settings for children with special educational needs (McCann, 1980).

The *Human Rights and Equal Opportunity Commission Act (Cth)*, 1986, s.4 indicates that the commonwealth did not intend to cover the field in relation to this area. The same is indicated in The *Sex Discrimination Act (Cth)*, 1984, (s.10(3)) and the *Racial Discrimination Act (Cth)*, 1975, (s.6A). Therefore, in this area of the law both state and federal laws are capable of running concurrently. This issue will be dealt with more fully below when examining the Queensland anti-discrimination legislation.

#### **4.7.1.3 Family Law**

Family law issues are one of the expanding legal areas affecting the leadership and management of schools. A chapter or section on this area of the law and its impact on schools appears in each of the general texts listed in Section 4.6 above. There is an increasing number of marriage breakdowns in Australia (Ramsay & Shorten, 1996) and society's attitudes to marital and sexual issues have undergone substantial redefinition in the latter part of the 20<sup>th</sup> Century (Finlay & Bailey-Harris, 1989; Maley, 1996). With these changes have come legislative reforms enacted under the power vested in the Federal Government through s.51 (xxi) & (xxii) of the Federal Constitution (*Child Support (Assessment)*



*Act (Cth) 1989; Child Support Legislation Amendment Act (Cth) 1990; Family Law Act (Cth) 1975; Family Law Amendment Act (Cth) 1991; Family Law Amendment Act (Cth) 1989; Family Law Amendment Act (Cth) 1987; Family Law Reform Act (Cth) 1995; Marriage Act (Cth) 1961).*

Along with these legislative and societal changes the number of single parent families and the number of children living in restructured families has increased. The breakdown of family relationships and the restructuring of families can be a very emotive experience for those involved (Funder, 1996). The school sometimes becomes the battle ground where parties subject to this restructuring of their lives, attempt to sort out differences, gather information to support a particular stance on issues, or gain evidence to present before a court in disputes. In this way, children and school leaders can be caught in the cross fire and a deal of stress is generated (Harris, 1997; Ramsay & Shorten 1996).

At the time of this study, leaders in schools were faced with having to deal with family law issues under the new legislation brought about by the passing of the *Family Law Reform Act (Cth) 1995*, which came into effect on 11<sup>th</sup> June 1996. A prominent perspective which came through this new legislation was to look at issues relating to family law from the point of view of what are the best interests for the children involved. This stance is reinforced by Australia's ratification of the United Nations Convention on the Rights of the Child, as the best interests of children is the central characteristic in that declaration. Besides a concentration on what are the best interests of the child, other guiding principles in this new legislation are: that children have a right to know and be cared for by both parents; children have a right to regular contact with both parents and any other person significant to their care, welfare and development; parents should share the duties and responsibilities of looking after their children; and, parents should try to agree on future parenting arrangements for their children (Attorney Generals Department, 1995).

Counselling and mediation became a major part of the new legislation, and

previous orders based on custody, guardianship and access, which portrayed a type of ownership of the children involved in family law matters, gave way to parenting plans and parenting orders. The latter applies when the parties can not agree and have to have the contents of the plans stipulated by the Family Court. These parenting plans relate to matters of contact with the children, residency of the children and other specific issues (s. 63D). In relation to residency, the notion has been broadened to incorporate other persons, besides the parents, with whom children may reside from time to time. With regard to specific issues, it is in this context in which matters relating to schooling and religious upbringing of the children are generally stipulated (Attorney Generals Department, 1995).

One of the areas of concern and which creates dilemmas for school leaders with these new arrangements, is that parenting plans do not have to be registered in the court. If the parenting plans are registered they are legally binding and carry the same weight as the previous court orders of custody, guardianship and access. However, if they are not registered, what leaders in schools have before them are basically the intentions of the parties. In the latter circumstances, if relationships between the parties deteriorate and one party does not want to adhere to the agreement, and battles emerge with regard to residency, contact and other issues, this can place school leaders in conflict with the parents and create dilemmas, for under the act, both parents have equal rights and responsibilities (Chan, 1996).

This new act also addresses the issues where family violence orders handed down by State Courts are in conflict with Family Court orders relating to access and contact. With family law being part of the Federal Government's jurisdiction, the new act provides for the supremacy of federal laws under s.109 of the Constitution as discussed in Section 4.2, to be waived, and allows State Courts to make, vary, revive, discharge or suspend an order under the *Family Law Act* authorising or requiring contact (s.68T). The act also requires the Family Law Court to take into account such orders from State Courts when making an order under the *Family Law Reform Act* (Cth) 1995 (s.68R). This adjustment lessens

the conflict and dilemmas faced by leaders in schools in the past, involving such orders where they were confronted with conflicting orders, when violence was involved in the break up of families.

While school leaders are not required to know all the details contained in the *Family Law Reform Act* (Cth) 1995, they need to have some understanding of residency, contact and the sorts of issues relating to schooling that could arise in the specific issues area. As many school leaders, particularly in the secondary area would have students subject to orders under the previous legislation, they need to know how those orders under the headings of custody, guardianship and access translate into the concepts of contact, residency and specific issues under the new legislation. Chan (1996) outlines this relationship:

1. An existing Custody Order is equivalent to a Residence Order and a Specific Issues order that the custodian have daily care and control of the child.
2. An Access Order becomes a Contact Order.
3. An order for guardianship may convert into both a Residence and Specific Issue Order. If the Guardianship Order provides for joint guardianship, then it will convert to a Specific Issues Order for joint responsibility between the parents for the long term welfare of the child (2).

School leaders need to put in place some procedures to ensure that they obtain a copy of the parenting plans, and not accept the details of such orders or agreements on the hearsay evidence of one of the parties. School leaders also need to put in place procedures to ensure school personnel comply with the plans, particularly if registered as court orders (Kenworthy, 2001). In scrutinising these agreements, it is important to note the date of such orders and the date they expire, as sometimes one parent may request compliance with an interim order or an order that has expired or been superseded by a later court order. To disregard the contents of such orders or agreements would be to breach a court order and could have important consequences. Difficulties can arise in school situations if the agreement between the parties includes a statement to the effect that contact is granted at specific times, and then at other times as mutually agreed to by the parties. If the latter is the case, it is well for the school leaders to arrange for the parents to confirm in writing the additional arrangements as they occur. However, school leaders should be assured that they cannot be held

responsible for the breach of a court order of which they are unaware.

Sometimes a parent may contact a school indicating that a separation has taken place and try and explain that he/she has control of the children, and that the other partner is to have no contact with them. This creates dilemmas for school leaders, for under the present legislation both parents have parental responsibility and equal rights regarding their children. Unless the parents agree, or the courts order otherwise, the sharing of responsibility between the parents continues regardless of separation, divorce or other changes in circumstances. This situation also applies irrespective of decisions that may have been made by the parents or by the court about the child's residence (Tronc, 1996b, Tronc & Sleigh, 1989). Contact is looked upon as a right of the children to have contact with their parents not a right of the parents, and where contact issues between parties become complicated, it is for the parents themselves to resolve, and school leaders and teachers should not intervene as mediators (Ramsay & Shorten, 1996). It is important, therefore, in these circumstances that school leaders keep both parties informed of issues about school, including normal communication that would be made regarding student progress, school events, newsletters etc. These circumstances can create difficult and emotional situations and even bring parties to the extent of trying to abduct students (Harris, 1997; Tronc, 1986).

Another issue that can arise for school administrators and teachers is when they are approached by one or both of the parents to give information in writing in the form of an affidavit to support particular positions regarding welfare issues relating to their children. Teachers and school administrators should be aware that such affidavits could lead to cross examination in court, even to defamation action and being sued for libel (Tronc, 1996b). It is suggested that the more sensible practice for school administrators and teachers in such circumstances is to be subpoenaed to give evidence, for besides the possible difficulties already canvassed, there are stringent rules regarding the structure of affidavits (Minister for Justice and Attorney General, 1991). If an affidavit has been drafted, "it is imperative to provide evidence by way of provable and supportable facts" (Tronc,

1996b, 80), and it is also suggested that it be checked by a legal representative to ensure that the statement deals with factual situations only and that opinions and hearsay information are not included. Teachers' unions and system authorities usually have legal advisors that can be accessed to support school leaders and teachers in this regard.

One of the emerging issues relating to access by the custodial parent in Queensland is the position created by the passing of anti-discrimination legislation. On a particular court order issued in the Family Court a parent may be granted access under strict guidelines, e.g. by phoning between the hours of 6.00 p.m. and 8.00 p.m. on Wednesday. On the other hand, the policy of a school may be that all parents are encouraged to work in classrooms, to be involved as volunteers in supporting the education of their children. A parent may therefore make himself/herself available to work in classrooms as a volunteer helping with reading, art, craft etc outside the regulated contact periods. The question then arises as to whether or not the principals of the schools can restrict the access of the non-custodial parents on the grounds of the court order without placing themselves liable to actions under the anti-discrimination legislation. If the regulations of the Queensland Department of Education can be used as a guide (Queensland Department of Education, 1994), it appears such parents cannot be denied the involvement offered to other parents, and to do so could create difficulties under the anti-discrimination legislation.

Another issue that confronts school leaders in this area of the law is when one of the parties to a divorce, marriage or partnership separation requests the school to adhere to a name change of the children who are part of the separation, or may be part of a new relationship or restructured family unit. This request may come in a number of forms:

an attempt to enrol a child at school under a name other than that which appears on the child's birth certificate or may seek to alter school records regarding the child's name after a separation or a divorce. Sometimes it is because the mother has reverted to her maiden name or she has remarried and wishes the child in her care to be known by that name. Alternatively a parent may seek to hide their identity or the identity of the

child to avoid detection by the police or because the child has been abducted contrary to court order, or because they are seeking to hide from a violent spouse (Harris, 1997, 202).

The first point for school leaders to remember in these situations is, that providing the name change does not contravene a court order or intend to defraud, it is not unlawful to use an assumed name, and people can action such a change officially through deed poll. However, a parent can make application to the Family Court for an injunction in order to prevent a partner from having a particular name used for a child who is part of a family break up. Two cases that are often quoted in school situations referring to these matters are, *Fooks, G I and McCarthy, A M*, 1994; and , *Mahony, A J and McKenzie, K A*, 1993.

In the former case Ms McCarthy had enrolled her son in a day care centre using the surname McCarthy-Fooks, and had also used the surname McCarthy for her son. The father, Mr Fooks, sought an injunction restraining Ms McCarthy from using any surname other than Fooks for his son. In this instance the court granted the injunction. In the latter case, Ms McKenzie enrolled her son in a preschool under the name McKenzie. The father objected to this, but there was some agreement between the parties that a hyphenated surname McKenzie-Mahony could be a preferred option. The court upheld a request to use the hyphenated surname for the child.

School leaders may be confronted by a request for a name change quoting either of these cases to support their request to action, or prevent a name change. However, the Family Court in deciding whether a name change is appropriate or not, makes their decision on the basis of what is in the best interests of the child. In determining this judgment the court usually takes into account the factors outlined in *Chapman and Palmer*, 1978. These are:

- (a) The welfare of the child as the paramount consideration.
- (b) The short and long term effects of any change in the child's surname.
- (c) Any embarrassment likely to be experienced by the child if its name is different from that of the parent with custody or care and control.
- (d) Any confusion of identity which may arise from the child if his or her name is changed or not changed.

- (e) The effect which any change in surname may have on the relationship between the child and the parent whose name the child bore during the marriage.
- (f) The effect of frequent or random changes of name. (Finlay & Bailey-Harris, 1989, 252).

Dore (2000) indicates that other variables may also be taken into consideration, particularly long term effects of the name change and the relationships and identification with siblings that exist or may eventuate should children reside with other children born into a new partnership. Hurditch (2002) also points out that the act asks courts to taken into account any family violence or ill-treatment issues.

Because both parties have equal rights and responsibilities under the *Family Law Reform Act* (Cth) 1995, and unless other documentation, such as a parenting plan or court document indicates to the contrary, it is best practice to question requests to have children enrolled under an assumed name, and to ascertain the circumstances. Where a name contrary to that on a birth certificate is used, one of the parents objects to the use of the name and there is no documentation or evidence to justify the change, the name on the certificate should be used until the parents have the issue sorted out.

These along with other Family Court issues can become very difficult situations (Bates, 2004, Harris, 1997), and the school leader's position should be to have the parents and the courts resolve the situation and not to allow the school to become embroiled in disputes of this kind. Where a court order indicates that a child should be known with a particular surname contrary to that on the birth certificate, this should be adhered to. For registration purposes on the school register, where previous surnames are recorded and a name change is in order, a record indicating that a child is known by a different surname can be noted. School documents such as school reports, however, should use the surname as indicated by the court order.

#### **4.7.1.4 Trade Practices Legislation**

In recent times within Australia, a number of schools and school systems, particularly those in the non-government sector, have become incorporated bodies under the federal corporations legislation, and as such have come under the jurisdiction of Federal Parliament legislation relating to corporations. Coupled with this, has been the increasing commercialisation of schools and educational institutions, increased competition for the market share and the promotions and marketing of schools (Lawrence & Cunningham, 1997). Some commentators believe this process of incorporation has brought many Non-Government schools within the realms of the *Trade Practices Act (Cth)* 1974 (Best, 1998; Verma, 2002, 1998). Others, while acknowledging the existence of contractual arrangements between Non-Government schools and their clientele, are not so sure that the arrangements extend as far as trade practices (Dawson, 2003b).

The broad objectives of the *Trade Practices Act (Cth)* 1974 are “to promote competition and market efficiency together with consumer protection” (Verma, 1998, 2). In this regard there are some sections of the Act that could have an increasing impact on Non-Government schools; Part IVA of the act which deals with unconscionable conduct, Part V which deals with unfair practices and implied warranties in consumer transactions, and Part IV which prohibits restrictive trade practices relating to their effect on competition.

Mentioned above in Section 4.6.2 was the development of the terms and implied terms of the contractual relationships between parents and students, and those operating Non-Government schools. If the prospectuses of these schools are drafted in an ambiguous manner or contain misleading or deceptive material, they could expose the controlling bodies of these schools to penalties under the *Trade Practices Act (Cth)* 1974. Under Division 2 Part V of the act, schools could also be exposed to educational malpractice through providing their services carelessly, negligently and without the due care and skill required. This is an emerging area of education and the law, and one could see in the future more activity in the courts associated with this act. As indicated above in Section 4.6.2,



some stakeholders have already signalled this approach by bringing an action against a school authority on the basis of both contract arrangements and the provisions in this act.

#### **4.7.1.5 Census and Statistics Legislation**

This area of federal jurisdiction dealing with the collection of census and statistical information has a particular impact on the Non-Government school sector. Under the power vested in the Federal Parliament, various requests are made for information to be supplied to the Federal Government Departments, particularly in relation to situations where commonwealth funds are allocated to support areas of need. This is particularly the case with regard to funding of Non-Government schools, and where funds are allocated to various systems or educational sectors for specific purposes. The information supplied through such returns, helps the Federal Government review its funding arrangements to school authorities and meet its commitments to school systems in relation to funding agreements. Of particular importance here for system and school administrators, is that in providing the information, there is generally a request that the financial returns be signed under oath, and that the signatures be witnessed. The signature of such documents should therefore not be taken lightly, and details in the returns should be checked carefully. As the appropriation of funds are dependent on such information, to knowingly provide incorrect information could also amount to fraud.

#### **4.7.1.6 Immigration Legislation**

Because Australia is a very multicultural society and a number of children in schools are immigrants from other countries, the powers extended to the Federal Government under this area have an impact on schools. One of the most important issues here relates to overseas students requesting instruction in Australian schools and the basis of their involvement in Australian society. Of particular importance in the context of this study is their involvement in

educational institutions, in accordance with the particular category of visa with which they have been granted entry into Australia. The range of these visas include Australian citizen, permanent resident, temporary resident-student visa, temporary resident-bridging visa, temporary resident - other visa and visitor.

As the largest proportion of funding for education is provided by governments, even in the Catholic sector (see Section 2.5), students from overseas, because of their status, may be required to pay full tuition fees, and others may be eligible for particular funding and support, as with new arrival funding to help develop English language skills. Different policies and regulations apply to Government and Non-Government schools. It is important therefore, that school leaders check entry visas to determine the status of overseas students. These visas usually have a particular number attached to them and this number indicates the category of the visa. These categories themselves have various subsets. For example, there are almost seventy subsets under the permanent residency status and these regulations are frequently updated by the Immigration Department. A document giving guidelines to principals in Catholic schools in NSW of the update in January 2003 amounted to fifteen pages, including a flow chart of some twenty five steps to help principals travel through the maze when dealing with these issues (Catholic Education Commission NSW, 2003).

Students on visitor visas are not eligible for state or federal government funding. Students on bridging visas may be eligible depending on the particular subcategory stamped on their visa, and the regulations attached to those with student visas require certain registrations and supervision of the students themselves. The school authority also has to be registered with the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to be eligible to enrol these students. In most cases, it is a requirement on school authorities enrolling pupils with student visas to collect school fees and the full cost recovery of tuitions fees. It is not intended to go through each of the categories here, but school leaders need to be aware of these requirements, particularly as under this legislation the requirements are

mandatory. The details surrounding the enrolment of such students form part of the annual census information, and the enrolment of such students can have funding and legal implications.

#### **4.7.2 State Legislation Impacting on the Administration of Schools**

As pointed out in Section 2.6, the development of Catholic schools has seen the establishment of administrative structures for Systemic Catholic Schools focused on the Catholic dioceses, which in turn are structured within state boundaries. This is a convenient structure, for the schools within the state boundaries are subject to the legislative requirements and regulations of the state in which they are situated. This negates the need for system authorities to deal across state borders, and means they need to be responsive to only one set of state legislation besides the applicable federal legislation and common law issues. Some independent congregational school systems, however, do cut across state boundaries and therefore are involved in a more complex legal environment. The particular state legislation impacting on the schools in this study is that passed by the Queensland Parliament.

Some of the legislation passed by the Queensland Parliament applies specifically to schools, educational institutions and education, while other legislation is applicable to Queensland in a generic sense, and has implications for educational establishments, and education to the extent that it has an impact on schools and school communities. Again, it is not the intention to examine in detail the various statutes and pieces of legislation and the sections within them, but to highlight particular aspects and comment on issues that arise in the educational context, particularly as they impact on schools.

##### **4.7.2.1 Education Acts Specifically Related to Schools**

All Australian states have enacted statutes to cater for education within their jurisdictions, and provision is made for private education in Church schools and

Independent schools within this legislation (Funder, 1996, Ramsay & Shorten, 1996). In Queensland, the appropriate legislation is the *Education (General Provisions) Act (Qld) 1989*. This act covers numerous issues relating to education of a general nature, including the age of compulsory attendance for children “not less than 6 nor more than 15 years” (s.3.(1)), that teachers have to be registered or provisionally registered under the *Education (Teacher Registration) Act (Qld) 1988* (s 3.(1), provision for home schooling (s.58 (2); s.59), inspections of Non-Government schools (s.74) and the hours in which schools should operate (s.11).

The act outlines the enrolment requirements for pupils under s.33.(1) and indicates that a child should have attained “the age of 5 years on or before 31 December in the year prior to enrolment” and then goes on to allow enrolment of younger children under special circumstances particularly “where the executive director is satisfied that the child would be disadvantaged educationally” (s.33.(2) through non-attendance at school. The act also sets out fairly stringent responsibilities on principals in both Government and Non-Government schools in relation to truancy, including notifying the local police station of non attendance in particular circumstances.

The desire to have teachers registered in Queensland grew out of a movement from teachers themselves to set up a self regulatory mechanism to maintain standards within the teaching profession (Jansen, 1998). This resulted with the enactment of the *Education (Teacher Registration) Act (Qld) 1988*. This act set up a Board of Teacher Registration and entrusted to that board a number of functions (Board of Teacher Registration Queensland, 1998; *Education (Teacher Registration) Act (Qld)*, Division I). Unless authorised by the board, a person who is not a registered teacher cannot be employed as a teacher in any school in Queensland (s.43.(1)). The exceptions to this regulation are very limited and are set out under s. 8.(1) in the by laws to the act.

In many instances, the checking of the requirements for registration are

delegated to leaders in schools, and principals have a requirement under the act to submit a report and particular returns relating to persons teaching in their schools each year (s.6. (1)). Under the act, teachers who have completed their course of teacher education are given provisional registration, and they are then required to teach for one year to satisfy the board for full registration. In this regard, the reports submitted by principals each year are of particular importance, for the board usually accepts the recommendations of the principal to grant full registration (Board of Teacher Registration Queensland, 1998). This places a responsibility on principals to have some processes and strategies in place to mentor and monitor new graduates taking up positions in the teaching profession in Queensland. To meet the registration requirements teachers must have not only completed the necessary academic and practical studies, but also be of good character. This places a responsibility on school leaders to check documentation carefully when employing persons as teachers, and to consider the possibility of persons presenting fraudulent documents (Jansen, 1998).

In relation to a person being of good character, the board has established a code of ethics (Board of Teacher Registration, 1996), and in examining particular cases of good character “may consider all matters the board believes are relevant to the decision, including a matter that happened outside the State“ (s.37. (1)). Issues that may be taken into consideration in determining this are set out in s. 37.(3) and include behaviours “that do not satisfy a standard of behaviour generally expected of a teacher” or disgraceful or improper behaviour that shows the applicant is unfit to be registered as a teacher. In examining these issues the board “must take criminal history into account” (Jansen, 1998, 5).

Under the act, the employing authority includes the person or entity responsible for the appointment of teachers to the staff of schools, which in some circumstances could include school leaders, particularly where the employment of casual teaching staff is concerned or where school leaders in Non-Systemic schools have the power to hire and fire. This employing authority has the responsibility to notify the board where there is dissatisfaction with a teacher after

an investigation of a sexual allegation involving that teacher. A sexual allegation is where a teacher has:

- (a) Committed an offence of a sexual nature, including, for example carnal knowledge of a girl under 16 years and a sexual assault mentioned in the Criminal Code, section 337; or
- (b) engaged in conduct of a sexual nature (other than an offence of a sexual nature) with a student or a child, whether in the teacher's capacity as a teacher or otherwise, and the conduct does not satisfy a standard of behaviour generally expected of a teacher (Board of Teacher Registration Queensland, 1998, 14).

This act has placed a set of very important legal responsibilities on school systems and school leaders, particularly when one considers the central purpose of schooling, the provision of quality learning and teaching, and in the Catholic schools, providing this quality learning and teaching within the context of the particular ethos pertinent to that sector. It should also be noted, that in carrying out responsibilities under this act, there is a requirement that due process and the principles of natural justice and procedural fairness referred to in Section 4.6.3 are followed.

Leaders in Non-Government schools need to be aware of the sections contained in act specifically directed towards schools and education to which they are accountable. In more recent times this accountability to the Queensland Government has increased with the enactment of the *Education (Accreditation of Non State Schools) Act* (Qld) 2001, which has brought Queensland into alignment with other jurisdictions who require the registration and accreditation of Non-Government schools (Ramsay & Shorten, 1996).

#### **4.7.2.2 Anti-Discrimination Legislation**

The *Anti-Discrimination Act* (Qld) 1991 saw Queensland move into the discrimination arena. As with the commonwealth legislation, the Queensland act (s.2) indicates that this legislation was also supportive of Australia's ratification of a number of international human rights instruments including the Convention on the Rights of the Child and the Rights of Disabled Persons. The Queensland act

aims at promoting equality of opportunity for everyone by protecting them from unfair discrimination in certain activities including work, education and accommodation (s.6 (1) ), and from sexual harassment and other conduct that is objectionable (s.7).

Under the act, a person can be discriminated against either directly, or indirectly. Direct discrimination occurs when persons have an attribute or attributes, and they are treated or it is proposed to treat them less favourably than other persons without the attribute or attributes, in circumstances that are the same or not materially different (s10). Indirect discrimination occurs when a term is imposed on persons, or it is proposed to impose a term on persons, and persons with an attribute do not, or are not able to comply, and a higher proportion of people without the attribute comply or are able to comply, and that is unreasonable to ask the person with the attribute to comply (s.11). Section 7 of the act outlines the attributes concerned and these include, sex, marital status, pregnancy, parental status, breastfeeding, age, race, impairment, religion, political belief or activity, and trade union activity.

The educational environment is particularly relevant to this act and under Section 4, the definition section, educational authority, educational institution, non-state school, and non-state school authority are all defined. It is also to be noted from the definition section that in the school context, exclusion from school has the meaning of being expelled. The act allows discretion under s.29 (1) on religious grounds in relation to work related areas such as employment of teachers and in s.41 with regard to enrolments. This allows Catholic schools to operate without breaching the anti-discrimination legislation.

This legislation has been applied in a number of circumstances in educational settings, mainly to do with enrolment, refusal of enrolment and the suspension and exclusion of students from school. In other states, under similar legislation actions have even been taken by students who have been suspended for refusing to cut their hair (*Cope v. Girton Grammar School Ltd*, 1995; Hawes,

1995), but the most celebrated cases have been associated with refusal of the enrolment or exclusion of students with particular learning needs from schools, and in particular, from mainstream classes or schools (Lindsay & Keeffe-Martin, 2002; Varnham, 2002).

One report relating to this legislation indicated that a student who believed he had been discriminated against was considering an appeal to the High Court of Australia (Oberhardt & O'Chee, 1997). The matter reported here had been dealt with by the Queensland Anti-Discrimination Tribunal, who ruled that the State Education Department had discriminated against the student concerned, by refusing to allow him to continue his education at a Special School. The basis of the argument was that he was not allowed to continue his education because he had reached his eighteenth birthday. An action claiming discrimination on similar grounds was also brought before the Queensland Anti-Discrimination Tribunal in *Finn v. Minister of Education*, 1995. In the case reported by O'Chee (1998) an appeal to a Supreme Court Judge overturned the decision of the Queensland Anti-Discrimination Tribunal, and this position was upheld by a further appeal to the Queensland Court of Appeal. Hence the applicant was contemplating a further appeal to the High Court. This report not only indicates that actions under this legislation are forthcoming but also presents the long and sometimes drawn out process in the court system to have such matters resolved.

Also in Queensland 'L' brought an action before the Queensland Anti-Discrimination Tribunal when she was excluded from her school, and a recommendation was made by the schooling authority for her to return to a Special School facility (*L v. Minister for Education for the State of Queensland*, 1995). The regular school which had enrolled her fully after a phase in period, excluded her after a series of incidents which included certain behaviours that the school found it difficult to deal with, and which the school believed were impinging on the school's ability to meet the learning needs of other children in her class. The Tribunal agreed that 'L' had been discriminated against in accordance with the meaning of discrimination under s.10 of the Queensland act, but ruled that the



discrimination was not unlawful, because to meet *L*'s needs would have caused the school authority unjustifiable hardship.

Unjustifiable hardship is a concept which appears in a number of anti-discrimination statutes (Dickson, 2004). In the Queensland act the unjustifiable hardship provision can be argued if special services or facilities are required to meet the needs of the person involved (s.44). Whether the hardship in meeting the needs of the discriminated person is unjustifiable, depends on the circumstances and in making a judgment a number of variables are taken into consideration. These variables include: the nature of the special services or facilities required; the cost of and disruption in supplying the special services and/or facilities; the number of people who would benefit or be disadvantaged from supplying the special services and/or facilities; the financial circumstances of the educational authority; and, the nature and benefit or detriment to all people concerned with the matter at hand (s. 5). In *L*'s case the tribunal believed the demands placed on the teachers along with other issues, "such as the stress placed on the teaching staff...without specialists training and the disruption entailed to other children", which included the toileting requirements and the noise level created by the impaired student, were sufficient to warrant a case to be made out on the grounds of unjustifiable hardship.

In Section 4.4, it was pointed out that because of the government structures within Australia, school leaders could be subject to both state and federal legislation, and one example of this was in the area of discrimination law. When an action was brought under the federal *Disability Discrimination Act* (Cth) (1992) claiming discrimination, when an enrolment was refused at Hills Grammar School Sydney, the unjustifiable hardship provision in that act (s.22(4)) featured in the arguments before the court (*Finney & Another v. The Hills Grammar School*, 2000). In that instance, the court ruled that in the circumstances the school authority's argument on unjustifiable grounds was not sustained. Although the financial circumstances of the school authority was not the only variable considered in relation to the unjustifiable hardship issues, a particular mention

was made regarding the school's financial means to meet the cost of adjustments required on the campus to accommodate the needs of the student, despite the schools submission to the contrary.

“Consideration of unjustifiable hardship, therefore, involves a complex process where the circumstances of the particular case are weighed in terms of the benefits and the detriments to all concerned” (Keeffe-Martin, 2001, 5). Dickson (2004) agrees with this assessment, but concludes that the cases decided on these issues may not face some of the particular concerns surrounding integration, especially regarding the provision of resources and support services, and issues surrounding behaviour management. It should also be noted, that the unjustifiable hardship provisions cannot be relied upon under the federal legislation to exclude a student once the student has been enrolled. This places responsibilities on school systems to ensure a carefully planned enrolment procedure is in place to process applications from students who have disabilities (Lindsay & Keeffe-Martin, 2002; Stafford, 2004).

The need to be cautious of the grounds on which students are excluded and to keep copious notes on such circumstances are also important issues with regard to discrimination. In *Purvis v. New South Wales (Department of Education and Training, 2003)*, which passed through a number of courts, including the Human Rights and Equal Opportunity Commission (HREOC) and the Federal Court (Keeffe-Martin, 2001), the student involved was excluded from a NSW school because of his continued behaviours, which included assaulting students and staff. One of the central issues in this case was whether the disabilities of the student, which resulted from brain damage suffered while very young, was the cause of his behaviour. The argument here was that if the behaviour was an attribute of the disabilities, and he was excluded for that behaviour, then it could well come within the definition of disability as per the *Disability Discrimination Act* (Cth) 1992. In the final analysis, by a majority judgment in the High Court, the court ruled that the student was treated as any other student would be treated in relation to his behaviour. The student was excluded on the basis of his behaviour

not on the attribute of his disabilities.

Once students with disabilities have been enrolled in a regular school, the legislation has also been used to place responsibilities on school leaders to ensure students with disabilities have the same access to activities of school life as their regular counterparts. This includes such things as excursions, attendance at school graduations and the like, even though this may cause schools to have to make additional arrangements and provisions. To limit access by not providing such assistance can amount to discrimination under the Queensland legislation (*I v O'Rourke and Corinda State High School and Minister for Education for Queensland*, 2001).

A similar situation occurred when a Catholic school system provided particular assistance for a deaf student in the form of a particular sign language while he was in primary school. However, when offering a place as a transfer from the feeder primary school to the partner High School within the same school system, an offer of enrolment was made on the basis that the particular sign language support would not be one of the provisions made for the student in the secondary setting (*Clarke v. Catholic Education Office & Anor*, 2003). The parents of the student refused to accept the offer on the basis on which it was made, and brought an action of discrimination under the *Disabilities Discrimination Act*. (Cth) 1992. The Federal Court ruled that withdrawing the support was unreasonable and therefore the student had been unlawfully discriminated against.

Dempsey (2003), believes anti-discrimination legislation has had a significant impact in raising the level of awareness about disabilities, but the impact in terms of practices has not been substantial. He argues that the legislation has only gone some of the way in eliminating the discrimination experienced by students a decade ago. His hope is that the Education Standards, which have recently been enacted as legislation by the Federal Parliament, will be the next step in clarifying "the level of responsibility schools have in the provision of support to these students" (Dempsey, 2003, 42).

Keefe (2004, 2003) in her research, found that principals regarded the Federal *Disabilities Discrimination Act* (Cth) 1992 as very important, but that they referred to it scantily in making decisions regarding discrimination matters; decisions that in fact carried with them a number of legal implications. She saw this as a contrast between what she termed the life world of principals, the social cultural context in which principals live out their roles as expounded by Habermas, and the system world of principals as portrayed in the purpose and principles in the legislation. To meet the objectives of the discrimination legislation, Keefe argues that the challenge for school leaders is to bring these two worlds closer together.

Tronc (2004a, 1996a) on the other hand, believes there needs to be a rethink of the push to integrate student with disabilities into the regular school and classroom, and the legal and educational implications this move to normalisation brings with it. The integration of these children without the proper training, and provision of facilities and resources, and particularly where behaviour management problems and acts of violence against staff and students are generated, could also be placing education systems on a collision course with their responsibilities under the workplace safety and occupational health and safety legislation. The provisions in such legislation places responsibility on employers to develop safe and secure workplaces for staff and learning environments for students (Johnson, 2002; Stafford, 2004; Tronc, 2004a). Failure to develop such environments could not only bring penalties under the acts themselves, but lead to actions for compensation under stress related claims (Coen & Hatch, 1998; Endicott, 1997, 1995; Hooper, 1995).

These situations also place a responsibility on school leaders to be vigilant in gaining all the relevant information about students who have applied for enrolment in their schools and who have a potential to endanger the safety and welfare of others. Sometimes this creates a dilemma for school leaders with regard to privacy considerations (Crouch & Ainsworth, 2003). However, there is ample evidence in cases decided before the courts that establishes a precedent

for safety and welfare of employees and others, above other considerations such as privacy concerns (Dawson, Fairservice, Hague & O'Halloran, 2003; Knott, 2003). Therefore, in terms of looking after the safety and welfare of staff and others, there is a responsibility on school leaders to disseminate this information appropriately, to provide the adequate resources and to prepare teachers to meet the likely demands created by such circumstances (Knott, 2003).

#### **4.7.2.3 Workplace Health and Safety Legislation**

The *Workplace Health and Safety Act* (WH&S) (Qld) 1995, brought into place in Queensland a non-specific general duties approach to the health and safety of workers in their workplace. This replaced acts which applied specific responsibilities on employers in particular employment settings, such as factories (Department of Employment, Vocation Education, Training and Industrial Relations, 1995). The overall objective of the act was “to ensure freedom from disease or injury to persons caused, and risk of disease to persons created, by workplaces, workplace activities or specified high risk plant” (s.7.(1)). The act broadened the definition of a workplace to encompass “any place where work is, is to be, or is likely to be, performed by a worker, self employed person or employer (s. 9.(1)). The effect of this has been to place general obligations on all workplaces, including schools.

The legislation reflects the principles expounded by the High Court in the common law case of negligence *Wyong Shire Council v. Shirt*, 1980 referred to in Section 4.6.1 by placing an obligation on people in charge of workplaces to undergo risk management practices of anticipating and assessing the risks, making judgments and assessment whether the risks are justified, and setting up strategies and precautions to minimise risks. Subordinate legislation accompanying the act such as compliance standards and regulations set out compliance and advisory standards (Codes of Practice (s.191.(1)) to be observed in particular situations. Under the legislation many of these responsibilities in the workplace are placed on the Workplace Health and Safety Officer.

“An employer must appoint a qualified person as workplace health and safety officer for a workplace prescribed under the regulation if 30 or more workers are normally employed at the workplace” (s.93.(1)). This section engulfed most schools, and placed responsibilities on school leaders, who in many cases were required to take on this role stipulated in the act and to undergo the training required to hold the position of workplace health and safety officer. Besides this, under the legislation workplaces have to elect a workplace health and safety representative who must be consulted regarding a number of matters affecting the health and safety of workers on the work site, including any proposed changes to the workplace itself and plant (machinery, equipment, appliances tools Schedule 3), or substances used at the workplace (s.78.(1)). Heavy penalties apply to breaches of sections of the act (Schedule 1), and in some cases this includes imprisonment (s. 24.(1)).

This legislative initiative has increased the legal responsibilities on school systems, schools and school communities in terms of providing training and support personnel, maintenance and upgrading of plant and equipment, and applying risk management strategies to school sites, policies and practices.

#### **4.7.2.4 Legislation Relating to Criminal Issues**

A number of statutes and related subordinate legislation have been passed by the Queensland Parliament relating to criminal issues. These statutes include the *Child Protection Act* (Qld) 1999, *Crimes and Misconduct Act* (Qld) 2001, *Drugs Misuse Act* (Qld) 1986 and the *Juvenile Justices Act* (Qld) 1992. However, the overriding legal position on criminal law in Queensland is contained in the *Criminal Code Act* (Qld) 1899, which codified the criminal law and gave a statutory rather than a common law basis to criminal law in that State. Through the passing of this act, Queensland criminal law “became almost wholly the creature of statute with most of the common law offences being incorporated in the Code in statutory form” (Herlihy & Kenny, 1984,105). A similar approach has

been actioned in Western Australia.

Although Stewart's study (1996) revealed that the criminal areas of breaking and entering and vandalism of school property, theft and use of illegal substances were present within Queensland Government schools, the most contentious matters impacting on schools in the criminal area relate to physical abuse involving assault, including the issues of child abuse and indecent dealings. In Queensland, assault is defined as:

a person who strikes, touches, or moves or otherwise applies force of any kind to, the person of another, either directly or indirectly, without his consent, or with his consent if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person and the act is called assault (*Criminal Code*, s.245).

One of the elements of this definition is that assault does not have to be committed by touching someone else (the common law act of battery), as assault can occur where there is an apprehension on the part of the victim that the person pertaining to commit the offence has a present ability to carry out the action or threat (Herlihy & Kenny, 1984). Technically speaking, prima facie any touching is an assault, but in the normal daily life of persons, contact is made with a numbers of people and objects (Tronc, 1995). In relation to assault the issue is whether in the circumstances, the action, contact or behaviour is not unlawful and in fact is consented to "authorised, justified or excused by law" (Williams, 1995b, 26).

As with all criminal issues, it is one thing to be accused of a criminal offence, such as assault, it is another to be convicted of the offence. The burden of proof for issues of a criminal nature lies with the prosecution to prove the offence beyond all reasonable doubt. This burden of proof in most criminal matters is played out and decided by a jury. This is a higher standard of proof than that required in civil matters such as a common law matter relating to negligence, where the standard of proof is based on the balance of probabilities and in many

instances does not involve a jury (Morison, 1984).

In the school setting, the issue of assault has implications for the use of corporal punishment and the touching of students. While at the time of this study under the Criminal Code it was:

lawful for a parent or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction, discipline, management or control towards a child or pupil under the person's care such force as is reasonable under the circumstances (*Criminal Code* s.280),

most education systems throughout Australia have moved or are moving away from the use of corporal punishment (Board of Studies NSW, 2004; Ramsay & Shorten 1996) and the Brisbane Catholic Education System sees such practices as having no place in schools operating within the ethos of the Catholic School (Archdiocese of Brisbane, 1994). In the present social cultural climate school leaders applying corporal punishment would be placing themselves in a precarious position, if not legally, than certainly in relationships with system authorities and the perceptions of the general public (Knott, 1997b, McMurdo, 1994).

The touching of students was dealt with by the Queensland Court of Appeal in the *Queen v. Ferguson*. 1994. In this case, the central issue was whether a teacher who had touched female students on the buttocks while encouraging them in such circumstances as to move in particular directions or to line up for sport, placed his hand on the shoulders of girls as a gesture of greeting, and touched a student's abdomen on the outside of her clothing while she was in sick bay, amounted to offences of common assault. A magistrate had previously convicted the accused of common assault on nine charges for such behaviour. The accused appealed the convictions, and the Court of Appeal as part of its judgment made the following remarks:

A child attending school tacitly consents to receiving from a teacher tactile expressions of encouragement. The traditional pat on the shoulder for a significant achievement falls within this concept. To deny this concept would be to insist that schools become sterile, unemotional and devoid of



normal expressions of friendly human interaction.

The court, however, went on to explain that such consent could be withdrawn by a pupil by means of gesture or word, and teachers should be sensitive to such withdrawal of implied consent by gesture or response (Knott, 1997b; Williams, 1995b).

The application of a 'no touch' policy in schools could, particularly in primary schools, do much to break down the pupil/teacher relationships which are an important component of learning and teaching in that environment, intimidate teachers and even drive people, especially males, away from the teaching profession (Johnson, 1997). Tronc (1995) suggests that the decision in the case *Queen v. Ferguson*, 1994 has brought some balance back into the teacher/touching debate. However, if a school or school system is going to restrict the discretion of teachers with regard to this aspect of the law and implement a 'no touch' policy, and then implement it to the extent that it will be used to discipline teachers and even lead to their dismissal, as was the case in *Puccio v. Catholic Education Office*, 1996 this needs to be clearly spelled out to teachers. In applying such a policy and process, the principles of procedural fairness/natural justice as expounded in Section 4.6.3 should be applied to the policy's implementation when situations arise (Knott 1997a).

In terms of touching students to manage, discipline, correct and control them, and to protect the safety of themselves and others, the courts have upheld the right for teachers to use reasonable force in such situations. What is reasonable force will depend on the circumstances at the time, including the nature, age and sex of the student. However, as Tronc (1995) points out, if teachers touch students with actions of the wrong kind they cannot expect protection from the courts, and this specifically relates to touching of a sexual nature.

The court's ruling does not protect the teacher whose touching is of the wrong kind, in the wrong place and for the wrong reasons. That sort of touching could never be seen as part of the exigencies of everyday normal school life and no teacher could validly argue that he or she had an honest and reasonable, but mistaken belief that consent could have been given or implied for any episode of sexual touching (Tronc, 1996b, 125).

The other area of criminal law associated with assault centres around the issue of child abuse. Child abuse covers a range of aspects of abuse, physical abuse, sexual abuse, abuse through neglect and psychological and emotional abuse (Tronc & Sleigh, 1989).

Boys are more likely to be the subject of substantiated physical abuse, whereas girls are more likely to be the subject of substantiated sexual abuse. Younger children are more likely to be the subject of substantiated abuse or neglect. Children from indigenous backgrounds are more likely to be the subject of substantiation than other Australian children. Physical abuse and neglect are two types of maltreatment which account for the most substantiations (Mathews & Walsh, 2004, 31).

Recent statistics indicate that over 33,000 cases of child abuse are now reported each year in Australia, approximately 58 offences against children are reported daily in NSW, and the estimate is that a child is abused in Australia every fifteen minutes (Rodrigues, 2005).

In the school setting, two aspects of child abuse confront school leaders. The first aspect is where the abuse occurs outside the school, as many cases of child abuse occur in the home or in the confines of the extended family (Cashmore & Castell-McGregor, 1996; Fairservice & O'Halloran, 1998), and the school becomes involved because it gains information about the abuse through observation and involvement with the child, or in the case of sexual abuse, students who are victims of the abuse, disclose the abusive behaviour to teachers or members of the school staff. The second aspect of involvement in the school context, is where the abusers are employees or personnel associated with the school. In the Catholic School context, the latter have included members of the clergy and personnel holding senior leadership positions in schools and within school systems (Catholic Leader, 1998; Giles, 1997; Toy, 1998).

In an attempt to deal with these issues the Australian Catholic Bishops have set down a set of ethical standards expected of clergy and religious (Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutions, 1997), and principles and procedures to be followed in

responding to complaints of sexual abuse against personnel within the Catholic Church (Australian Catholic Bishops' Conference, 1996). Item 4.1 of the document relating to the latter states, "if a complaint of sexual abuse against Church personnel comes to the notice of any member of the Church, he or she shall take contact details and immediately (and within 24 hours) refer the matter to a contact person." Contact persons are identified for each Diocese. Item 4.3 of the same document states, "all Church personnel shall comply with the requirements for mandatory reporting of child sexual abuse that exist in some States/Territories. The appropriate Church authority shall also be notified of any such report" (Australian Catholic Bishops' Conference, 1996, 9).

As outlined below, in Queensland reporting of child abuse by school personnel has only recently become mandatory, until then school leaders often faced dilemmas in making a decision as to whether to report incidences of child abuse or not. The requirement now to report such behaviours may also cause anxiety for school leaders:

What is the impact on children and families? Will it be negative or positive? What if the child or young person who is the subject of the report does not wish further investigation and wishes confidentiality to be maintained? Is it ethical to report when resources are stretched to the limit and necessary services are not available? What is the experience of the workers making the decision to investigate or not? How do they make their decision? Is it ethical to put children through a gruelling assessment and possible court process, particularly in sexual abuse matters, when the legal system's response is so poor? These are salient questions (Cashmore & Castell-McGregor, 1996, 121).

In 2004, the Queensland Parliament passed an amendment to the *Education (General Provisions) Act* (Qld) 1989, imposing an obligation on members of staff in schools to immediately notify, through a written report to their school principal or to the principal's supervisor, incidents of sexual abuse of which they become aware or that they reasonably suspect (*Education and Other Legislation (Student Protection) Amendment Act* (Qld) 2003). The amendment made it an offence for school personnel not to notify such knowledge and suspicions that related to students under the age of 18 years who attended their school, and applied penalties to this obligation. The amendment also provided an immunity from civil

and criminal liability that may arise from actioning such a report.

This amendment sets up a narrow band of reporting and ignores the other areas of abuse listed above which are reportable in other state jurisdictions. For example, under the *Children and Young Persons (Care and Protection) Act* (NSW) 1998, there is an obligation on school staff members to report incidents where they suspect students are at risk of being harmed, and this covers physical, sexual and psychological harm. Mathews & Walsh (2004), argue that the amendments enacted in Queensland “do not significantly advance the primary goal of child protection” (36).

In dealing with issues of child abuse, the literature has some very important guidelines and advice for school leaders and teachers (Knott, 1997b; Tronc & Sleigh, 1989). The first piece of advice is to stay calm, to listen to the allegations and to note down as close as possible the exact words used to describe the actions and behaviours pertaining to the abuse, and then to document any other evidence that is available, such as bruising. Where notification is mandatory, or going to be made, this should then be reported to appropriate authorities through the correct channels, as soon as possible. It is important that school leaders are aware of the procedures and protocols surrounding the notification process (Knott, 2002).

Carrying out investigations associated with such disclosures and matters of abuse is a field for experts. It is not the school leaders' responsibility to carry out such investigations. In fact to do so, and not follow correct protocols can often contaminate evidence and have serious consequences for the persons involved. The reputations and standings of persons within their communities can be greatly affected by such matters (Fairservice & O'Halloran, 1998; Knott 2002; Lawrence, 1998; Wellington, 2003), and as already emphasised above, the processes of procedural fairness/natural justice and the notion that in relation to matters of a criminal nature, a person is innocent until proven otherwise, should prevail in dealing with such issues (Knott, 1997a; Tronc & Sleigh, 1989).

One of the other issues surrounding this area of the law is the access certain personnel have to students, school staff and school records. The personnel involved here can be police or others who have responsibilities under various legislation pertaining to their roles, such as Family Services personnel, or those who have designated roles within the particular education system. In most cases, school systems have guidelines, policies, procedures and associated flow charts to assist school leaders in this regard (Rout, 1996). The new privacy legislation and duty to disclose referred to above have implications here.

One of the areas that causes moral and ethical dilemmas for principals surrounding these criminal issues is the interviewing of students (Tronc & Sleigh, 1989). Schools go out of their way to encourage a working relationship with police and to portray police as a support and confidant for students in such programs as “stranger danger”. Although the police who become involved in requesting interviews with students, or who arrive on the door step with a warrant to arrest a student or staff member may be different personnel from those who visit the school regularly, the fact remains for students, they are still police.

The procedures to follow when interviewing students in relation to matters of child abuse and other legal issues, usually involve some actions to be taken by the principal as the chief executive officer responsible for the operations of the campus. Matters relating to child abuse generally have their own processes and procedures to be followed with regard to the interviewing of students, and as mentioned above, school leaders especially principals, need to be aware of these. Areas outside child abuse take a more generic approach. At the time of this study, the Brisbane Catholic Education System had documentation in place to deal with requests from police to interview students, and for dealing with the management of drug related matters in schools (Brisbane Catholic Education, 1998a, 1998b).

The generic procedures indicate that generally, police and others, interview students away from the school. This is the preferred course of action and the

procedure followed in most cases by the police and others. However, if circumstances warrant the police approaching the school to carry out an interview with students, issues such as the age and sex of students, and whether the parents of the students are implicated in the allegations become important considerations. Other considerations include students' rights to refuse to be interviewed unless compelled by statute, their right to representation and their right to remain silent.

Assuming matters are of a serious nature, when police make a request to interview students, from a generic perspective, the first response for school leaders is to establish if the allegations involve students from the school as offenders, victims or witnesses to incidents, actions or behaviours. The second consideration is to establish if the matter relates to incidents, actions or behaviours that have taken place within the school or in a location outside the school's legal jurisdiction. If students are being identified as offenders, it is not the school leaders responsibility to convey this information to the parents. If police arrive with a warrant, school leaders should ask to see the warrant and also check the identification of the personnel present. Unless a warrant is produced, there is no other place where the warrant can be reasonably served, or unless the parents have been contacted, consulted and agree to the student leaving with the police, school leaders should not allow students to leave the school premises.

If, as a last resort, and at the discretion of the principal of the school, an interview has to be held at the school, under s.36 of the *Juvenile Justice Act* (Qld) 1992, evidence attained at interviews is inadmissible unless certain persons are present. In the school setting, if parents cannot be present this involves having a teacher or the principal present, and where children with particular needs are involved such as indigenous students, or students who have limited grasp of English because it is their second language, others have to be involved for the evidence to be admissible. Police would be aware of these requirements, but it is prudent for school leaders to prompt police in relation to these matters.

Before finalising this discussion on criminal issues, other matters that sometimes confront principals relate to student property and theft. When teachers confiscate students' property or collect lost property, the general common law principles associated with bailment apply. This means that the teachers or school authorities need to take care of the property, otherwise they could find themselves liable for damages that may occur. This is especially important where very valuable items are concerned. The best practice in this regard is to return the goods to the owners as soon as practicable. Should school leaders dispose of the goods at will and the goods are of some value they could find themselves in difficulties. In Western Australia regulations have been enacted to provide some certainty to these issues and to provide some legal protection for principals (Monterosso, 2002). Other states might well follow this example.

#### **4.7.2.5 Other Queensland State Legislation**

There are a number of other statutes and subordinate legislation that impact on schools within Queensland. The impact of these pieces of legislation seems to depend on situations that arise. In the early stages of this study, in December 1996, the Queensland Parliament enacted a new statute the *WorkCover Act* (Qld) 1996, which brought about changes to matters previously administered by the Workers Compensation Board, and the act transferred the personnel from this board to a new statutory body, WorkCover, revamped the responsibilities and set up a new structure. Along with these changes, employers and personnel from human resource sections in businesses and other workplaces, including principals and school leaders and personnel from school systems, were offered training to familiarise themselves with these changes. Some of the important adjustments brought about by these changes focused on the responsibilities of employers and their agents with regard to the rehabilitation and return to work for those people who suffer injuries associated with the workplace. This legislation has since been replaced again with the *Workers Compensation & Rehabilitation Act* (Qld) 2003.

In relation to this area of the law, school leaders need to be aware of the relationship between injuries sustained by workers and the extent to which these injuries are related to their employment, especially if the injury sustained is significantly contributed to by work related matters. Of particular importance here are stress related claims, as stress experienced by teachers is an increasing concern in schools (Endicott, 1997, 1995; Hele, 1994; Jongeling, 1995; Mifsud, 1994). In this regard, school leaders need to be aware that such claims are usually not subject to compensation if they result from reasonable supervisory and management practices associated with work performance. This highlights again the importance of applying the principles associated with natural justice and procedural fairness in supervisory and disciplinary practices within schools.

Most workers compensation schemes now carry with them a rehabilitation component and a set of fairly prescriptive procedures and responsibilities in this regard. Again it is important that school leaders keep themselves informed of these responsibilities and follow them where they are involved with the rehabilitation of injured workers back into the workplace at schools.

In 1997 the Queensland Parliament passed new legislation which set up a framework in which employers and employees could negotiate their employment and working conditions (*Workplace Relations Act* (Qld) 1997). This act was replaced in 1999 by the *Industrial Relations Act* (Qld) 1999. Under this legislation, in the school context, school staff, usually through their union representatives and employing authorities, negotiate awards which set out the relationships and working conditions of staff employed in schools. In the Catholic School environment in Queensland, these negotiations are undertaken between the Queensland Catholic Education Commission (QCEC) and the Queensland Independent Education Union (QIEU), and through these negotiations working conditions are structured for teachers, support staff and school principals. For school leaders it is important to understand the terms and conditions outlined in these awards and particularly to ensure the agreed grievance procedures are



followed should a dispute arise. In dealing with industrial matters, again it is emphasised that the principles and processes relating to natural justice and procedural fairness should be applied, and this is particularly the case where the performance of staff is concerned (Fulton, 1995; Rayner, 2003).

#### **4.8 Bullying and Harassment**

Articles about bullying and harassment, appear frequently in the media (Macdonald, 1998; Steele, 1997; Templeton, 1998; Walker, 2001), and bullying in schools amongst students has become the focus of much research (Bothe, 1997; Rigby & Slee, 1998). This research indicates that many students are bullied at school (Rigby & Slee 1993), “approximately one in six students report being bullied on a weekly basis” (Slee & Ford, 1999, 23), bullying is most evident in the primary school years and is more prevalent in primary schools in the lower grades (Slee & Ford, 1999). Bullying can have long term effects on relationships, learning, social adjustment, work prospects and even contribute to suicide (Bothe, 1997; Farrell, 1999; Slee, 1994; Slee & Ford, 1999; Stewart & Knott, 1998). Although there is less research on bullying amongst staff (Duncan & Riley, 2005), this is an issue in schools (Duncan & Riley, 2004, 2003), including Catholic schools (Duncan & Riley 2005; Duncan, Edwards & Riley, 2005).

There have been various attempts to clarify what is meant by bullying. Ford (2001) defined it as “repeated intimidation, over time, of a physical verbal or psychological nature of a less powerful person by a more powerful person or group of persons” (1). This notion of some continuous behaviour by a more powerful person over a less powerful person, seems to be an element of most definitions of bullying (Duncan 2005). Bullying can take many forms and be carried out via various means such as name calling, insults, stalking, continuous unsolicited communication and even physical assaults (Conn, 2004; Stewart & Knott, 1998).

Harassment is a subset of bullying and again can take many forms. One of the forms which has gained prominence in the media is harassment of a sexual

nature (O' Neill,1997; Greber,1997). The Brisbane Catholic Education Office has set out guidelines to prevent such harassment (Brisbane Catholic Education, 1993). In this publication examples of sexual harassment include: personally offensive verbal comments; sexual or smutty jokes; comments about a person's alleged sexual activities or lifestyles; covert sexual behaviour used to control, influence or affect the career, or job of another person; unsolicited letters and communications; sexual propositions; physical contact such as patting, pinching, touching, grabbing and fondling; and, indecent exposure. In some situations, sexual favours may be sought for offering particular grades and access to certain programs or privileges in educational institutions (Stewart & Knott 2002b). Such behaviours can create a hostile learning environment which becomes "so pervasive as to affect student learning as well as creating other problems" (Stewart & Knott, 2002b,125).

School leaders need to be aware that bullying and harassment can occur across many facets of school life involving students, staff, and even parents (Duncan 2005; Hay-Mackenzie, 2002). To be aware of and allow such harassment and bullying to occur and continue, exposes school leaders and school systems to a number of possible legal implications (Coen & Hatch, 1998; Stewart & Knott, 1998). Failing to confront such behaviours amongst students and staff could lead to actions under common law in negligence and contract.

School leaders could also exposure themselves to actions brought under anti-discrimination legislation, particularly if the harassment involved issues of a sexual or racial nature. Exposure to possible actions and penalties under workplace health and safety and workers compensation are clear possibilities, particularly where stress on staff is involved, for school authorities have a responsibility to provide a safe and healthy environment (Coen & Hatch, 1998). If the bullying and harassment is associated with issues of assault, this would expose the persons involved to matters of a criminal nature (Todd, 1998) and child protection legislation in some jurisdictions could also be implicated (Ford, 2001). Actions under the *Trade Practices Act* (Cth) 1974 may also be feasible,

particularly if schools have emphasised in their school prospectuses an anti-bullying environment exists within the school.

#### **4.9 Principals and Their Understandings of Legal Issues Impacting on Catholic Schools**

Legal issues are having an increasing impact on school leaders in Australia (Nolan & Spencer, 1997; Stewart, 1996; Sungaila, 1988). They are also having an increasing impact on schools and educational policies and practices (Ramsay & Shorten, 1996). This can be seen from the review of the literature of legal issues impacting on schools outlined above. While education law has become an integral part of school leaders preparation and study in the United States, and school principals there would be exposed to the core legal issues with which they could be confronted in their roles (McKay & Grady, 1995), basic understandings of legal issues impacting on schools from an Australian context, have not become an integral part of school leadership preparation (Shorten, 1995).

Very little research has been carried out in Australian in relation to school leaders overall development of legal understandings and their impact on the leadership and management of schools, and in particular Catholic schools. Studies have been carried out into particular legal aspects as they affect schools, such as bullying in Catholic schools (Duncan & Riley, 2005) and the impact of particular legislation, such as the anti-discrimination legislation on leadership in schools (Keeffe, 2003), and these have been referred to in the above review. The one study that stands out with regard to principals overall understandings of legal issues impacting on schools is that carried out by Stewart (1996) .

Stewart examined the legal issues impacting on principals in Government schools in Queensland, the knowledge principals had of these issues, how principals in Government schools acquired this knowledge, and some of the influences legal issues were having on the management of Government schools. In carrying out this study, Stewart developed a questionnaire through reference to the literature

and through telephone conversations with a groups of principals. This survey instrument was taken through a trial process and then distributed to a sample population of 168 primary and 36 secondary school principals throughout Queensland.

The study revealed that school principals in Government schools in Queensland were involved with a wide range of legal issues ranging across common law and various pieces of legislation. However, the study revealed that principals' understandings of legal issues were poor, and their major sources of gaining legal knowledge was through the Department of Education Manual and reference to the regional personnel who support them in their role. There was limited knowledge gained through attendance at in-service courses and very little formal training experienced through university courses. However, dealing with legal issues caused considerable stress. Stewart suggested in his study that similar research be carried out in other systems and jurisdictions to add to the findings of his study and to gain understandings of the impact of the law on schools across all systems and states within Australia. This present study is a follow up to and an expansion of Stewart's work.

From the work carried out by Stewart in relation to education law and school administration, he concludes that what is required for school leaders in this area in Australia is a sufficient understanding of the legal issues to implement legal risk management processes and procedures.

School administrators must have a sufficient understanding of law to meet the many, and increasing legal matters that arise in the day-to-day life of the school. While they do not need law degrees they do need a level of legal literacy adequate to develop and implement appropriate risk management strategies. They need, in other words, a basic sense of what kinds of problems and situations generate legal difficulties. Professional staff must, then, have an understanding of elementary legal concepts and have the knowledge of how and when to apply these to actual situations. In short they need to practise legal risk management (Stewart, 1998, 1)

In dealing with legal risk management, the importance of some understandings of what the legal risks are, is a critical issue, as lack of legal knowledge or inaction

based on the premise that no serious consequences or damages have occurred for long periods of time, are not defences to matters brought before courts and tribunals. This was emphasised in the common law case, *Enzo Cardone v. Trustees of the Christian Brothers*, 1991, where a student suffered serious injuries when he fell through glass doors having tripped on a boot scraping bracket adjacent to the doors. In a judgment that awarded damages of over \$263,000.00 to the injured student without a disbursement of costs, Higgins J commented :

The defendant was, in my view, negligent in permitting the brackets to be constructed as they were and in failing to have them removed at any time in the 20 years between the construction and the plaintiff's fall. The consequences of the plaintiff's fall were greatly exacerbated by the failure of the defendant to install safety glass. In my view, whatever may have been reasonable in 1966, once it became Australian Standard for safety glass to be installed, it was negligent for the defendant not to ensure that relevant glass panels were replaced with safety glass as soon as practicable after it became, or should have become, aware of that safety standard. It is only necessary to conclude that such replacement, being both practicable and affordable, should have been attended to shortly after 1972 and well before the plaintiff's accident in 1987.

A similar conclusion was reached with regard to legislation in *Inspector Guillarte v. Trustees of De La Salle Brothers*, 2004 where the lack of understanding of the requirements under the *Occupational Health and Safety Act* (NSW) 1983 was seen as no defence to damages and penalties imposed on the defendant as result of injuries received by a youth when he fell through a roof skylight while on a work experience program and sustained injuries.

#### **4.10 Summary of Chapter 4**

This chapter reviewed the legal issues featured in the literature which are impacting on schools in the Australian context. The foundations of the legal framework from which these legal issues have emerged, were grounded in the social cultural world of the English Westminster System of governance. These foundations and framework were inherited through colonisation. The social cultural development of Australia from settled colonies, to self governing

jurisdictions and then into a unified country with a system of federal and state governments, parliaments and court systems, has given an Australian situational perspective from these early beginnings to the development of law within the Commonwealth of Australia. From this development emerged a division of powers and responsibilities between the federal and state jurisdictions and parliaments, and culminated in the establishment of the High Court of Australia as the apex of the court structure. Through this body, the interpretation of laws via the doctrine of precedent, permeate through the various courts, commissions and tribunals that form part of the structure which interprets and renews the law.

The principles and areas of common law which emerged in England were transplanted into Australian society, and since their arrival have undergone change and renewal. Coupled with this, the various parliaments have enacted legislation within their powers and responsibilities to formulate laws for the peace, order and good government of the people within their jurisdictions. As part of this structure, education has remained a responsibility of the states. The former colonies, however, through the development of the powers of the Federal Parliament within the confines of the constitution, which set up the Commonwealth of Australia, the Federal Government has come to play an increasing role in education, especially through financial and funding arrangements.

While the common law continues to have an important role in defining and clarifying the rights of persons within Australian society, and subsequently on the rights of people engaged in education, there has been a continual stream of legislation impacting on schools. Legislation has come to acquire a dominating influence, not only on what happens in schools, but defining the bounds of freedom of individuals within society as a whole. The various parliaments have enacted legislation to modify and go beyond the confines of rights established by the principles of common law.

Along with this development of the law and governance in Australia, has been the development of public education systems centred around state government

jurisdictions. Independent systems of schools have also developed, including a system of independent Catholic and Systemic Catholic schools (see Section 2.6). The systemic Catholic schools have established a structure of leadership and management around diocesan geographical areas, which are themselves confined with state boundaries. This has meant systemic Catholic schools are subject to the laws of the state in which they are situated and the federal laws which operate across Australia as a whole.

This social, cultural and situational development of law has had a direct impact on the leadership and management of Catholic systemic schools in Queensland. While common law decisions in Queensland Courts associated with the areas of law examined in this chapter, have impacted directly on Catholic schools, decisions of the High Court within these areas of law also have had a direct impact. Decisions in other jurisdictions have persuasive authority, as do decisions in other countries such as England, United States of America and Canada, who share a common Westminster heritage. Legislation passed by the Queensland Parliament is sometimes directly aimed at schools and education, while other acts of parliament and their accompanying supportive legislation are of a generic nature and impact on schools in an indirect way. Similarly, legislation passed by the Federal Parliament also has its impact within the confines of the powers and interpretations of these powers as outlined in the chapter.

As can be seen from the examination of the literature in this chapter, the impact on schools of the legal issues surrounding this legal framework, the common law decisions in courts and the legislation passed by the Queensland and Federal Parliaments is extensive, and as referenced by a number of commentators, continues to develop and increase. This continual development and renewal of the law stands as a feature of this examination.

Stewart's study (1996), has shown that this development of legal issues is having an impact on Government schools in Queensland. His study also revealed that

principals' understandings of these legal issues were limited, and that this is one of the factors contributing to the stress experienced by principals in carrying out their role in the workplace. This present study extends the exploration of these issues by examining them from a Catholic schools perspective in Queensland. As was the case in Stewart's study (1996), this review of the literature served as a base for the development of an instrument used to examine this phenomena.



## CHAPTER 5

### IDENTIFYING THE THEORETICAL FRAMEWORK

#### 5.1 Introduction

The theoretical framework of a research project relates to the philosophical basis on which the research takes place, and forms the link between the theoretical aspects and practical components of the investigation undertaken. The theoretical framework, therefore, “has implications for every decision made in the research process” (Mertens, 1998, 3). The starting point in developing a research proposal according to Crotty (1998) is to identify the methodologies and methods that will be utilised in the research project and then to justify their choice. The methodologies relate to “the strategy, plan of action, process or design lying behind the choice and use of particular methods, and linking the choice and use of methods to the desired outcomes” (Crotty, 1998, 3). The methods applied, on the other hand, convey “the techniques or procedures used to gather and analyse data related to some research question” (Crotty, 1998, 3). Therefore, it is important “to find a method which is compatible with the kind of thing [one is] trying to investigate” (Mackay, 1993, 300).

While the choice of methodologies and methods per se relates to the processes the researcher believes will fulfil the purpose in answering the question(s) posed for the research, the justification of the choice of methodologies and methods goes beyond answering the questions in the proposed research. This justification relates to identifying the underlying assumptions about reality and understandings of human knowledge that the researcher brings to the research, and the theoretical perspectives which lie behind the methodology used. The theoretical framework, therefore, discloses the methods, methodology, theoretical perspective (underlying philosophical assumption about the researcher’s view of the human world and the social life within that world) and epistemology (the

philosophical basis, nature and limits of human knowledge) underpinning the research ( Crotty, 1998).

In the latter half of the 20<sup>th</sup> Century there was a growing uneasiness with the assumption that social and educational research was to be governed by the dominant empirical analytical methodologies, and the “regularities and law-like relationships which characterised the so-called ‘hard’ or ‘natural sciences’ ” (Candy, 1989, 2). With this uneasiness grew a recognition of the appropriateness of alternative approaches. This shift in understanding called for the recognition of alternative paradigms, alternative epistemologies, and the application of a variety of methodologies and methods (Jacob, 1988; Manis & Meltzer, 1972; Torbert, 1981; Wiersma, 1991). From this debate new epistemologies, theoretical perspectives, methodologies and methods emerged as theoretical constructs on which to base research, along side the dominant objectivist’s perspective of the nature and limits of human knowledge. These epistemologies are referred to by Crotty (1998) as objectivism, constructionism and subjectivism, although others (Candy, 1989; Mertens, 1998) in their analyses, have placed alternate labels and interpretations on the theoretical constructs that have developed. In identifying the theoretical framework for this study (see Figure 5.1) the schema of epistemologies, theoretical perspectives, methodologies and methods outlined by Crotty (1998, 4-5) will be used.

While the epistemologies referred to here may, for the purpose of explanation, be categorised and particular aspects of each identified, “few pieces of research are ever ‘pure’ examples of any one paradigm, fitting unequivocally into one category to the exclusion of the others” (Candy,1989, 8). However, one can derive a dominant perspective which is appropriate for the purpose of the research and relevant to the specific research questions posed in a study and the investigation undertaken. In essence, when researchers undertake a research project to investigate identified problems or issues, they devise a research process that is appropriate for their purpose and which appears most suitable to answer the research questions.

The focus of this study was an exploration of the interface between the leadership of Catholic schools and the legal framework of the social and cultural environment of Australian society in which Catholic schools operate.

**Figure 5.1** <sup>(6)</sup>

**Schema Outlining the Theoretical Framework of the Study**

<b>Epistemology</b>	<b>Theoretical Perspective</b>	<b>Methodology</b>	<b>Methods</b>
Constructionism	Interpretivism <ul style="list-style-type: none"> <li>• Symbolic Interactionism</li> </ul>	Survey Research  Interpretive Approach	<ul style="list-style-type: none"> <li>• Questionnaire</li> <li>• Statistical Analysis</li> <li>• Observations</li> <li>• Discussions</li> <li>• Review of Diary Records</li> <li>• Data Reduction</li> <li>• Reference to Documentation</li> </ul>

Specifically, the study aimed to investigate the legal issues impacting on Catholic Schools, the understandings principals of Catholic schools have of these legal issues, and to examine the influence this aspect of the social and cultural environment of Australian society is having on principals in carrying out their leadership roles within the ethos of Catholic schools. The study was focused by three Specific Research Questions. These were:

- What areas of the law are having an impact on the administration of Catholic schools? (Specific Research Question One);
- What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings? (Specific Research Question Two); and,

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 6. Devised from Crotty, M. (1998). *The foundations of social research*. St Leonards, NSW: Allen & Unwin pp. 4-5

- What impact do legal issues have on the administration of Catholic schools, and in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School? (Specific Research Question Three).

Taking into account the purpose of this research and the questions posed, it was considered appropriate to encapsulate this study within the epistemology of constructionism and from the theoretical perspective of symbolic interactionism.

## **5.2 Epistemologies**

As indicated above, the three epistemological constructs outlined in Crotty's conceptual framework were objectivism, subjectivism and constructionism. In providing an outline and justification for the preference of constructionism for this study, it is also considered appropriate to briefly outline the other two positions which provide an examination of the philosophical basis, nature and limits of human knowledge.

### **5.2.1 Objectivism**

Objectivists "hold that meaning, and therefore meaningful reality, exists as such, apart from the operation of any consciousness" (Crotty 1998, 8). For the objectivists, meaning is already inherent within the object being examined and the properties of that object can be measured and quantified. From this perspective it is the researcher's role to decipher and map out this meaning and reality (Guba & Lincoln, 1994). Therefore, objectivism has been the epistemological basis for the sciences of the Western World and is closely aligned to the theoretical perspectives underlying positivism, and predominantly characterised by the features of experimental methodologies and quantitative methods used in research in the natural and physical sciences. These theoretical perspectives and features include:

- (1) the belief that theory is universal and that law-like generalisations are not bound to specific contexts or circumstances;
- (2) the commitment to an

objective or dispassionate pursuit of 'scientific truth; (3) a belief in determinism, or the assumption that events have causes which are distinct and analytically separate from them; (4) the view that variables can be identified and defined, and that knowledge can be formalised; and (5) a conviction that relationships between and among variables can be expressed in mathematically precise ways in the development and testing of theoretical propositions (Candy, 1989, 3).

In applying this epistemology to the social world, there is a belief that "the social world can be studied in the same way as the natural world, that there is a method for studying the social world that is value-free, and that explanations of a causal nature can be provided" (Mertens, 1998, 7). However, the absolute position of objectivists has been challenged and the claims of objective reality are now more tempered by a degree of probability and the tentativeness of present knowledge and understandings. In this sense, while an exact reality exists, one can only grasp this reality in an imperfect way and not in its totality. The explanation for this is that researchers are constrained by human limitations, including underlying values and biasness, cultural influences and the provisional nature of knowledge and understanding (Crotty, 1998; Feyerabend, 1993; Mertens, 1998; Popper, 1959). The researcher, in this more tempered context is confined to discovering reality within certain bounds of probability and providing a strong case of what the reality is in the present circumstances, knowledge and understandings, by controlling variables and discounting possible alternatives (Reichardt & Rallis, 1994). Despite these more tempered concepts of objectivism, it is still difficult to control variables when investigating social behaviour within the context of its natural environment.

### **5.2.2 Subjectivism**

The epistemology of subjectivism, suggests that meaning emerges from a vacuum. Meaning "does not come out of an interplay between subject and object, but is imposed on the object by the subject. Here the object as such makes no contribution to the generation of meaning" (Crotty, 1998, 9). In applying this epistemology to the social world, one of the difficulties is that the human person makes meaning out of something, and may well import meaning

from other sources quite obtuse from the object or event at hand, even from a fantasy world, or a world of make believe. Another difficulty in applying subjectivism to the social cultural world is that in emphasising the subjective meaning of social action, the relationships between individuals' perceptions, interpretations and actions, and the influence of external factors are neglected. The latter can expose interpretations of reality to be heavily influenced by various social groups and the possible dominance of significant figures' perceptions of reality. This issue was referred to in Section 3.2.5, where comments were made in relation to the vision of leaders, and the dilemma that can be created when one wants to question the particular visions of certain leaders and the basis of those visions. For example, Hitler had a vision.

### **5.2.3 Constructionism**

In contrast to objectivism and subjectivism, constructionism can be applied comfortably to the social cultural world, as the corner stone of constructionism is that "reality is socially constructed" (Mertens, 1998, 11). The focus of this epistemology is that:

Truth, or meaning, comes into existence in and out of [one's] engagement with the realities in [one's] world. There is no meaning without a mind. Meaning is not discovered, but constructed. In this understanding of knowledge it is clear that different people may construct meaning in different ways, even in relation to the same phenomenon. In this view of things, subject and object emerge as partners in the generation of meaning (Crotty, 1998, 8).

One of the assumptions underlying constructionism is that the social world is without meaning prior to one's experience of it. Meaning is not created, but constructed in an interconnectedness of objectivity and subjectivity. There is a certain imaginativeness and creativity exercised in relation to the objects one encounters. The mind is actively involved in this process and individual perspectives, perceptions and experiences play a vital role in constructing one's reality (Blumer, 1962).

From the paradigm of constructionism, the individual is not a passive recipient of a set meaning, but an active, resourceful and reflective participant in the construction of meaning. In this encounter with the world, the individual makes use of a range of attributes and skills as part of the process. One's concept of things and events therefore, can be attributed to the type of engagement that occurs with objects and events, and how one relates and directs attention to them (Charon, 2001; Denzin & Lincoln, 1994). For example, the concept of a rainforest may be attributed to one's position on issues such as ecosystems and conservation, or one's involvement in the forest industry. Similarly, the law may be seen as a means of identifying and upholding the rights of individuals, or may be viewed as an ever increasing encroachment on people's bounds of freedom. This construction of meaning is not a socially constructed static reality, but an ongoing phenomenon. This social construction of meaning is linked to symbols which have a social origin, character and convention, and within various cultures, these conventional meanings provide the guidance and mechanism for human behaviour. In this sense "culture is best seen as the source rather than the result of human thought and behaviour" (Crotty, 1998, 53).

It is believed that there is a historical and biographical component to this encounter with the social and cultural world, and in this encounter one develops one's social construction of reality (Berger, 1963; Berger and Luckman, 1970). Berger and Luckman's historical aspect relates to being born at a particular time in history into a physical social world, which already has developed a social cultural world of meaning and an inherent system of symbols and conventions. The biographical aspect relates to individuals' social/cultural journeys within the subcultures within a segmented portion of the overall social world in which they live out their lives; a world which itself is in a cycle of continual social renewal and cultural development.

Mead, who is considered the father of symbolic interactionism, contends that through this journey one develops a defined view of the world, one's social construction of reality, which he terms one's generalised other of society. This is

a dynamic construct which is in a continual state of fluidity and development (Meltzer,1972). For the social psychologists, this social construction of reality is the genuine reality in which human beings operate.

It is the view that all knowledge and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out of interaction between human beings and their world, and developed and transmitted within an essentially social context (Crotty, 1998, 42).

The researcher working from a constructionist epistemology, therefore, places a focus on gaining an understanding of persons' interpretations of reality derived from social interaction and interpersonal relationship; Mead's generalised other. Such research is characterised by a purpose to discover the interpretations of reality within particular social /cultural contexts. In this respect, the researcher usually provides details relating to the "backgrounds of the participants and the contexts in which they are being studied" (Mertens, 1998, 14). The researcher is very cognisant of persons' involvement with the objects and events being investigated and explored, and sees these persons as a vital part of the events and situations under investigation, and integral to the outcomes emerging from the research undertaken. In many instances there is interaction between the researcher and those taking part in the research as participants.

There is a range of methodologies and methods use in constructionist based research, although there is a biasness towards qualitative type research. However, this does not necessarily exclude the use of qualitative methods to gain information relating to the study, and in particular gathering data relevant to the context in which the research takes place (Tam, 1993; Wiersma, 1991). The researcher approaching a problem from a constructionist epistemology usually applies the notion of triangulation, which "involves the use of multiple methods and multiple data sources to support the strength of interpretations and conclusions" (Mertens, 1998, 354). In this respect, data is usually gathered from multiple samples and through a variety of methods. This is done so that consistency in the data gathered from various sources can be evaluated, and the possible differences that might be attributed to particular settings and contexts in which the research takes place, can be identified. The methods used may



include various types of interviews and observations, and the review of records and documentation. In presenting the findings of studies undertaken from a constructionists epistemology, it is also usual for the researcher to provide direct quotes from participants who take part in the research to support the inferences drawn from the data (Wiersma, 1991; Stainback & Stainback, 1984).

### **5.3 Theoretical Perspective**

In moving across Figure 5.1 from left to right, the second component encountered on the schema of the theoretical framework is the theoretical perspective. The theoretical perspective relates to the underlying philosophical assumption about the researcher's view of the human world and the social life within that world (Crotty, 1998). Coming from a constructionist epistemology, the purpose of this research and the questions posed, the theoretical perspective underlying this study aligns itself to interpretivism under the particular banner of symbolic interactionism.

The interpretative approach to explaining human social cultural reality has its roots in the sociology of Weber who placed "the study of society in the context of human beings acting and interacting" (Crotty, 1998, 68). From this perspective, human beings are viewed as social beings who interact socially with each other, and the outcomes of this interaction develop the fabric of society, the cultural world in which individuals live out their lives and an identification for individuals within that society (Blumer, 1972; Congalton & Daniel, 1976). In this sense, society is "central to forming what the human being is" (Charon, 2001, 200).

#### **5.3.1 Symbolic Interactionism**

Symbolic interactionism is one of the prominent interpretive theoretical perspectives from which to examine society and individuals' actions and behaviour within their social cultural world. Strictly speaking, symbolic interactionism is considered a part of social psychology, and its prominence grew

out of the desire to understand society, particularly the influence culture plays in human behaviour, and the place of the individual in society. As noted above, the origins of symbolic interactionism are attributed to the work and ideas of George Herber Mead. Commenting on symbolic interactionism as a perspective of social psychology, Charon states that no other perspective “comes closer to capturing the essence of the human being as a social being - a creator, a product, and a shaper of society – than symbolic interactionism (Charon, 2001, xi).

The ideas of Mead have been developed by John Dewey, Charles Cooley, William Thomas, Herbert Blumer and others (Crotty, 1998, Manis & Meltzer, 1972). Blumer refers to symbolic interactionism as :

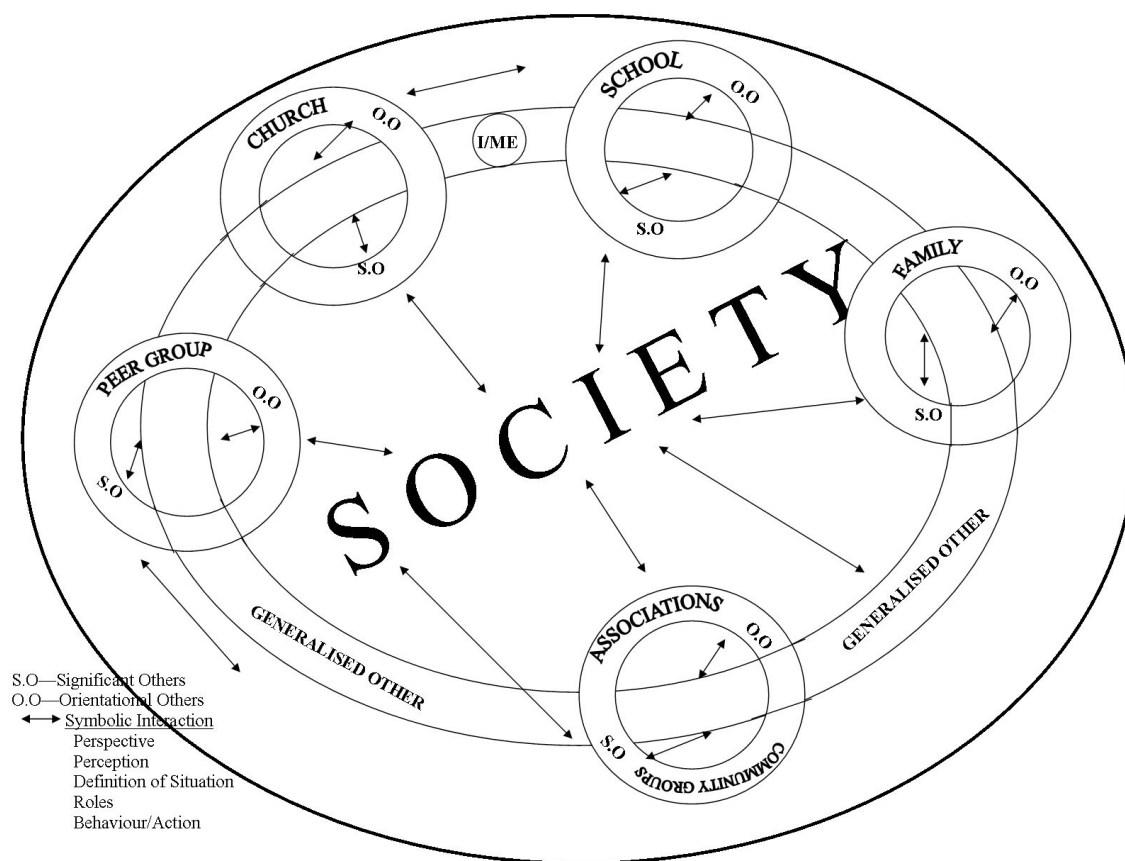
the peculiar and distinctive character of interaction as it takes place between human beings. The peculiarity consists in the fact that human beings interpret or “define” each other’s actions instead of merely reacting to each other’s actions. Their “response” is not made directly to the actions of one another but instead is based on the meaning which they attach to such actions. Thus human interaction is mediated by the use of symbols, by interpretations, or by ascertaining the meaning of one another’s actions. This mediation is equivalent to inserting a process of interpretation between stimulus and response in the case of human behaviour (Blumer, 1962,145).

Figure 5.2 provides a conceptual framework from which to examine symbolic interactionism. The framework depicts a society into which individuals are born; a society, which through its historical development and the social interaction of people within it, has already established meaning through symbols and cultural conventions. Individuals encounter this society through various cultural units; subsets within the segmented portion of the world in which they live out their lives. The framework indicates that individuals experience only a small part, or segmented portion of the overall social cultural world. This segmented portion is very much influenced by the cultural journey of individuals and the experiences they have, including being exposed to cultures of other countries and ethnic communities; cultures themselves, which have gone through a historical social cultural journey.

In each of these subsets encountered within this segmented portion of the world, the interactions with others or what Mead calls the social other (Manis & Meltzer, 1972), and particularly with significant and what Denzin (1966) and Kuhn (1964) refer to as orientational others, contribute to the development of individuals' social construction of reality, or generalised other of society. The significant others, that individuals encounter within these subsets of the cultural world, are considered to be those people with whom they interact for a short period of time in a "highly role specific sense" (Denzin, 1966, 186) in circumstances which are often determined by the situation, and the roles of individuals and others in the interaction are fairly well defined. An example of this might be a relieving classroom teacher who teaches a class for a school term.

**Figure 5.2 (7)**

**Conceptual Framework for Symbolic Interactionism**



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 7. Devised by the Researcher

Oriental others are others:

to whom [individuals are] most fully, broadly, and basically committed, emotionally and psychologically;...others who have provided [individuals] with [their] general vocabulary, including [their] most basic and crucial concepts and categories;...others who have provided and continue to provide [individuals] with [their] categories of self and other, and with the meaningful roles to which such assignments refer;...others in communication with whom [individuals'] self-conception is basically sustained or changed (Denzin, 1966, 186).

Oriental others therefore, have a more long term historical relationship, as is the case with close family members, such as a parent. It must be remembered, however, that the oriental others within families are not necessarily confined to parents, for other members of the extended family can be very influential in developing individuals generalised other of society, for example, grandparents or may be particular aunts and uncles who have a long term relationship with individuals. In the school setting this could be the members of a School Leadership Team who interact with and work with each other. Similarly, in particular situational contexts, relationships which on the surface might be viewed as a relationship with a significant other, could very well be better described as an oriental other relationship, for example, where a student encounters a particular teacher through a number of contexts within a school, such as across a number of grades, in sporting activities, extra curricular activities and may be in other roles within the local community.

The family unit is the first subculture encounter individuals have with this social cultural world, and it is believed that this first encounter in the family is the main source of individuals' primary socialisation (Berger & Luckman 1970). Following the family, one of the major subcultures of secondary socialisation encountered, is the school, which, through social and cultural development in the past one hundreds and fifty years has its own conventions and symbolic set of rules and social principles that regulate what goes on and how people relate to each other. On Figure 5.2 other subgroups are presented, and each of these in turn help shape one's generalised other of society.

However, as can be observed from the conceptual framework for symbolic interactionism Figure 5.2, the subunits and the members within them are themselves influenced by interactions with others in society as a whole. Some of these subgroups can also have a fairly identified social, cultural, ethnic and historical development in themselves, which very much influences the symbolic meaning and conventions within them. An example of this is identified in this study in Chapter 2, which indicates that the perspectives of Catholic schools in the early days of European settlement in Australia were very much influenced by an Irish Catholic culture. The subgroups presented on Figure 5.2 are not a finite portrait of all subunits but an example of the possible subcultures individuals might encounter on their own biographical, social cultural journey. Other subcultures could play a part, for example the influence of the mass media and significant and orientational others within the media could very well be another unit with substantial influence.

On Figure 5.2 arrows indicate symbolic interaction taking place in many directions. There is interaction between people within the subsets, between the subsets and people within society, between subsets and subsets, between people within subsets and society, and between people and society as a whole. In an interaction with society as a whole, society itself carries with it the generally accepted norms, rules, values and conventions. This interaction process has a degree of complexity and is a very fluid and dynamic process.

For the symbolic interactionist, this socialisation process and social cultural journey, is based on symbols:

human society is based on symbols...symbols create and maintain the societies within which we exist. They are used in socialising us; they make our culture possible; they are the basis of ongoing communication and cooperation; and they make possible our ability to pass down knowledge from one generation to the next (Charon, 2001, 62).

Language plays a vital part in this symbolic interaction (Berger & Luckman, 1970; Hertzler, 1965) and through language, individuals can name, distinguish and categorise symbols, identify roles, interact with others, and internally within their

own minds, develop perspectives of the world and guide their perceptions, interpret and define situations and events within their environments, create and resolve issues and problems, and record and pass on aspects of their culture and cultural heritage.

From the perspective of symbolic interactionism, as individuals encounter objects, events, situations and people, the interaction process goes through a number of phases (Charon 2001). The initial phase in this process is the perception of the object or event. This perception itself is influenced by the ability to comprehend all the aspects and elements of what is happening in the interaction and the perspectives one brings to the interaction. These perspectives have a large influence on individuals' actions in the social cultural world, and carry with them certain biases, assumptions, value judgments and ideas (Charon, 2001) which have developed over time through one's historical and biographical journey to date. This perception then goes through a further interpretation in what symbolic interactionists describe as the definition of the situation (Thomas, 1972).

This definition of the situation is an important aspect of symbolic interactionism. In this process, individuals interact with the external world and internally within themselves, mentally taking into account the roles they play in the situation or event and the roles of others. As indicated above, this often involves the use of language and internal conversation with themselves, internalising the situation or event and placing themselves in the role of others, (something similar to Covey's (1989) empathic listening technique referred to in Section 3.3.1). It is after this summing up of the situation that one takes action and individual behaviour occurs. Sometimes the generally accepted definition of the situation may be linked to a particular moral or ethical stance (Charon, 2001; Goffman 1959) and "expressed in public opinion and the unwritten law, in a formal legal code, or in religious commandments and prohibitions" (Thomas, 1972, 332).

Through this process, individuals develop an understanding of how they believe the social cultural world in which they live operates; Mead's generalised other of

society. Also, through this process, individuals gain an appreciation of where they, as individuals, fit into this understanding of the world. They develop a concept of themselves (*Me*) and their understanding of themselves in the roles they play in their social cultural world. Mead in his work speaks of the *I* as well as the *Me*. (Charon, 2001; Meltzer, 1972) and both these are depicted on Figure 5.2. The *I* is generally referred to as “the impulsive tendency of the individual...the initial spontaneous, unorganised aspect of human experience. Thus it represents the undirected tendencies of the individual” (Meltzer, 1972, 10). However, it is the *Me*, the self perceptions developed from feedback from others (Cooley, 1972; Goffman, 1959; Kinch, 1963;) as a result of the considered responses and actions to objects and situations in the social context, that plays a crucial role in the development of a generalised other and an understanding of the individual’s place in society.

For the symbolic interactionist then, individuals build up an understanding of how the world operates through interactions with others, and particularly significant and orientational others within the subcultural units in which they live out their lives within a segmented portion of the whole of society. They are not, however, immune to the influences of the wider society, for this wider cultural environment is itself influencing the subcultures and those within them, particularly in carrying with it a set of norms, rules, and conventions which have been developed over a period of time, and which help define situations and the roles of those in them from the perspective of what is usually, socially and culturally acceptable. In encountering objects, events and situations in this social cultural environment, individuals define the situation within themselves; a definition which is itself influenced by the perspectives they have built up through their own biographical journey to date, and their actions and behaviour is the result of this interactive objective and subjective process. This process is one of continual engagement and development, and through it individuals continue to construct, reconstruct and renewing their generalised other of society and their identity of self within that society.

#### **5.4 Alignment of This Study with Constructionism and Symbolic Interactionism**

Taking into account the outline in this chapter, the purpose of the study and the research questions presented, this study is comfortably placed within an epistemology of constructionism and the theoretical perspective of symbolic interactionism. The focus of this study is to explore the understandings and meaning human beings have of an important aspect of their social and cultural world. It was indicated above that the corner stone of constructionism was the social construction of meaning, and therefore the focus of this study is congruent with a constructionism epistemology.

From the symbolic interactionist's perspective, human beings have symbolically, socially and culturally constructed their understandings and meanings through their interactions with others, as they live out their lives within society and as they carry out roles, sometimes designated roles which have specific characteristics associated with certain circumstances, situations and environments. From the view point of symbolic interactionism this constructed meaning is the lived reality which will guide actions and behaviour. This study sets out to explore this lived reality in the natural setting of the social cultural environment of the workplace of participants as they carry out their particular role as principal of a Catholic school. There is "no manipulation of variables, simulation, or externally imposed structure on the situation" (Wiersma, 1991, 219).

Positioning a research project within constructionism and symbolic interaction also places a particular focus on the context in which the research take place. The purpose of this study is to explore the reality of a particular social and cultural context. As indicated in Figure 1.1 the context of this study is the intersection of Australian society, with its norms, rules and conventions, and specifically those defined by the legal framework of the situational jurisdiction in which the study took place; the Catholic School with its own ethos and characteristics, and the particular role the participants carry out as leaders of schools within the particular



workplace setting. From a symbolic interactionist's perspective there are a number of influences coming to bear on principals when having to define situations they are confronted with, when faced with legal matters in this context.

Firstly, there is the historical context of the Westminster system of governance, the basis on which the norms and conventions have been established and the process with which these norms and conventions are renewed. This can be viewed as the conventional definition of the situation as suggested by Thomas (1972) in the above outline. However, the participants in this study are carrying out a designated role within the particular ethos of the Catholic School. The historical development of the Catholic School within Australia and the emerging structure resulting from that development, places Catholic schools and those who lead them within in a particular context in relation to leadership and management. While the heritage of the Westminster system may have stemmed basically from a Christian perspective, the separation of Church and state has become a feature of the modern secular and multicultural world (Gleeson 2001), and in this context the convention and the ethos may not necessarily be in communion, which could place strains on leadership and management issues.

Secondly, there is the role of principal and the leadership perspective the participants bring to that role, not to mention the role of those who might be involved in the legal matters and the context of the interaction which occurs within particular circumstances. In many situations the conventions outline the rights of others as expounded by the laws within various jurisdictions, and the understandings one has of these conventions will help one define the situations where the rights of others are a factor in determining action and human behaviour (Wilson, 1977). From such a context, symbolic interactionism places a conceptual framework around examining such dilemmas faced by leaders in the modern world, for it "seeks to uncover meanings and perceptions on the part of the people participating in the research, viewing these understandings against the backdrop of the people's overall worldview or 'culture' " (Crotty, 1998, 7).

One of the other aspects of this study is to explore the sources principals use in constructing their understandings of legal issues impacting on their schools within the above context. The study sets out to examine this construction of reality, which is closely aligned with Mead's notion of generalised other, and then to examine the congruency between participants' construction of reality and what one could call the conventional reality, as defined by legislation and the courts. Within this context also, there is the continual renewal and development of the law as it responds to people's needs within society and the impact this has on schools. This continual renewal and development of the law also corresponds to the non static nature of one's social construction of reality, and in the context of this study, the need for continued personal and professional learning and growth of the participants in carrying out their role as principal. The notions of constructionism and the theoretical perspectives of symbolic interactionism therefore, fit nicely into the purpose and context of this study.

## **5.5 Summary of Chapter 5**

This study set out to explore principals' understandings of aspects of the law impacting on the administration of Catholic schools and the implications this has for the leadership and management of Catholic schools. The contextual framework from which these issues were examined, focused on the interface within the Australian social cultural environment of the ethos of the Catholic School, the role of principals as leaders and managers, and the legal framework in which Catholic schools exist and operate. From this conceptual framework, the study was strongly embedded in the social cultural world and the social reality of those people who were the focus of the study. This comfortably places the study within an epistemology of constructionism, which embodies an active engagement of the human person in their social construction of reality.

The study, therefore, is closely aligned to the theoretical perspectives of interpretivism. From this perspective, the study is suitably viewed from the theoretical perspective of symbolic interactionism, as the legal framework within Australian society, with its norms, rules and conventions, fits neatly into Mead's

concept of the generalise other of society. The dynamic development of the law and the non-static nature of the human person's generalised other and social construction of reality, dovetail with each other. Similarly, the notion of defining the situation, a central element in symbolic interactionism, correlates strongly with the context of the study and the number of influences impacting on principals in carrying out their role as leaders and managers of Catholic schools, and the diverse views of the secular, multicultural and complex social cultural environment which they have to take into account when dealing with legal issues.

Accepting the epistemology of constructionism and the theoretical perspectives of symbolic interactionism, it was considered appropriate to use an interpretive approach and survey research to gather data in order to respond to the purpose of the study and provide information relevant to answering the questions presented. It was felt that this approach would provide an interactive element to the gathering of information, allow a wide range of data to be gathered from a number of participants and settings from the overall contextual framework, provide data through a variety of means and allow data of a qualitative and quantitative nature to be gathered. The design of the study set out to minimise the limitations of the methods chosen while at the same time provide strategies that would gather data focused on responding to the questions posed in the study. It is this design of the study which is the focus of the next chapter.

## CHAPTER 6

### DESIGN OF THE STUDY

#### 6.1 Introduction

The focus of this study was an exploration of the interface between the leadership of Catholic schools and the legal framework of the social and cultural environment of Australian society in which Catholic schools operate.

Specifically, the study aimed to investigate the legal issues impacting on Catholic schools, the understandings principals of Catholic schools have of these legal issues, and to examine the influence this aspect of the social and cultural environment of Australian society is having on principals in carrying out their leadership roles within the ethos of Catholic schools.

The study was focused by three Specific Research Questions. These were:

- What areas of the law are having an impact on the administration of Catholic schools? (Specific Research Question One);
- What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings? (Specific Research Question Two); and,
- What impact do legal issues have on the administration of Catholic schools, and in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School? (Specific Research Question Three).

In directing attention to the Three Specific Research Questions, the study also set out to examine the significant differences that might be attributed to variables such as the sex of principals, the secondary or primary school contexts, complexity of schools (which included the size of the schools) and the location of

the schools within various community settings. When focusing on how principals' understandings of key areas of the law impacting on schools are acquired, the study included an examination of the exposure principals have to these legal areas in their preparation for senior leadership positions in Catholic schools, through personal and professional learning in formal courses and in-service, and the extent to which exposure to such courses of personal and professional learning have on the development of appropriate understandings of principals with regard to legal matters.

While exploring the impact of the law on the administration, leadership and management of Catholic schools, the study also investigated the time principals perceive themselves as dealing with legal matters, the perceived stress associated with dealing with legal issues and the possible conflict, if any, that may result in dilemmas and paradoxes created by competing demands and rights. In relation to the latter, as mentioned in Specific Question Three, the study set out to explore the compatibility of the ethos of the Catholic School with the resolutions reached and processes used in coming to a resolution, when dealing with legal issues.

## **6.2 Research Approach**

Continuing the movement from left to right across the Schema outlining the theoretical framework of the study in Chapter 5, the final column on Figure 5.1 refers to the methods used in the study. In the theoretical framework based on the schema of Crotty (1998) there are no set methods tied to any particular methodology and theoretical perspective, however, certain methods fit more comfortably with certain methodologies and theoretical perspectives. Stemming from the epistemology and theoretical perspectives outlined earlier, the purpose of the research and the questions posed, the methods chosen for this study were aimed at gathering as much information as possible and practicable relating to the research questions. The idea here was to explore the lived reality participants have constructed through their interactions in the defined situation,

cultural and social context. To this end, the methods chosen for this study relate to survey research and gathering data from an interpretative approach.

Survey research as a methodology allows the collection of data from a large number of people at a given point in time. Survey research fits appropriately into research conducted in the natural settings of participants and for research designs that are not quasi-experimental or experimental. In the latter studies, there is an attempt to control particular variables in the research design. In this study, while the influence of particular variables on participants' development of understandings were examined, there was no attempt to control certain variables in the natural settings in which the study took place. The application of survey research, therefore, allowed the gathering of a large amount of material from a number of participants in various settings within the overall context of the study.

Survey research also provides a means of gathering data of a quantitative and qualitative nature. Approaching a study from a qualitative or quantitative methodology does not necessarily exclude the other, as they can be combined and complement each other (Tam, 1993; Wiersma, 1991). In this study, from a quantitative perspective, the use of survey research allowed valuable information to be gathered and presented on the background of the participants, to highlight issues relating to the context and settings of the study and to identify significant influences of particular variables on participants' understandings of certain issues. In addition, open-ended questions on the survey, provided valuable qualitative data elaborating on the understandings participants had of legal issues, and allowed participants to express their feelings about legal matters as they impacted on their role as leaders in Catholic schools (Adler, 1996, Russo, 1996).

In constructing survey research, researchers should be conscious of the purpose of the survey and draft items appropriately. Survey research conducted via mailing to participants also has a tendency to result in low returns, so researchers need to plan strategies to try and overcome this short fall if using a mailing

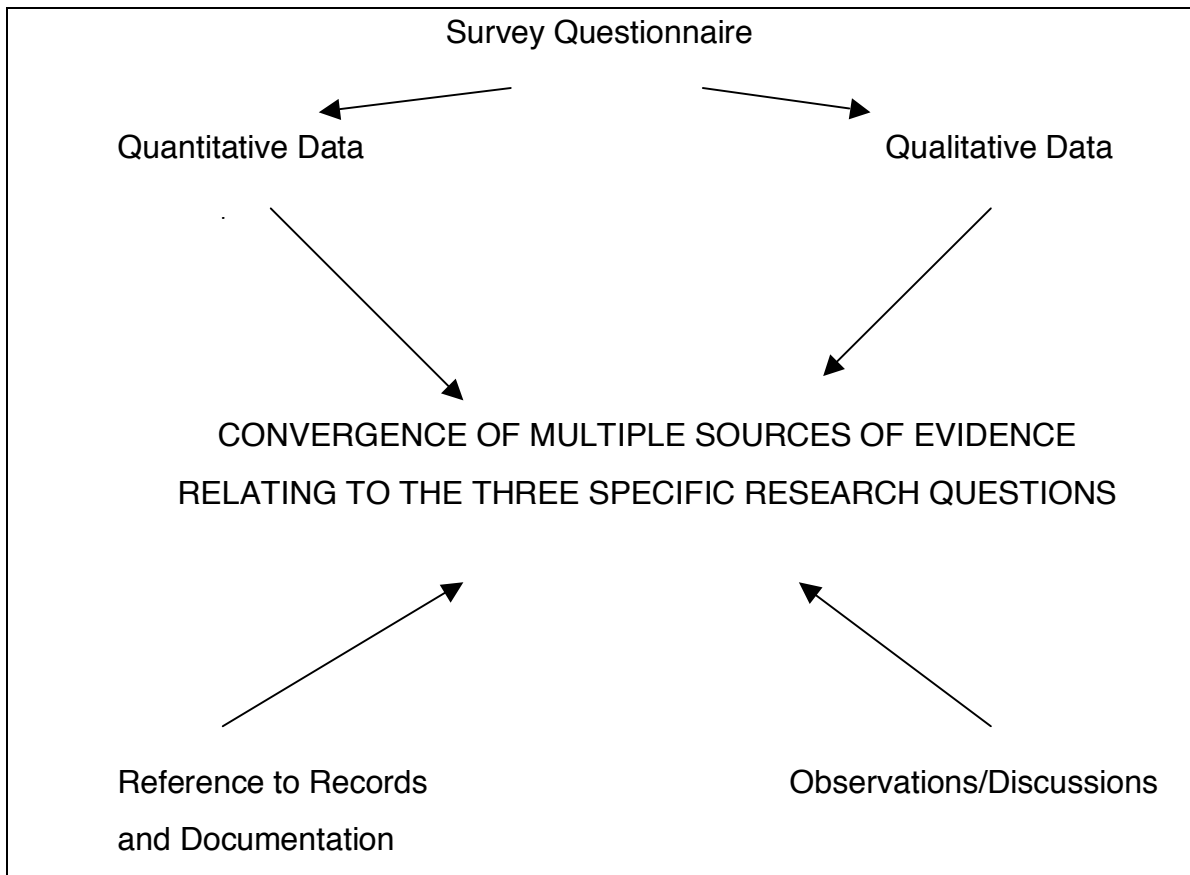
system. Survey research also has a weakness in that it relies on the honesty of the self-report of the participants who take part. Another disadvantage is that if the survey is a one off survey, it provides the information which is restricted to a particular period of time. In using survey research, therefore, the researcher needs to consider ways to overcome these limitations, and in particular, if a one-off survey is used, provide other strategies to indicate consistency in the findings of the data over a period of time. In this study the other strategies applied, related to gathering and interpreting data through other means.

In gathering data from an interpretative approach, the researcher often has some type of interactive relationship with participants in the study undertaken and is often known to the participants who are actively engaged in the social/cultural context of the study. Through this the researcher gathers information about the aspects of the cultural world of the participants within specific contexts and settings (Jacob, 1988; Wiersma, 1991; Wilson, 1977). In gathering data of an interpretative nature, it is also not uncommon for the researcher to collect data relating to the purpose of the study through reference to documentation and records (Mertens, 1998; Wiersma, 1991; Wilson 1977).

Undertaking a study from an interpretative approach and from the aspect of survey research, lends itself readily to gathering understandings from a constructionist perspective. The critics of such studies come mainly from those with objectivists and positivists perspectives and these argue that approaching studies from a constructionist and interpretive perspective find it difficult to provide scientific knowledge. However, by using the notion of triangulation and gathering data from a number of subjects in different settings, from various sources and via various means, this criticism can be substantially alleviated, (Mertens, 1998; Stainback & Stainback, 1984; Tam, 1993; Yin, 1994; Wiersma, 1991; Wilson,1977). Nevertheless, researchers using one-off survey methods and interpretative approaches, still need to be cautious about generalising the findings of their studies beyond the sample and particular context of the study undertaken.

This study gathered information through an interpretative approach and survey research methods by the development and distribution of a Survey Questionnaire, which provided data both of a quantitative and qualitative nature, and through observations and discussions, and by reference to records and documentation. Figure 6.1 gives a conceptual framework of the approach to this study.

**Figure 6.1**  
**Conceptual Framework of the Research Design**



### 6.2.1 Development and Distribution of the Survey Questionnaire

The Survey Questionnaire used in this study (Appendix 1), was constructed along the lines of that developed and used by Stewart (1996) when he examined the impact of aspects of the law on the administration and management of Government schools in Queensland. Some modifications, adjustments and additions were made to the questionnaire used by Stewart, to align it with the Catholic School System, to gather data specifically associated with some of the



questions posed in this study, to update items as a result of Stewart's (1996) study itself, and to modify some of the items in order to align them with recent cases, court decisions and changes to legislation. When the modifications and updates were completed, the Revised Questionnaire went through a process of piloting and further review before the final Survey Questionnaire was distributed to principals of Catholic Systemic Primary and Secondary Schools within the Brisbane Archdiocese.

#### **6.2.1.1 Modifications and Additions to the Questionnaire Used by Stewart**

Prior to revising the questionnaire used by Stewart (1996) to align it with recent court decisions, changes to legislation, some of the findings in Stewart's (1996) study itself and the Catholic Education System, discussions were held with senior personnel within the Brisbane Catholic Education Centre (BCEC) regarding legal issues which related to their areas of responsibility. A number of these people were also asked to provide feedback to the Revised Questionnaire as part of the piloting, before finalising the document prior to its distribution. As a result of the initial dialogue and discussions, a number of modifications and additions were made to Stewart's (1996) Questionnaire. These included:

- The order of some items was changed. These were adjusted and further refined following a piloting of the Revised Questionnaire. For example, Item 16, which corresponded with Item 15 on Stewart's Questionnaire (1996) and dealt with the perceived time spent on legal issues was coupled with Item 17. The latter corresponded with Item 11 on Stewart's Questionnaire (1996) which related to the perceived increase or decrease in the influence legal matters had on school administration, policies and practice. It was felt that there was a relationship between these two items and it made more sense to place them together on the Survey Questionnaire used in this study;
- Item 1, dealing with the category of schools, was adjusted to bring the categories into line with the school classifications used by the (BCEC).

This classification also had leadership implications, as the BCEC had set criteria relating to experience and academic qualifications for principalships of the various categories of schools (see Appendices 7 and 8);

- Item 2 listed a number of options for principals to identify the geographical location of their school. This replaced an open ended question, Item 6 on Stewart's Questionnaire (1996);
- Item 3, complexity rating (see Section 6.2.3.1 below for more details), was added to the Survey Questionnaire to provide data for analysis in relation to the Three Specific Research Questions posed in this study;
- In Items 4-7 and 9-11, which corresponded with Items 2-5, and 8 and 9 on Stewart's Questionnaire (1996), additional details were added to the administrative and academic history items, to align them with the Catholic System. The intention here was to gauge whether principals' personal and professional learning and growth experiences in leadership and legal issues were undertaken as part of pre-service or post graduate studies, and to provide information as to whether these learning experiences were attempted in Government or Catholic Institutions;
- In Item 12, which corresponds with Item 10 on Stewart's Questionnaire (1996) dealing with the sources of acquiring legal understandings, the variables were adjusted to align them with the structure of the Catholic School System within the Brisbane Archdiocese, and additional items were added following the piloting of the Revised Questionnaire (see below Section 6.2.1.2). In addition, in Item 12, a provision was made for participants to rank as well as identify the variables listed;
- In Item 13, which corresponds with Item 12 on Stewart's Questionnaire (1996) dealing with principals' involvement with legislation, the various Acts of Parliament were listed alphabetically, and where recent enactments had replaced former legislation, the former acts were identified in brackets after the new acts were listed. Some acts, which were identified in the literature and by senior school personnel within BCEC as having an impact on schools, were added to the list. These included the

Commonwealth *Copyright and Disability Discrimination Acts*, the Queensland *Drug Misuse Act, Education (Teacher Registration) Act, WorkCover and Workplace Relations Acts*;

- In relation to Items 13 and 14, corresponding with Items 12 and 13 on Stewarts Questionnaire (1996), where principals were asked to identify their involvement with particular legal issues and legislation, a definition of involvement was provided, e.g. in relation to involvement in legal action, Item 14, involvement was defined as: “Where you as a Principal, or a member of your staff has had to respond to a writ, or a summons and/or a request to provide information or a statement on a matter relating to any of the following”;
- Involvement in legal action, Item 13 on Stewart’s Questionnaire (1996), was split into two categories, Items 14 and 15. Under Item 14 which dealt with civil issues, the issue of contracts including employment related contracts was added, as discussions and data gathered through reference to diary records indicated that this was an issue impacting on Catholic schools. Item 15 dealt with areas of a criminal nature which were identified in Stewart’s (1996) study as having an impact on schools. These were listed under Item 15 for principals’ responses;
- Item 18, relating to how principals recognised that a legal problem might be developing in their schools was updated. The variables and categories identified in this area in Stewarts’ study (1996) were listed for principals’ responses. This replaced Item 14 on the questionnaire developed by Stewart (1996) which was an open-ended question;
- Items 19 and 20, which focused on the resolutions developed and process involved in dealing with legal issues, and their compatibility with the ethos of the Catholic School, were added to the Survey Questionnaire to provide data relevant to Specific Research Question Three;
- Item 22 was added to provide additional data regarding stress caused by legal issues. Variables identified in Stewart’s study (1996) as causing stress for principals and that were applicable to Catholic schools, were

listed for principals' responses. A provision to rank, as well as identify the variables was also provided under this item;

- In the scenarios relating to common law and legislation (Items 23-42), a number of which were based on the scenarios listed in Stewart's Questionnaire (1996), references to Government schools and The Government Department of Education Policies and Regulations were deleted, and appropriate references were made to align the scenarios with the Catholic System of Schools and their administrative structure;
- Item 28, supervision in the vicinity of the school, expanded the third scenario relating to supervision before school, Item 21 in Stewart's Questionnaire (1996), to take into account the decision in *Trustees of the Roman Catholic Church for the Diocese of Bathurst v. Koffman & Anor*, 1996;
- Item 32, relating to common law contracts, replaced the second scenario under excursions, Item 25 in Stewart's Questionnaire (1996). This was necessary, as issues relating to law of contract, especially as it related to employment contracts, was identified in dialogue with senior personnel in the BCEC as being significant for principals in Catholic schools;
- Item 28 in Stewart's Questionnaire (1996), the scenario dealing with Freedom of Information, was deleted as this legislation did not apply to Catholic schools. However, the *Freedom of Information Act* (Qld) 1992 was left in Item 15 of the Survey Questionnaire relating to involvement principals have had with various pieces of legislation, as dialogue with senior personnel in the BCEC indicated that some parents had been approaching principals believing that the legislation was applicable to Catholic schools and principals could be exposed to issues relating to Freedom of Information. For example, if principals produced documents for students to attend government run institutions, and those documents were placed on students' files in an institution subject to the legislation;
- Item 33, relating to the *Education General Provisions Act* (Qld) 1989 replaced Item 30 on Stewart's Questionnaire (1996) to pick up issues of enrolment and attendance. Information arising from discussions with

senior personnel in the BCEC indicated concerns in these areas were confronting principals of Catholic schools;

- Item 36, dealing with family law, Item 32 on Stewart's Questionnaire (1996), was adjusted to take into account the amendments brought about by the *Family Law Reform Act* (Cth) 1995, particularly those sections relating to Parenting Plans. This updates to family law were referred to in Section 4.7.1.3;
- Item 38, which correlated with Item 34 on Stewart's Questionnaire (1996) dealing with the touching of students, was adjusted to take into account the statements made by the Queensland Court of Appeal in the case *Queen v. Ferguson*; 1994 referred to in Section 4.7.2.5;
- Item 41 replaced Item 37 in Stewart's Questionnaire (1996). Information gathered through observations, discussions and reference to diary entries tended to reveal that a number of legal issues associated with discrimination were arising in the areas of enrolment, and catering for students with special education needs. It was decided, therefore, to replace the scenario dealing with racial discrimination with a scenario closely aligned with the case from the Queensland Anti-Discrimination Tribunal, *L and Minister for Education for the State of Queensland*, 1995, which, as pointed out in Section 4.7.2.2, was a case dealing with special education needs and enrolment centred on the Queensland *Anti-Discrimination Act*;
- Item 42, a scenario dealing with Copyright, replaced Item 38 in Stewart's Questionnaire (1996). The latter dealt with the Criminal Justice Commission which did not apply to personnel working within the Catholic School System, whereas discussions and reference to diary entries were indicating that copyright legislation appeared to be an increasing concern for principals.

### **6.2.1.2 Piloting and Feedback of Revised Questionnaire**

After reconstructing the questionnaire, a copy of the revised document was forwarded to a number of people for critique, further comment and feedback. The people asked to be part of this pilot included some personnel from departments within the BCEC already referred to and who were involved in the initial consultation process before the revision, and three solicitors external to the Brisbane Catholic Education System, one of whom had regular dealings with education law matters. The Revised Questionnaire was sent to the persons involved in the pilot, in the format in which it was planned to distribute the questionnaire to participants of the study. This Revised Questionnaire was also accompanied by a covering letter, which outlined the study, its purpose, research design and methods, and a request to critique the document and provide feedback (see Appendix 5).

The feedback from this pilot indicated that the Revised Questionnaire was very comprehensive, clearly set out and covered the areas which had been part of the discussions prior to its revision, and for which advice was being sought by principals. One of the persons from the personnel section in BCEC who was part of the pilot commented on the comprehensive nature of the document, while others had personal discussions with the researcher or by phone to comment on various aspects of the revised document, and most returned the Revised Questionnaire accompanied by suggested comments or with suggested comments entered on the document itself. The solicitor, who had regular contact with education law matters, in his written comments, made the following observations in relation to the scenarios in Sections B and C of the document:

All the scenarios seem to me to be quite realistic...the responses from which they are to choose seem to be quite appropriate. The general layout of the scenarios is very clear. I think you summarise the significant points without unnecessary material and that the degree of detail and complexity relates well to the answers from which the readers have to choose.

Resulting from this pilot and the feedback received, further minor adjustments were made to the Revised Questionnaire before it was printed in its final Survey Questionnaire format. These adjustments included the following:

- In Item 2, dealing with the geographical location of schools, an additional category in the geographical location was added to include, Suburb of Provincial City/Shire Surrounding Brisbane e.g. Redlands/Ipswich;
- In Item 6(i), dealing with administrative positions within a School Administration Team, was adjusted to include the title of Religious Education Coordinator. This title was used in other dioceses and in other states to designate the role of Assistant to the Principal Religious Education, and it was feasible to believe that some of the participants in the study may have transferred into the Brisbane Archdiocese from other dioceses or from inter-state;
- In Item 12, which dealt with the sources of acquiring legal understandings, two additional variables were added. The Queensland Government Gazette was added as a variable, as it was felt this could be referred to for legal understandings, especially by principals in secondary schools. 'Friends or Associates within the Community' was also added as a variable. This was done because it was felt, that without a designated legal practitioner within the BCEC at the time of the study, principals might have developed their own network to gain legal understandings. In Item 12 also, the opportunity was added for participants to rank the variables as well as identify them as a source of gaining legal understandings;
- In Items 19 and 20, which provided data on the compatibility of process and resolutions of legal issues with the ethos of the Catholic School, the options for responses were changed. On the Revised Questionnaire the response options for Items 19 and 20 were; very compatible, compatible, incompatible and very incompatible. The feedback from the pilot indicated that these were perhaps too rigid, so the options were revised to read, very compatible, mostly compatible but some incompatible, mostly incompatible but some compatible and very incompatible;

- In Items 32, 35 and 36, scenarios based on common law and legislative requirements, a response for participants to elect to consult the BCEC or others for advice was added. This was done because the feedback suggested, that if such an option was provided, when analysing the data the study might be able to provide evidence of where principals believed that a legal difficulty existed, but were not exactly sure of what course of action to take, or what the legal implications might be, and therefore might prefer to consult the system authorities or some other person with legal expertise before attempting a resolution to the issue;
- In Item 35, which correlated with Item 29 on Stewarts Questionnaire (1996) and dealt with workplace health and safety, the response options were reduced to four. This adjustment was made on the advice of the Occupational Health and Safety personnel in the BCEC; and,
- On the feedback received, a number of minor presentation adjustments and word changes were made to make items and the general presentation of the questionnaire clearer and more presentable. This included printing on the front cover the word confidential and the consent to take part in the study, which corresponded with the information in the letter which accompanied the Survey Questionnaire when it was distributed.

### **6.2.1.3 Overview of the Survey Questionnaire**

The front cover of the Survey Questionnaire included the title of the study, indicated that the responses were confidential, that taking part in the study was voluntary and involvement in the study could be withdrawn at any time. The cover also acknowledged that the document was closely based on the questionnaire developed by Stewart (1996).

Section A of the Questionnaire, General Information, provided items for the participants to identify the classification and geographical location of the school they led and managed. The classification was mainly based on the number of student enrolments. This section also provided items to gather information of the



participants teaching, administrative and academic histories, and in relation to the latter, their exposure to personal and professional learning and growth experiences related to legal issues. As well, Section A provided items to gather information on principals exposure to legal issues, how they acquired their understandings of legal issues, how they become aware of a legal issue developing in their school, the perceived time they spent dealing with legal issues and if that perceived time appeared to be on the increase or decrease. Other items in this section provided questions to gather information on how principals perceived the compatibility with the ethos of the Catholic School and the resolutions reached and processes used in dealing with legal matters.

Section B of the Survey Questionnaire provided scenarios relating to common law issues. These scenarios mainly covered matters dealing with the area of negligence and portrayed a series of situations relating to school activities in settings within the classroom, the school playground and beyond the school boundaries. These scenarios were based around the elements of negligence and on cases decided in Australian Courts as outlined in Section 4.6.1. This section of the questionnaire also provided a scenario based on issues relating to contract law. As indicated above, this was considered an increasing area of concern for principals.

Section C also provided a series of scenarios, but in this instance the scenarios were related to various statutes and legislative requirements. While scenarios were not provided for all of the statutes and legislation identified in the literature and portrayed in Figure 4.1 as impacting on schools, those that were considered significant as a result of Stewart's (1996) study, by reference to the researcher's diary entries and by dialogue and discussions, were selected. These included, *The Criminal Code (Qld)*, *The Copyright Act (Cth)*, *The Education Act (Qld)*, *The Family Law Act (Cth)*, *The Workplace Health and Safety Act (Qld)*, and discrimination legislation emanating from both the Australian Commonwealth and Queensland Governments.

In Sections B and C, which dealt with the scenarios, participants were provided with a number of options from which they were asked to select what they felt was the most appropriate response to the situation described. The idea of these sections was to gather data on understandings principals had on a number of key legal issues with which leaders in Catholic schools were being confronted. These were identified in the literature, reference to other records and documentation, and dialogue and discussions referred to in this study. As a result of the feedback from piloting the Revised Questionnaire, provision was offered in the options to some of these scenarios for participants to seek advice from the BCEC in relation to the issues raised, if they thought that was the most appropriate course of action.

As explained earlier, as well as providing material of a quantitative nature, the questionnaire also gave respondents the opportunity to provide additional comments to the items listed and areas covered in the survey, and to add general comments about legal issues and their impact on Catholic schools.

#### **6.2.1.4 Distribution of the Survey Questionnaire**

Prior to the Survey Questionnaire being forwarded to the participants, principals of primary and secondary systemic Catholic schools within the Brisbane Archdiocese, all of whom were known to the researcher, were phoned individually, spoken to about the study and asked for their participation and cooperation in completing the Survey Questionnaire. The purpose and details of the study were outlined to them and it was explained that these details would be contained in a letter accompanying the questionnaire (see Appendix 6), and this would be posted to them along with the questionnaire in the next few days. It was also explained, as was pointed out in the letter, that participation in the study was voluntary and they could withdraw consent and discontinue involvement in the study at any time. It was also pointed out to the principals that their decision not to complete or to complete the questionnaire would not in any way influence or jeopardise the professional relationship that existed between the researcher

and the participants. All principals contacted expressed an interest in taking part in the study. Some indicated that whether they completed the questionnaire would depend on the perceived amount of time they felt it would take to complete the document and how that fitted into their already busy schedules.

All principals were allocated a research number, which was placed on the front of their Survey Questionnaire (see Appendix 1). This number was known to the researcher alone, was allocated so that follow up could be carried out with those principals who did not return the questionnaire after a considerable amount of time, and also so the school complexity ratings (see Section 6.2.3.1 below), Item 3 on the instrument, could be allocated by the researcher as the questionnaires were returned. The Survey Questionnaires and the letters that accompanied the document were posted to principals with a stamped, self addressed envelope in which the questionnaires were to be returned.

During the three months following the distribution of the questionnaires phone calls were made to some principals who had indicated they wanted to take part in the study, but had not returned their questionnaire. Seven principals requested a supplementary Survey Questionnaire having misplaced their original copy and these were forwarded to them. After three months, which included two holiday periods, a cut off point was reached and no further follow up was made to have the outstanding Survey Questionnaires returned. Table 6.1 provides a matrix showing the relationship between the items on the Survey Questionnaire and the Specific Research Questions posed for the study. This matrix was used as a guide when providing a presentation and analyses of the data in Chapters 7-11.

## **6.2.2 Observations, Discussions and Diary Records**

The Brisbane Catholic Education Centre (BCEC) has the responsibility of administering the Catholic systemic school system within the Brisbane Archdiocese. During the period prior to the study and during the study itself, the researcher was also employed by the BCEC. In this capacity, the researcher

supported principals in leading and managing their schools, and had a particular role in the selection, induction, development and appraisal of school leaders within the Brisbane Archdiocese. The researcher had also completed a law degree at one of the Queensland Universities in Brisbane and had been involved in providing personal and professional learning experiences and in-service type activities for principals and school staffs on legal issues, and was responsible for coordinating the 'Advanced Skilled Teacher Program'.

The Advanced Skilled Teacher Program gave teachers the opportunity to make application to advance to a higher level on the pay scale, based on criteria relating to their teaching and learning and professional conduct. This process was drawn up in accordance with the appropriate Industrial Award. Carrying out this program had a number of legal implications for principals, particularly of an industrial, contractual and procedural fairness/natural justice nature.

This involvement and employment status provided the opportunity for the researcher to enter into dialogue and discussions relating to legal issues affecting Catholic schools and which were pertinent to the study. It was normal work practice for discussions and consultations relating to legal issues to be documented for reference and follow up. Thus, reference was made to diary entries, which the researcher had recorded over a period of forty-two months that were of a significant nature and which related to the study. These were analysed and categorised.

Discussions and consultation also took place between the researcher and other senior personnel within BCEC in relation to issues associated with this study. These were held with personnel in the Human Resource Section, Occupation and Workplace Health and Safety (WHS) Section, Industrial Relations Section, and with those immediately responsible for supporting and supervising principals in their leadership and management of schools, namely the Area Supervisors. In relation to these discussions and consultations, the Industrial Relations Unit was of particular importance, for at the time of the study, the persons in this unit were

a focal point of reference for principals in relation to legal issues, particularly those issues which were heading towards some form of litigation.

**Table 6.1**

**Matrix Indicating the Relationship Between the Items on the Survey Questionnaire and the Three Specific Research Questions**

Item Number	Specific Research Question 1	Specific Research Question 2	Specific Research Question 3
Item 1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Item 2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Item 3	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Item 4		<input checked="" type="checkbox"/>	
Item 5			
Item 6		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Item 7		<input checked="" type="checkbox"/>	
Item 8	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Item 9		<input checked="" type="checkbox"/>	
Item 10		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Item 11		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Item 12		<input checked="" type="checkbox"/>	
Item 13	<input checked="" type="checkbox"/>		
Item 14	<input checked="" type="checkbox"/>		
Item 15	<input checked="" type="checkbox"/>		
Item 16			<input checked="" type="checkbox"/>
Item 17			<input checked="" type="checkbox"/>
Item 18			<input checked="" type="checkbox"/>
Item 19			<input checked="" type="checkbox"/>
Item 20			<input checked="" type="checkbox"/>
Item 21			<input checked="" type="checkbox"/>
Item 22			<input checked="" type="checkbox"/>
Item 23		<input checked="" type="checkbox"/>	
Item 24		<input checked="" type="checkbox"/>	
Item 25		<input checked="" type="checkbox"/>	
Item 26		<input checked="" type="checkbox"/>	
Item 27		<input checked="" type="checkbox"/>	
Item 28		<input checked="" type="checkbox"/>	
Item 29		<input checked="" type="checkbox"/>	
Item 30		<input checked="" type="checkbox"/>	
Item 31		<input checked="" type="checkbox"/>	
Item 32		<input checked="" type="checkbox"/>	
Item 33		<input checked="" type="checkbox"/>	
Item 34		<input checked="" type="checkbox"/>	
Item 35		<input checked="" type="checkbox"/>	
Item 36		<input checked="" type="checkbox"/>	
Item 37		<input checked="" type="checkbox"/>	
Item 38		<input checked="" type="checkbox"/>	
Item 39		<input checked="" type="checkbox"/>	
Item 40		<input checked="" type="checkbox"/>	
Item 41		<input checked="" type="checkbox"/>	
Item 42		<input checked="" type="checkbox"/>	

The information gathered from these observations, discussions and consultations contributed to developing, piloting and reviewing the Survey Questionnaire used in this study which has already been referred to above. Also, some of the sections within the BCEC identified here, and the personnel in them were referred to in appropriate items on the Survey Questionnaire. For example in Item 12, relating to sources of acquiring legal understandings, some of the personnel and sections were listed as possible sources of gaining legal information, knowledge and understandings. These observations, dialogue and discussions, besides supporting the development of the questionnaire also provided additional evidence to respond to the questions posed in the study.

### **6.2.3 Other Documentation**

Documentation from the Brisbane Catholic Education Centre (BCEC) was referred to during the study to clarify issues and provide information. At times, these documents were alluded to in the Survey Questionnaire, for example, in Item 12 of the Survey Questionnaire the list includes The Administrative Handbook, which contained a number of entries relating to legal issues. In this publication at the time of this study, references to legal matters included the following: copyright; the *Workplace Health and Safety Act (Qld)*; duty of care and negligence and the safety of students in classrooms, in the school playground, on excursions, and when participating in sport; the transport of students especially by private car; child abuse issues; matters associated with the interviewing of students by police; family law issues; the application of procedural fairness when dealing with grievances and disputes; issues associated with the keeping of student records; and, access to these records. The brief outlines relating to these areas of the law, where applicable, were aligned with the interpretations of legal issues as provided in Chapter 4.

Reference is made below in Section 6.2.3.1 to the Complexity of School Environment Index (CSE Index) from which each school was allocated a complexity rating. Also, Appendices 8 and 9 of this study provide information

relating to the criteria for the position of principals in the various classifications of schools listed in Item 1 of the Survey Questionnaire. These documents have implications as to Items 6, 9 and 10 on the Survey Questionnaire which dealt with the personal and professional learning and growth of the participants as leaders within their communities.

### **6.2.3.1 Complexity of School Environment Index**

When exploring the Three Specific Research Questions posed for this study, the significant relationships between legal issues and certain variables were examined, and one of these key variables was the complexity of schools. To assist in this regard, each school was given a complexity rating. This rating, identified as Item 3 on the Survey Questionnaire, was provided by the Complexity of School Environment Index (CSE Index) developed for Catholic schools within the Brisbane Archdiocese by Briody (1992).

This complexity rating was developed with reference to the workload of principals as part of a proposed pay restructure. The complexity rating for each school was based on categories 1-5 identified on a points scale. The points for each school were tabulated following their allocation in relation to the following variables:

- Socio Economic Variable: Points were allocated on this variable in line with data gathered on a Needs Assessment Questionnaire issued by the Ministerial Advisory Committee on Non-State Schooling in Queensland (MACN-SS). This variable took into account the financial data of the school and centred around the community's ability to meet financial commitments and school fees, and particular note was taken of the number of fee concessions made available to parents and care givers;
- Type of School: Points were allocated on this variable on a point scale which took into account whether the school was primary only, secondary only, senior secondary only, junior secondary only, Kindergarten to Year 12, preschool as part of the campus etc. Each of these combinations were allocated a certain number of points;

- Location/Isolation: The allocation of points here was related to the distance in kilometres the school was located from the BCEC Offices;
- Enrolment Bands: Points were allocated on this variable depending on the number of student enrolments;
- Exceptional Needs: This variable took into account the number of students in the school who displayed particular needs. This information was also accessible as part of the MACN-SS Survey mentioned above. Points were allocated where students demonstrated characteristics such as severe multiple disabilities, English as a second language, intellectual disabilities, hearing, sight and physical impairments, and advanced learning needs, and/or were part of an Aboriginal, Torres Strait Islander or refugee family; and,
- Specific Complexities: Points were allocated on this variable on the basis of documentation supplied by the principals of the schools as to their particular complexities.

When the points allocated on these variables were tabulated, each school received a complexity rating of 1-5 in accordance with the categories listed on the points scale. The researcher having a list of the schools and categories, added the complexity rating to the Survey Questionnaires on their return from the participants. All the data for a small numbers of school was not available to allocate a complexity rating because they had been constructed and opened after the development of the index. As a result, no complexity rating was allocated to the questionnaires returned by respondents from those schools.

### **6.3 Research Participants**

As the epistemological stance, theoretical perspectives and methods applied in this study did not embed it in an experimental and quasi-experimental design, participants were not selected randomly. Both participants and the research setting were selected because the characteristics and attributes of the



participants and the settings were appropriate for the context and purpose of the research (Wiersma, 1991).

As the research participants influence the quality of the data collected and the inferences that can be made from that data, it was essential to select participants from whom it was most likely that information and evidence relevant to the purpose of the research and the research questions could be obtained (Denzin & Lincoln, 1994). In this respect, the participants who took part in this study provided a sample closely related to the purpose of the study, people carrying out the specific roles within the social cultural environment being examined, and people carrying out leadership roles in a variety of settings within the overall context of the study. From this perspective, it was appropriate to expect that the participants would provide data relevant to the purpose of the study.

The participants were principals and personnel carrying out their roles within the Brisbane Catholic Education System. At the time of the study, the Brisbane Catholic Education Centre (BCEC) administered over 130 Catholic schools as part of a system of schools; 26 secondary systemic colleges and over 100 primary systemic schools. The administration area of BCEC covers most of South-East Queensland, one of the fastest growing areas in Australia, and the region includes the developing coastal areas of the Sunshine and Gold Coasts. The area is centred around the State Capital of Queensland, Brisbane, where the BCEC is situated, but extends North of Brisbane to the rural town setting of Childers, (which is just south of Bundaberg), South to the New South Wales border, West to the rural town setting of Gatton and North West to the area around Kingaroy.

The researcher himself was an employee of BCEC and at the time of the study held a position within the BCEC Office in Brisbane. The availability of personnel within the Brisbane Catholic Education Centre with whom the researcher worked, who had particular responsibilities with regard to legal matters, and who supervised and supported principals in their roles, provided opportunities for

discussions around the purpose of the study. As indicated above, a number of the discussions with these personnel assisted in revamping the questionnaire which had originally been developed by Stewart (1996), and in providing feedback to the revision of this document before it was presented in its final format.

The physical and social/cultural diversity within the area administered by the BCEC meant that there was access readily available to principals who were carrying out their roles in a variety of settings within the overall context of the study. These settings included primary and secondary Catholic schools with large and small student populations, a variety of local social/cultural environments ranging from inner city and city suburban environments to provincial cities surrounding the major capital, Brisbane, and also small rural town locations. All principals of systemic primary and secondary schools within the Brisbane Archdiocese, therefore, were invited to take part in responding to the survey questionnaire developed for the study. These principals were well known to the researcher and he had developed a professional relationship with them over a period of time. The number of principals carrying out their role in the variety of settings within the overall context of the study allowed data to be gathered from a number of participants in various settings, and along with the input from other personnel and data gathered via other means, contributed to the application of triangulation to the study. The context of the study and the participants involved also allowed an exploration of particular variables relating to the Three Specific Research Questions.

In relation to the research participants, there was a set of criteria within the Archdiocese that applied to applicants for principalship positions within schools. This set of criteria included the requirement that applicants should have undertaken some study associated with leadership and the ethos of the Catholic School before applying for principalship positions. This factor also allowed the researcher to examine particular issues relevant to the Specific Research Questions posed for the study.

## 6.4 Validity and Reliability Issues

Validity “refers to the ability of the researcher (and the user of the research results) to extend the findings of a particular study beyond the specific individuals and setting in which the study occurred” (Mertens, 1998, 254). From a constructionist epistemology and an interpretivist perspective as is the case with this study, the validity relies on being able to project the unique experiences and behaviour of individuals into a generally applied experience, and to the behaviour of others carrying out the role of principal in Catholic schools within the overall context of the study. For this to occur, the study needed to feature the following attributes of validity: credibility, which is related to authenticity and equated to internal validity; transferability which is equated with external validity; dependability which is equated with reliability; and, conformity which is equated to objectivity (Mertens, 1998).

In terms of credibility and authenticity, the test is to see “if there is a correspondence between the way the respondents actually perceive social constructs and the way the researcher portrays their viewpoints” (Mertens, 1998, 181). Thus the researcher should present a balanced view, be cognisant of one’s own biasness and be fair in presenting the views of others. To comply with this notion of validity, the study applied strategies of triangulation by gathering data through the survey instrument from a large number of participants in a variety of settings within the overall context of the study, by having the survey instrument gather data of a quantitative and qualitative nature, and by supplementing and corroborating this data with data gathered from other sources and via other means.

While the survey instrument gathered data at particular period of time, it also allowed participants to make comments about past experiences and their feelings about issues pertinent to the study. The use of open-ended questions allowing data of a qualitative nature to be provided, added credibility and authenticity to the study. Besides this, the survey instrument was not selectively distributed, but

all principals carrying out the role of principal within Catholic Systemic Schools within the Archdiocese were invited to complete and return the Survey Questionnaire. The individual comments returned with this instrument were used to highlight issues relating to the research, and a full outline of these are provided in Volume II <sup>(8)</sup> of the study.

Also, the data provided from the researcher's diary entries provided information relating to the purpose of the study over a period of three and a half years. This gave a prolonged and substantial engagement with the participants and with issues pertinent to the study. As well, the researcher's biases have been clearly stated in the theoretical perspectives underlying this study and the researcher's professional relationship with the participants has been stated clearly. All these measures and strategies within the research design helped provide credibility and authenticity to the study and attributed validity in relation to the study's findings.

Validity issues associated with transferability focus on the degree to which the results of the study can be generalised to other situations. In many respects, this is a perception made by those who read the account of the research. However, from the point of view of the researcher, what is required here is a careful outline of the time, place and context of the research; a thick description (Mertens, 1998, Merriam, 1998). In this study a careful outline of the context of the study has been provided as well as a clear description of the social/cultural settings of the participants who took part in the study. Section A of the Survey Questionnaire also gathered data to clarify characteristics of the participants and settings in which they carried out the role of principal in Catholic schools within the overall context of the study. These measures taken in the research design, methods and strategies used, and the application of triangulation to the study, provide support to the transferability of the findings of this study.

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8. Volume II was provided to the thesis examiners to allow them to gain a full indication of the work undertaken by the researcher to meet some of the issues of validity and reliability raised in Chapter 6 of the thesis, 'Design of the Study'.

Dependability issues of validity relate to whether the results of the study are consistent with the data gathered and whether the processes used in the study are appropriate. To support compliance with this aspect of validity in the study the following steps were taken. The justification of the processes used in this study have been provided in the outline of the theoretical framework in Chapter 5. Besides this, the adjustment of the survey instrument to align it with the context of this study has been outlined extensively, earlier in this chapter. The relationship of the researcher to the participants has been clearly provided and triangulation has been applied to methods and sources used to collect data. Beside this, statistical analyses applied to the data and the individual comments returned with the survey instrument from which particular references are made, are provided in Volume II.

In examining the validity attribute of confirmability, one is questioning whether the data and interpretations of that data are figments of the researcher's imagination or can be traced to a chain of evidence (Guba & Lincoln, 1994, Mertens, 1998, Yin 1994). In this study, many of the strategies already outlined contribute to strengthen validity in relation to this aspect, including the development of the theoretical framework aligned to the purpose of the study and the Specific Research Questions posed, the outline of the researcher's relationship and interactions with the participants, a clear outline of the context of the study and the settings and roles in which the participants experienced their social/cultural world, application of triangulation to the data collection, outline of the analyses procedures applied to the data (see Section 6.5 below), and providing in Volume II of the study, an outline of the statistical analyses applied to data gathered via the Survey Questionnaire and the individual comments provided by respondents to the open ended questions on the survey instrument.

From the above analysis it is argued that the features necessary to support the validity of a study undertaken from a constructionists epistemology and an interpretative theoretical perspective such as symbolic interactionism are

embedded in the design of the study, the methods used and the strategies applied to gather and analyse the data collected.

## **6.5 Analyses of the Data**

Quantitative and qualitative analyses were applied to the data gathered in the study. In relation to the quantitative data gathered via the Survey Questionnaire, the responses of participants to items were collated and entered into the computer program Statistics Package for the Social Sciences (SPSS) version 11.5, and various analyses were carried out. Percentages, means and standard deviations (SD) were calculated for the responses to each of the items, and these were used to apply a numbers of tests such as t-tests, analysis of variance (ANOVA) and Pearson Chi Square tests to examine the influence of variables on the issues associated with the Three Specific Research Questions. Where significant relationships between variables were identified, post hoc tests in the form of Scheffe comparisons were applied to provide more detailed analysis of the relationships. The significance level applied to statistical calculations was at the 0.05 level ( $p < 0.05$ ).

Items in Section A of the survey instrument relating to the various characteristics of the participants and the settings in which they carried out their roles, such as their exposure to studying legal related matters in their pre and post teacher training, personal and professional learning and growth, frequencies and percentages relating to the various responses were analysed and graphed. Where rankings were requested in relation to responses, such as in Item 12, relating to the sources of acquiring legal understandings, and Item 22, relating to sources of stress, the mean rankings were tabulated and graphed to indicate the rankings and range of responses.

In applying analyses to the data gathered through Items in Sections B and C of the survey instrument, which dealt with participants' responses to the common

law and statute law scenarios, the participants' responses were graphed and comparisons were made through t-tests and ANOV and post hoc tests to investigate the influence of variables on their responses. The variables investigated, included the complexity of schools, the sex of respondents, and a number of variables relating to the settings in which the respondents carried out their roles. These quantitative analyses are provided in Volume II, and in Chapters 7, 8, and 9 which provide a presentation and analysis of the data gathered via the Survey Questionnaire, graphs and tables are presented to give an outline of participant's responses and details of significant relations identified in relation to the variables examined.

Responses to the open ended questions on the survey instrument were tabulated according to each item on the Survey Questionnaire. These comments are also provided in Volume II and an analysis was made of these in relation to recurring themes and issues. After tabulating the comments from participants under the various items on the Survey Questionnaire, prominent themes and issues arising from these comments were identified. Where appropriate, these identified themes and issues supported by a number of individual comments made by respondents, are provided in the presentation and analyses of data in Chapters 8, 9 and 10. Besides this, the diary entries of the researcher relating to legal issues over the period of Semester 1, 1996 through to Semester 1, 1999 were tabulated into legal categories for each of the semesters.

The results of these qualitative and quantitative analyses of the data collected and the results and interpretations of these analyses were used as evidence to offer responses to the Specific Research Questions posed in the study.

## **6.6 Ethical Considerations**

Ethical issues form an "integral part of the research planning and implementation process" (Mertens, 1998, 23). One of the purposes of research, especially from the theoretical perspective of symbolic interactionism, is to develop

understandings that are trustworthy and which are arrived at in an ethical way (Merriam, 1998). In this regard the major issues for consideration in this study were the privacy and well being of the participants, and the necessity to give a clear outline of the study to participants so that their involvement was undertaken on a voluntary basis (Mertens, 1998; Schrumacher & McMillan, 1993). Associated with these ethical considerations was the necessity to obtain the required clearances from the appropriate authorities to undertake the study, including gaining the authority of the participants' employer.

To comply with these ethical considerations, application was made on the appropriate forms and with the necessary accompanying documentation to the Australian Catholic University Projects Ethics Committee, to obtain clearance to conduct the study. On receipt of the approval from the University Ethics Committee (see Appendix 2), a request was then made to the Brisbane Catholic Education Centre (BCEC) through the Chair of the Research Committee to conduct the study (see Appendix 3). Approval to proceed with the study was received on 28<sup>th</sup> May, 1998 (see Appendix 4).

These requests for approval set out details of the study and included, the title of the study, the researcher and the researcher's contact details, the major supervisor of the project and his contact details, background to the study, purposes of the research, the research design, proposed methodologies and procedures, and information regarding the confidentiality of the research. In relation to the latter and to safeguard the privacy of the participants each questionnaire distributed was given a reference number (see Appendix 1) which was known to the researcher alone. This number was allocated so that follow up contacts could be made with principals who indicated in the initial contact by phone that they would like to take part in the study, but after a period of time had not returned the survey instrument. The number was also allocated so that the appropriate complexity rating could be allocated to the participants' questionnaires when they were returned. Also, in relation to the privacy issues,



details of the storage and disposal of materials gathered during the project were outlined.

In addition, accompanying these applications for approval were copies of the letters the researcher had drafted to send to participants (see Appendix 7 for the outline of the letter that accompanied the Survey Questionnaire). The latter indicated approval of the study had been obtained from the University and BCEC, that consent to take part in the project was voluntary and that participants could withdraw at any time. In addition these letters provided details of persons they could contact if they had any questions, concerns or complaints about the study, or the way they were treated during the project. The outline of this consent to take part in the study was also printed on the front of the Survey Questionnaire (see Appendix 1).

One other ethical consideration to be aware of in this study related to the relationship between the researcher and the participants. The professional basis of this relationship has been outlined earlier. As well as this, personal contact or contact by phone was made with the participants inviting them to take part in the study and these discussions included the voluntary nature of that involvement and the right participants had to withdraw from the study at any time. It was emphasised in these discussions that any person's decision to take part or not to take part in the study would not in any way influence or jeopardise the professional working relationship that existed between the researcher and the people involved.

In relation to the gathering and interpretation of information, another ethical consideration was associated with the possible bias of the researcher. In relation to this issue, the theoretical position of the researcher is outlined in the study. Also, the possible bias in selecting participants to complete the Survey Questionnaire was annulled by inviting all principals in schools administered by BCEC to respond to the survey instrument. As well as this, all ideas and issues raised by participants associated with the purpose of the study were given an

equitable hearing, and in relation to the latter all the comments returned with the Survey Questionnaire are provided in Volume II.

## **6.7 Summary of Chapter 6**

This chapter outlined the design of the study. The design aimed at gaining some understandings of the social/cultural world of the participants within the overall context of the research that were related to the purpose of the study, and which were centred around the Three Specific Research Questions. To this end, the research design set out to gather information relating to these questions from a number of participants, especially those carrying out the leadership role of principal in Catholic schools from a variety of settings and social/cultural environments within the overall context of the study.

With this objective in mind, a questionnaire was structured along the lines of that developed by Stewart (1996) who conducted a similar study in Government schools in Queensland. The questionnaire used in Stewart's study (1996) was revised to develop a Survey Questionnaire for this study, which provided updated material, focused on the purpose of this study, and was aligned to the context in which Catholic schools operated within Queensland's legal jurisdiction at the time the research was conducted. The Survey Questionnaire, structured in three sections, provided data relating to the Specific Research Questions which could be analysed both quantitatively and qualitatively. Quantitative analyses were applied to the data to provide insights into the characteristics of the participants and the settings in which they carried out their roles as principals. Quantitative analyses were also used to examine the influence of particular variables on the issues raised by the Three Specific Research Questions, such as the influence of location and complexity of schools, and the personal and professional learning and growth experiences of principals. These quantitative analyses applied to the data are provided in Volume II. Recurring themes and issues emerging from the comments returned with the survey instrument to the open ended questions contained in the document, were identified and particular comments by individual

participants are used in the analyses and presentation of the data to highlight these themes and issues. These comments returned with the Survey Questionnaire are also provided in Volume II.

The design of the study allowed the data gathered via the Survey Questionnaire to be supplemented and corroborated through the interpretation of other information gathered by observation, discussions, records (including the diary entries of the researcher himself) and through reference to documentation. The latter included the Complexity of School Environment Index, which was used to allocate complexity ratings to the schools in which participants carried out their role as principal. All principals of Catholic Systemic Schools administered by the Brisbane Catholic Education Centre were invited to respond to the Survey Questionnaire.

The study was designed cognisant of the validity and reliability issues associated with conducting a study from a constructionist's epistemology and interpretative approach, and the theoretical perspectives of symbolic interactionism. The research design was developed with a desire to minimise the impact of these reliability and validity issues. To this end a number of strategies were applied, including the notion of triangulation, by gathering data from various sources, from a number of participants in a variety of settings within the overall context of the study, and supplementing and corroborating the evidence gathered via the questionnaire by other sources.

Similarly, the research design set out to address the ethical considerations raised by approaching a study from the theoretical framework presented. Associated with this aspect of the study, approval was sought from the appropriate authorities to conduct the research, procedures were put in place to obtain voluntary participation in the study and to safeguard the privacy and well being of participants, and to address the ethical considerations associated with the researcher's interaction with the participants.

As indicated above, the data gathered through the methods, strategies and structure of this research design were analysed to provide evidence to address the Specific Research Questions posed for this study. It is these analyses and presentation of the results of these analyses which follow in Chapters 7, 8, 9, 10 and 11.

## CHAPTER 7

### PRESENTATION AND ANALYSES OF DEMOGRAPHIC DATA GATHERED VIA THE SURVEY QUESTIONNAIRE

#### 7.1 Introduction

The focus of this study was an exploration of the interface between the leadership of Catholic schools and the legal framework of the social and cultural environment of Australian society in which Catholic schools operate.

Specifically, the study aimed to investigate the legal issues impacting on Catholic schools, the understandings principals of Catholic schools have of these legal issues, and to examine the influence this aspect of the social and cultural environment of Australian society is having on principals in carrying out their leadership roles within the ethos of Catholic schools.

The study was focused by three Specific Research Questions. These were:

- What areas of the law are having an impact on the administration of Catholic schools? (Specific Research Question One);
- What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings? (Specific Research Question Two); and,
- What impact do legal issues have on the administration of Catholic schools, and in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School? (Specific Research Question Three).

Data pertaining to these questions were collected from a variety of sources, through observations and discussions, via the development and distribution of a Survey Questionnaire, and through reference to documentation. The purpose of

this Chapter is to present an analysis of the demographic data gathered via the Survey Questionnaire and in particular, by the items in Section A of that instrument. The data gathered from these items were used to examine issues relating to the Specific Research Questions posed for this study.

## 7.2 Return of the Survey Questionnaires

As indicated in Section 6.3 as part of this study, all primary and secondary school principals in the Brisbane Archdiocese were invited to complete a Survey Questionnaire. A total of 124 questionnaires were distributed, 99 of these being sent to principals of primary schools and 25 to principals in secondary schools. Seventy eight were returned by primary principals giving a return rate of 79%, while 24 of the secondary principals returned their questionnaires giving an excellent return of 96%. In all, 102 questionnaires were returned, giving an overall return rate of 82%.

Table 7.1 provides an analysis of the 102 questionnaires returned in relation to the primary and secondary school settings, and the sex of respondents who took part in the study. This table indicates that examining the sample as a whole, males outnumbered the females by the ratio of a little over two to one, with 67.6% being males and 32.4% being females. This proportion of male to female principals reflected the proportion of males and females from the population invited to take part in the study within the Brisbane Catholic Education Systemic System.

**Table 7.1**  
**Distribution of the Sex of Respondents from Primary and Secondary Schools Who Took Part in the Study**

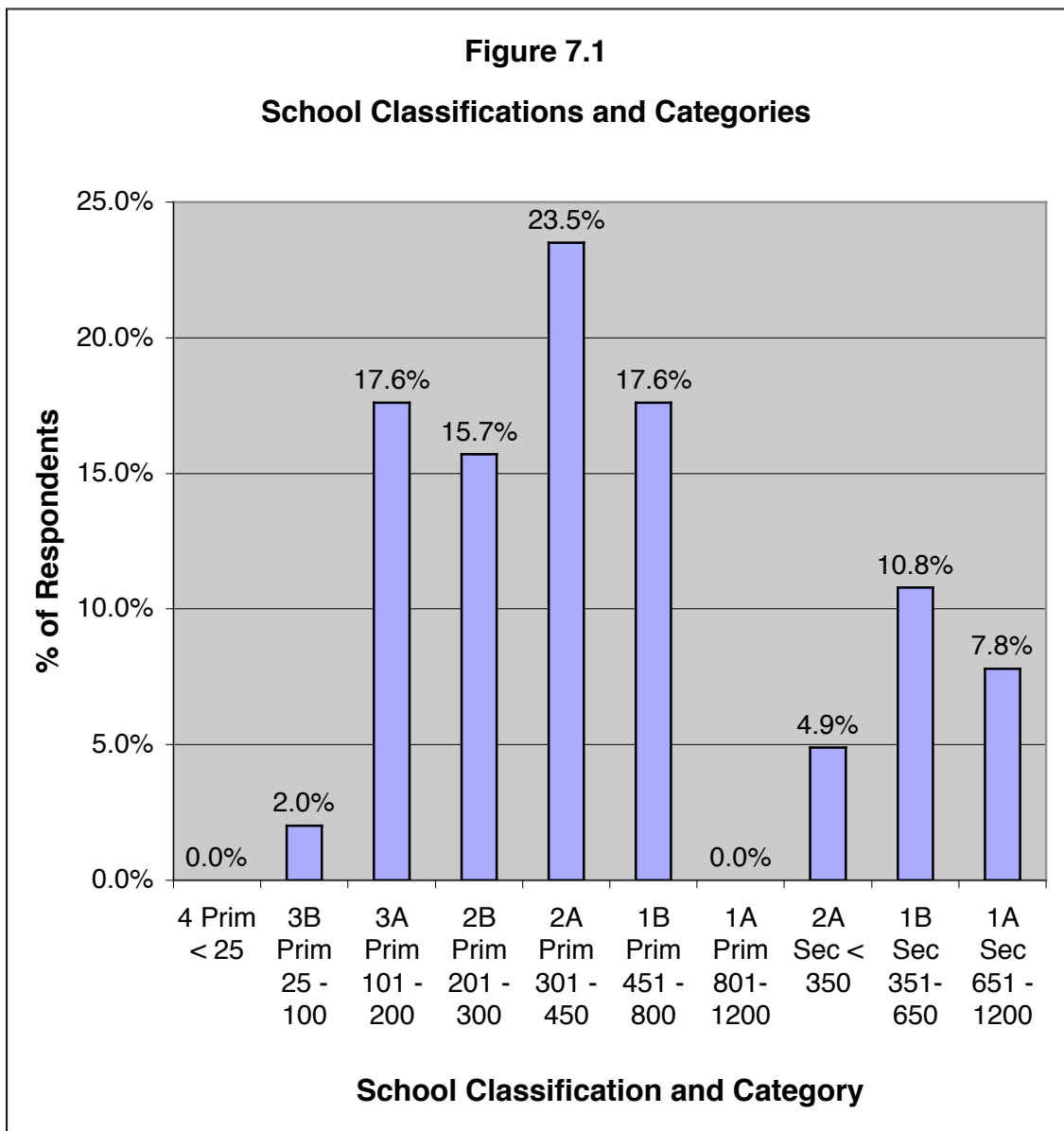
<b>School Classification</b>	<b>Number Males</b>	<b>% Males</b>	<b>Number Females</b>	<b>% Females</b>	<b>Total</b>	<b>% of Sample</b>
<b>Primary</b>	52	66.7%	26	33.3%	78	76.5%
<b>Secondary</b>	17	70.8%	7	29.2%	24	23.5%
<b>Totals</b>	69	67.6%	33	32.4%	102	100.0%

### **7.3 School Classifications and Categories**

The horizontal axis on Figure 7.1 below, outlines the categories used to classify schools within the Brisbane Catholic Education System. This classification system was used in Item 1 of the survey instrument to indicate the classification of schools in which respondents carried out their roles as principals. This classification ranged from a Category 4 primary school with a student population of less than 25 students, to a Category 1A secondary school with a student population of between 651-1200 students. Figure 7.1 also indicates the numbers of respondents in each school category.

From this table one can see that over 56% of principals who took part in the study carried out their roles in primary schools with student populations of 200 students or more, and there were no respondents carrying out their roles in Category 1A primary schools with student populations of 801-1200 students, or Category 4 primary schools which had a student population of less than 25 students. The largest primary schools from which respondents returned questionnaires were in Category 1B, and 17.6% of respondents carried out their roles as principals in this category.

In relation to the 24 principals in secondary schools who took part in the study, there was a reasonably even distribution of respondents in relation to the classifications and categories of schools. Figure 7.1 indicates that 4.9% of the sample came from secondary schools with student populations less than 350, 10.8% with student populations between 351-650 students and 7.8% of respondents carried out their roles as principals in secondary schools with student populations between 651-1200. The student population of schools was one of the variables used to calculate the complexity rating for schools as outlined in Section 6.2.3.1. The influence of size of a school as a variable affecting the data gathered in relation to the Three Specific Research Questions posed for this study, was therefore, not analysed independently in this study, but incorporated into the analysis associated with the complexity of schools.

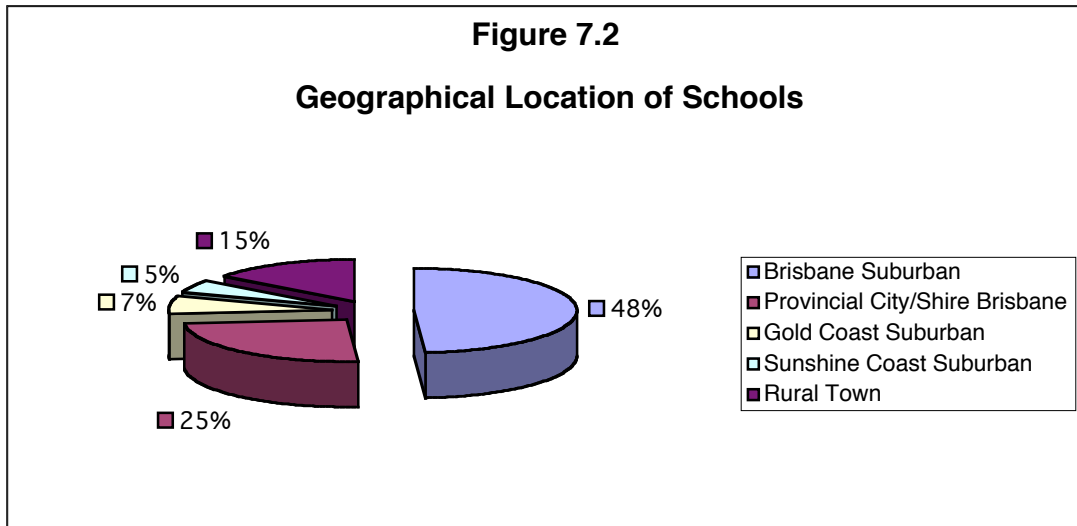


#### 7.4 Geographical Location of Schools

Item 2 in Section A of the Survey Questionnaire, gathered data in relation to the geographical location of schools in which respondents carried out their roles as principals. Figure 7.2 outlines this geographical distribution of schools. This figure indicates that almost 48% of the participants who took part in the study came from schools located in the suburbs of Brisbane. A further 25% came from Provincial Cities or Shires adjacent to the Brisbane Metropolitan Area, such as Ipswich. Therefore, almost 73% of the respondents came from the Greater Brisbane Area. The remainder of the principals who took part in the study came



from schools scattered across South East Queensland, with 5% located on the Sunshine Coast, 7% in the Gold Coast Region and 15% in Rural Towns. When examining the influence of geographical location on the questions posed in this study, the data gathered from the Sunshine and Gold Coast Areas were on occasions combined, when applying statistical analyses.

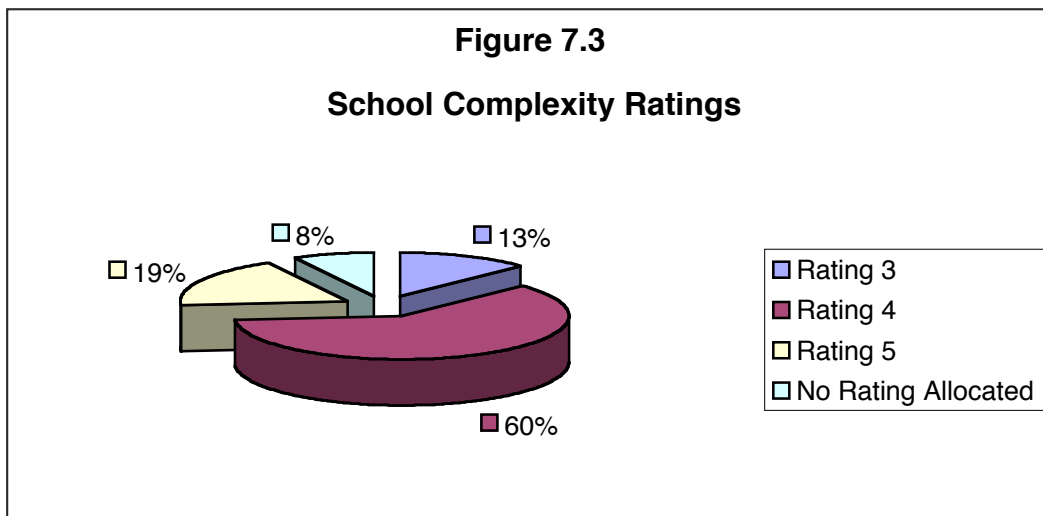


## 7.5. School Complexity Ratings

As indicated above in Section 6.2.3.1, the school complexity rating was a rating based on a number of variables associated with the schools in the Brisbane Catholic Education System, which were considered important in contributing to the degree of complexity within schools. The higher the rating, the more complex the school was considered to be. Figure 7.3 illustrates the distribution of the complexity ratings of schools in which the respondents carried out their roles as principal. As indicated in Section 6.2.3.1, some schools were not allocated a complexity rating, as they were constructed after the ratings were calculated and allocated. In this study eight schools fell into the latter category, and therefore, did not have a complexity rating allocated to them.

Almost one fifth of the respondents, 19% came from schools with the highest complexity rating of 5. A large majority of principals, 60% of the sample, carried out their roles in schools with complexity ratings of 4, and 13% had a medium

complexity rating of 3. There were no complexity ratings in the categories 1 or 2. This indicates that the respondents who took part in this study came from schools with medium to high complexity ratings.

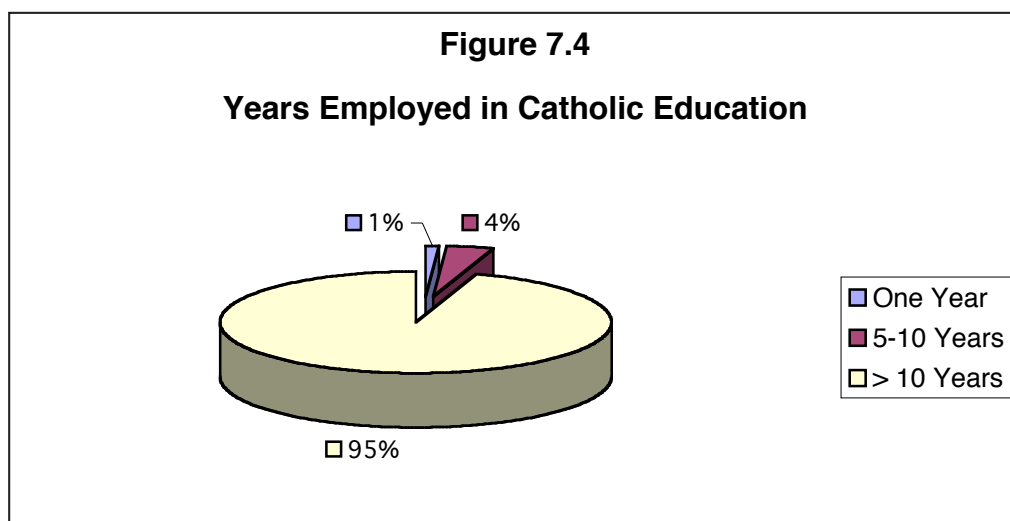


## 7.6 Personal and Professional Learning and Growth of the Respondents

A number of items in Section A of the Survey Questionnaire gathered data relating to the personal and professional learning and growth of the respondents. From a constructionist epistemology and from a symbolic interactionist's perspective, one could speculate that the construction of one's 'generalised other' of society and one's social/cultural construction of reality could be influenced by this growth and learning, and have some influence on the questions posed for this study. It was considered important therefore, to gather information on the personal and professional learning and growth of the respondents.

### 7.6.1 Length of Time Employed in Catholic Education

Figure 7.4 provides a distribution of the length of time the respondents had been employed in Catholic Education. This figure indicates that 95% of the respondents had been employed for more than ten years, while the remainder, apart from one principal who had less than two years employment in Catholic Education, had been employed from 5-10 Years. Surprisingly, no principals had been employed in the 2-5 Years range.

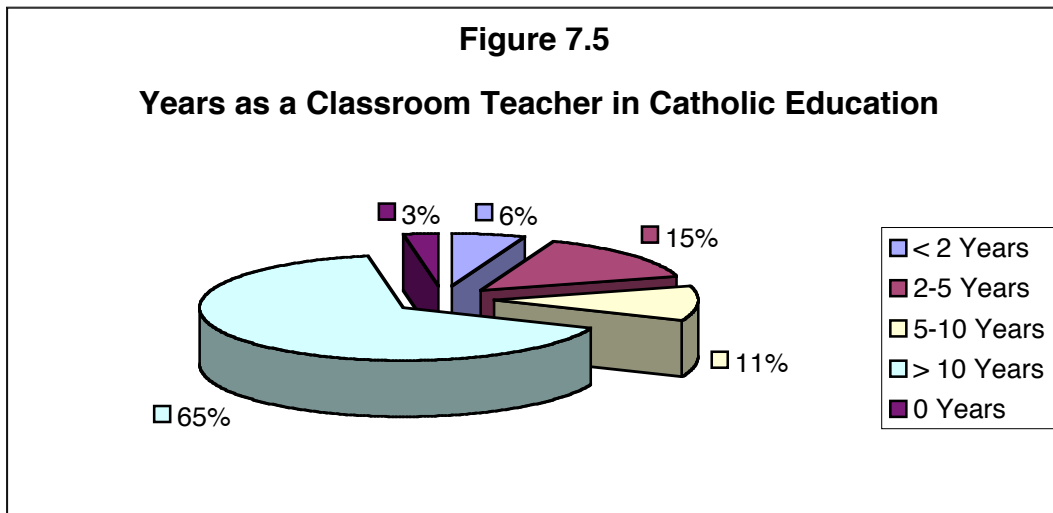


### 7.6.2 Years Spent as a Classroom Teacher

An analysis of the data relating to the number of years the respondents had spent as classroom teachers provided some interesting results. As indicated in Figure 7.5, 65% of the principals had spent more than ten years as classroom teachers in Catholic Education. This corresponds with the essential criteria, that was being requested by the employing authority, the Brisbane Catholic Education Centre (BCEC) at the time of the study, in order to be considered for a principalship in a primary school in the Brisbane Archdiocese. The criteria, outlined in Appendices 7 indicated that “Successful Primary Teaching Experience: minimum of 10 years” is required. However, the criteria was different for applicants for a principalship in secondary schools. As outlined in Appendix 8, the latter required applicants to have had “Successful Secondary Teaching Experience” and “Success in Teaching Religious Education in Catholic schools: minimum of 5 Years”.

Approximately one fifth of the respondents had less than five years classroom teaching experience in Catholic schools (< 2 Years, 6% and 2-5 Years, 15%), and surprisingly, 3% of respondents indicated that they had had no classroom teaching experience in Catholic schools. This does not mean that they had had no classroom teaching experience, but rather were most likely, respondents like R018, who joined the Catholic Education System from the Government System to

take up teaching and administrative positions, as the number of religious in Catholic schools declined from the 1960's onwards.



This raises questions about the development of these principals' understandings of the Catholic ethos. This was an issue faced by the leaders of Catholic Education as the numbers of Religious declined in Catholic schools. As indicated in Section 2.6, this issue remained until Catholic Teachers Colleges, Catholic Colleges of Advanced Education and Catholic Universities were established to educate the lay workforce for Catholic schools in the particular ethos and culture, and particularly with the introduction of leadership studies in Catholic Education. As will be shown later in Section 7.6.6, a large majority of the respondents had undertaken these leadership studies. An analysis of the data gathered here indicates that the majority of respondents had spent a large proportion of their professional careers working within the ethos of Catholic schools, and a large percentage had spent a considerable amount of that time as classroom teachers within the Catholic system, besides holding leadership positions.

### **7.6.3 Years Spent in a Leadership Role within School Leadership Teams Other Than as a Principal**

It was indicated that leadership within Catholic schools usually centered around the concept of a Leadership Team (Section 3.5). In the Brisbane Archdiocese at the time of this study, the Leadership Team in systemic schools comprised of the Principal, The Assistant to the Principal Administration (APA) and The Assistant

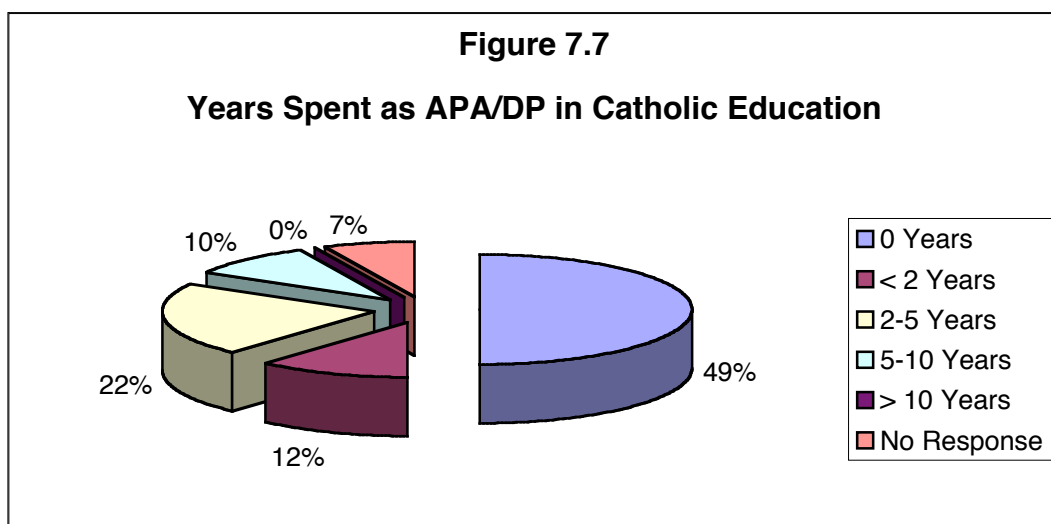
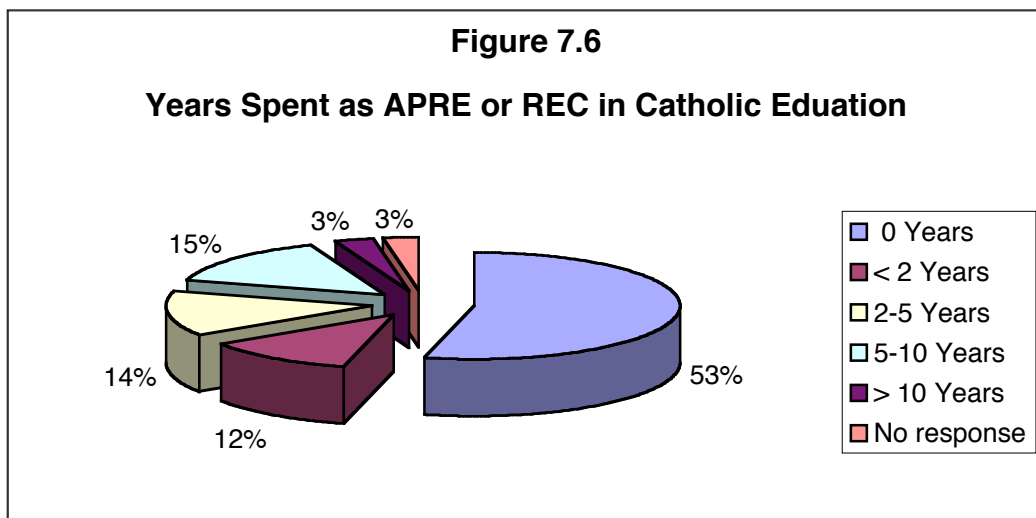
to the Principal Religious Education (APRE), and some of the larger secondary schools also had a designated role classified as Deputy Principal (DP).

The usual pathway to principalship within the Brisbane Catholic Education Systemic System at the time of this study, was via either the APRE pathway (or in some dioceses this position was referred to as the Religious Education Coordinator, REC), or the APA/DP pathway. For the purpose of this study, as many of the Deputy Principals carry out roles similar to the APA role in systemic schools, the roles of APA and AP were amalgamated on Item 6 (ii) on the Survey Questionnaire. This item related to the number of years participants had spent in administrative, managerial leadership positions. Item 6(i) on the Survey Questionnaire asked participants to indicate the number of years they had carried out the role of APRE/REC. Figures 7.6 and 7.7 offer an outline of the responses to these questions.

Almost one half of the respondents, 47%, had held the role of APRE/REC and of these, 12% had held the position for up to 2 Years and 14% for 2—5 Years. Of the remainder, 15% had held the position for 5-10 Years and only 3% beyond 10 Years. The analysis of this data supports the notion outlined above that carrying out the role of APRE/REC for a period of time was one pathway to principalship, and the findings are also consistent with the required teaching experience mentioned earlier which was being used as one of the selection criteria by the BCEC at the time of this study to appoint principals within that system of schools.

The alternative prominent pathway to principalship appears to be via the APA/DP pathway. It was not surprising therefore, to find a similar pattern emerging when examining the number of years participants had spent in the APA/DP roles. Approximately half of the participants, 51%, had held the position of APA/DP, with 12% having held the position for up to 2 Years, 22% for 2-5 Years, 10% for 5-10 Years, and surprisingly, no participants had held the role for more than 10 Years. The results of these analyses support the comments made above about the normal pathways to principalship and the selection criteria used for recruiting

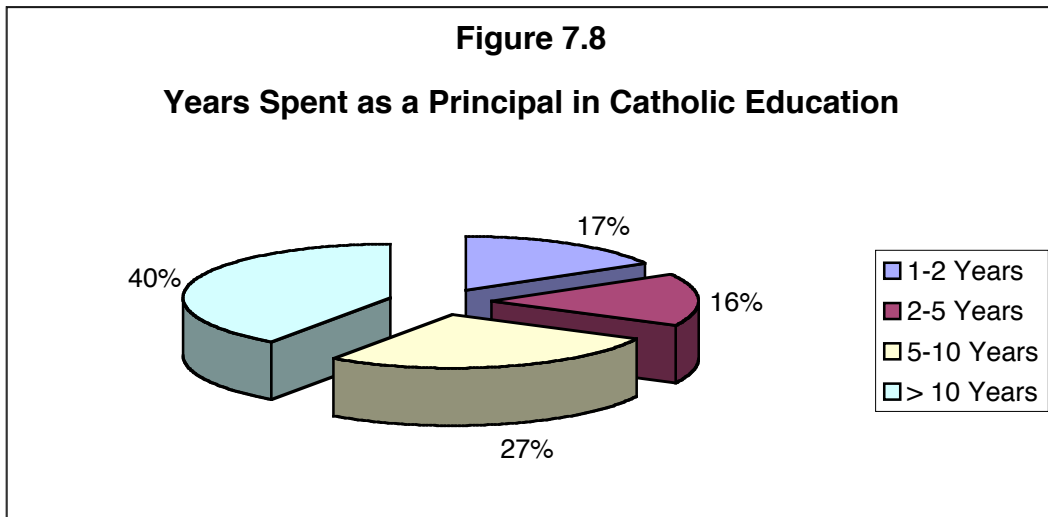
new personnel to the role of principal within the Brisbane Catholic Education System. These findings also indicate that the large majority of people in the Brisbane Catholic Education Systemic System, when entering leadership positions as part of School Leadership Teams, attain a principalship within ten years, and that the School Leadership Teams are a source of nurturing future principals. This has implications in relation to succession planning, and in relation to this study, the preparation for future principals to deal with the legal issues impacting on Catholic schools.



#### 7.6.4 Years Spent as a Principal Within the Catholic Education System

Figure 7.8 indicates that 40% of the respondents had had more than 10 Years experience as a principal. This figure also reveals that almost 27% of

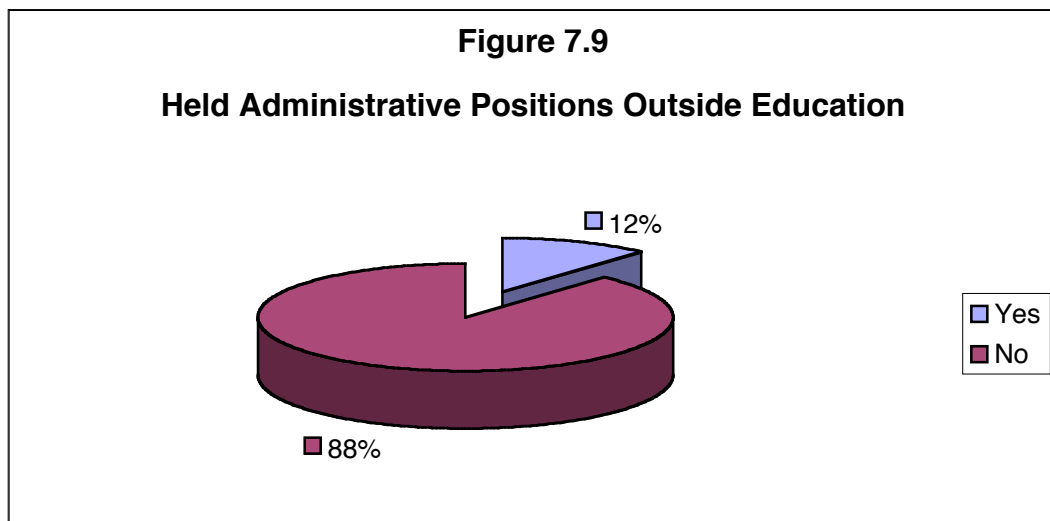
respondents had held the role of principal for 5-10 Years, making 67% of those who participated in the study having held the position of principal for 5 Years or more. Of the remainder, 33% had held the position for less than 5 Years, with 17% carrying out the role for less than 2 Years. This data was used to examine the influence of the length of time spent as a principal in relation to the questions posed for this study.



#### **7.6.5 Respondents Who Had Held Administrative Positions Outside of Education**

Item 7 on the Survey Questionnaire gathered data on the administrative experience respondents had had outside education. Figure 7.9 reveals that 12% of respondents had carried out administrative duties outside education. From comments returned with the survey instrument in relation to this item, it appears a wide variety of leadership roles had been undertaken by those who had experienced a work environment outside education. For example, one respondent had held a managerial role in a Public Service Department of the Queensland Government for 5 years (R116), another had held a leadership role in the rural sector with the Farmers and Wool Growers Association for 6 years (R018), a number had leadership positions in finance, manufacturing and service industries (R055; R077; R082; R011), while two had been self employed and carried out their own businesses (R123; R125). This data provided an

opportunity to examine possible influences experience in administrative positions outside education had with regard to the questions posed in this study.



#### **7.6.6 Studies in Leadership in Catholic Schools Undertaken by the Respondents**

The issue of people in leadership positions in Catholic schools having some understanding of the ethos of Catholic Education was raised earlier. It was pointed out that this was a concern facing senior administrators in Catholic Education, as the number of religious in Catholic schools started to rapidly decline from the 1960's onwards. As a result, in the 1970's and 1980's, Catholic Education System authorities structured their own leadership courses in Catholic Education, or in collaboration with newly formed Catholic Tertiary Institutions, and began requesting persons holding leadership positions in Catholic schools to undertake such studies. This initiative by Catholic employing authorities can be seen from the 'Eligibility Criteria' for principalship for both primary and secondary schools set by the Brisbane Catholic Education System, as outlined in Appendices 7 and 8. Figures 7.10, 7.11 and 7.12 present an analysis of the data gathered in relation to this issue.

Figure 7.10 gives an indication of the percentage of respondents who had undertaken studies relating to leadership in Catholic schools. This figure reveals that 84% of the respondents had undertaken such studies and Figure 7.11,



constructed from the data gathered from responses to Item 9 (ii) on the Survey Questionnaire, indicates that all but 1% who responded to this question, had undertaken these studies at post graduate level.

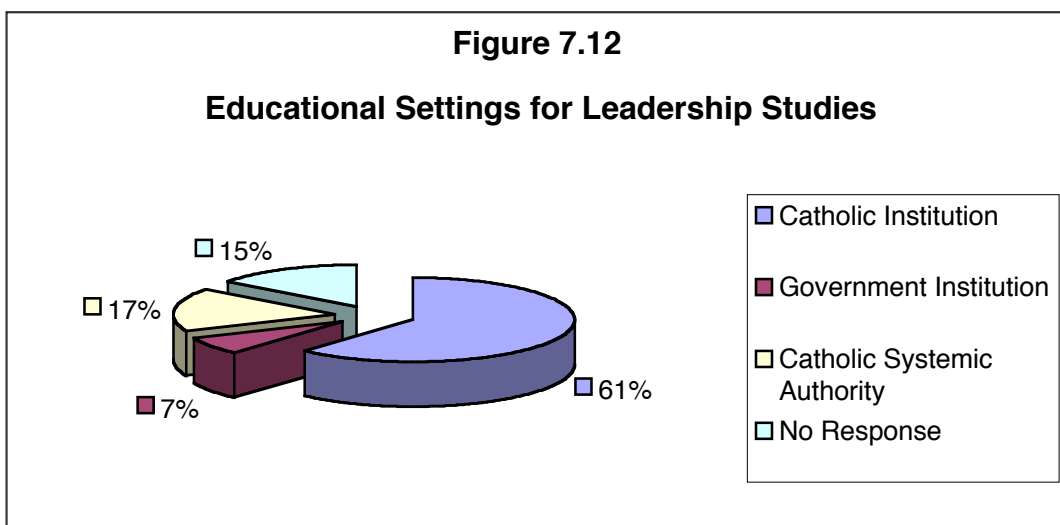
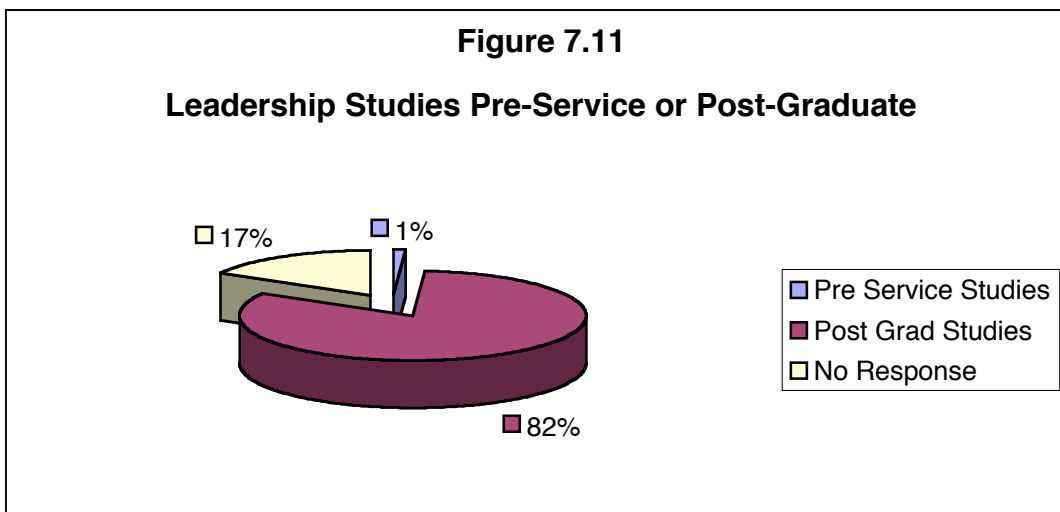
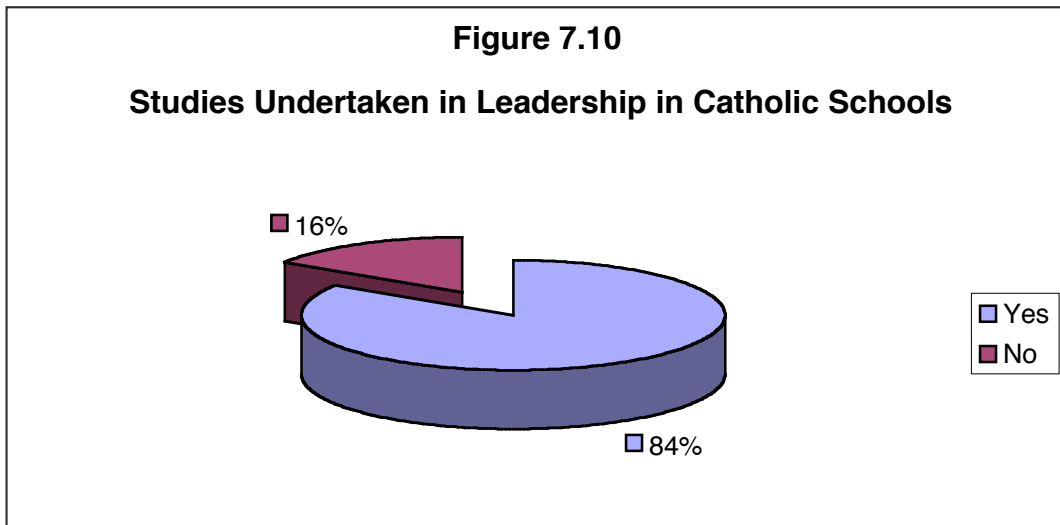
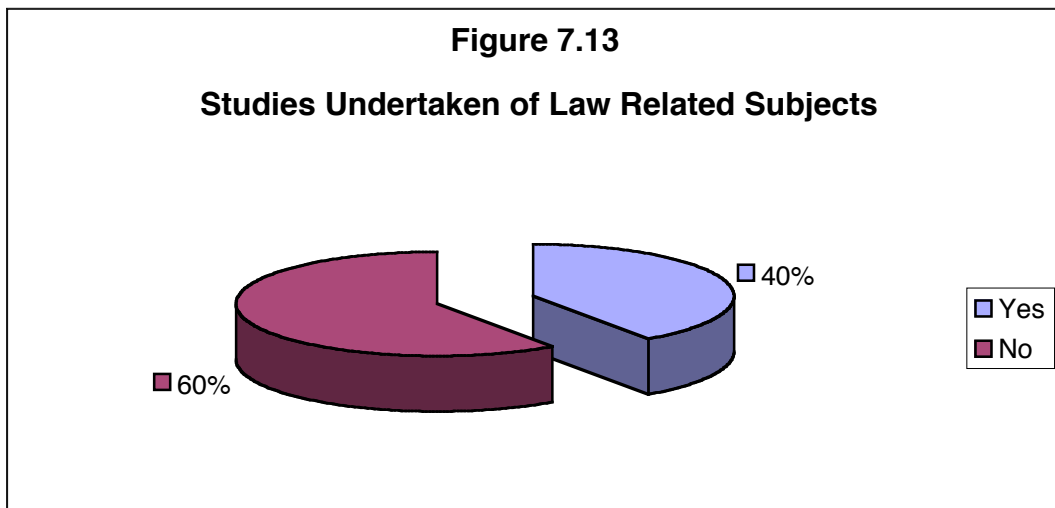


Figure 7.12 which was constructed from the data gathered under Item 9 (iii), reveals that 61% of the respondents to this question had undertaken their leadership studies in a Catholic university, 7% at Government universities and 17% had undertaken these studies in personal, professional development courses which were conducted by Catholic Education Employing authorities themselves.

### 7.6.7 Law Related Studies Undertaken by the Respondents

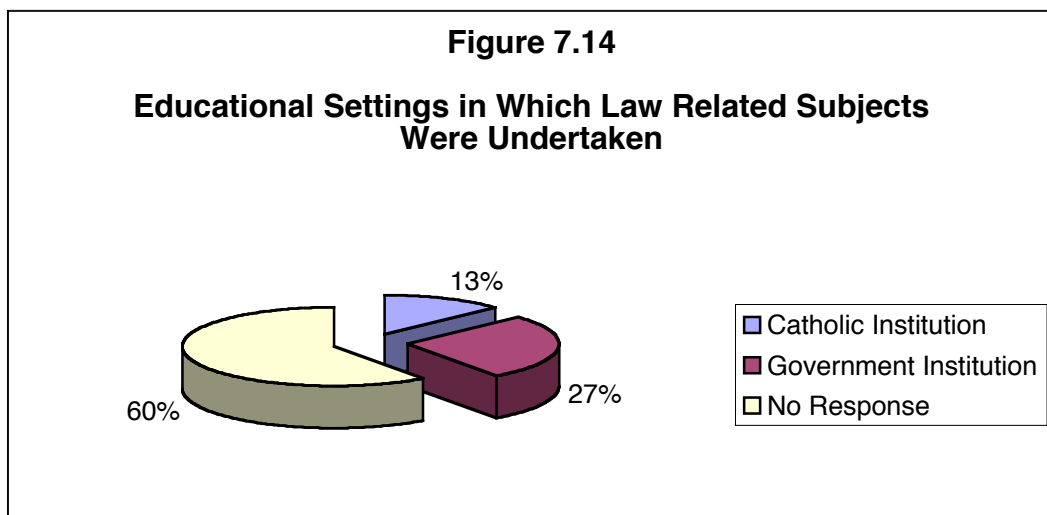
Item 10 on the Survey Questionnaire gathered information from the respondents in relation to their exposure to law related subjects, while undertaking their initial teacher qualifications and any post graduate academic studies. Figure 7.13 indicates that only 40% of the respondents had undertaken studies of a legal nature while gaining their academic qualifications. Further analysis of the data also revealed that all but six of these respondents had received this exposure during post graduate studies. The comments returned with the survey indicate that the few undergraduate legal studies that were completed were part of Business and/or Commerce Degrees (R077; R104; R124). This indicates that very little was being done in this area in initial teacher preparation programs.



As outlined in Figure 7.14, the presentation of the data also reveals that of the 40% who had carried out some studies in legal areas, 68% of them had undertaken these studies in Government institutions. Only 13% of the whole

sample had undertaken any studies relating to legal issues impacting on them as leaders in Catholic schools in a Catholic institution.

The general comments made on the survey in relation to this issue, indicate that those who had undertaken these studies at a post graduate level, had done so mainly at two Government universities, where studies in legal issues were offered as part of a Graduate Diploma in Education Administration (R014; R019; R039; R075; R078; R088; R091; R105). Of the 13% who had undertaken any formal studies in law related matters in Catholic institutions, the comments provided indicate that the majority of the latter studies had been undertaken at the Australian Catholic University in units which were part of a Masters of Educational Leadership Degree (R032; R089; R091; R098; R116; R117).



When it came to less formal study, such as the provision of in-service, and continued personal and professional growth and learning opportunities designed to cover specific legal issues, an analysis of the data gathered in this study under Item 11 on the Survey Questionnaire, indicates that there was an increased involvement of principals. However, as Figure 7.15 displays, this increased involvement only extended to 52% of the respondents.

This table reveals that the majority of in-service type courses undertaken were of a general nature and covered a number of legal issues. Most of the courses undertaken were day-long courses and two of these, namely the workplace health and safety and WorkCover courses, which dealt with recently introduced

and/or revised legislation, were a series of day courses sometimes conducted on sequential days with very little time for reflection and latent learning. The table also indicates that family law issues and negligence issues associated with duty of care, feature in the personal and professional learning experiences principals had undertaken.

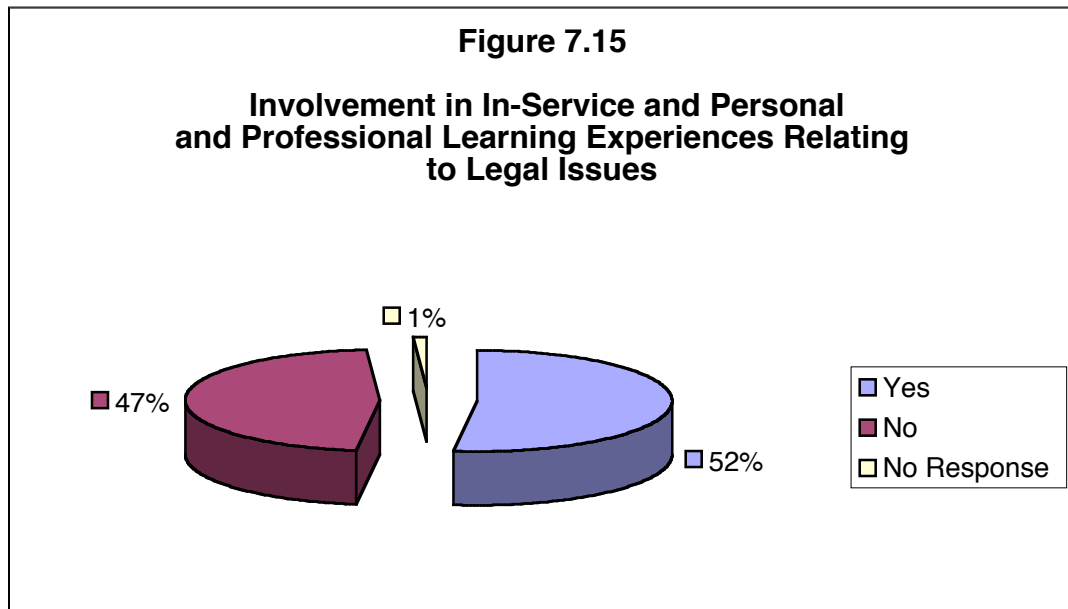


Table 7.2 outlined below, was drawn up from the general comments made by participants in relation to Item 11 on the Survey Questionnaire. This table gives an indication of the types of in-service and personal and professional learning experiences related to legal issues undertaken by participants in the study, and the duration of these in-service and personal and professional learning experiences.

A perusal of Table 7.2, and Table 11.1 which is presented later in Section 11.2 which provides an outline of the data gathered as a participant observer, reveals that there is some correlation between the two tables. While both tables indicate that the courses presented were of a general nature, negligence, family law and WorkCover issues feature prominently in both tables. This gives some indication that in-service and professional learning experiences provided are fulfilling a need in exposing some principals to understandings relating to some of the areas of the law impacting on the leadership and management of their schools.

However, the question still remains where are a large number of principals receiving and developing understandings of these legal issues?

**Table 7.2**

**Duration and Types of Courses Attended by Respondents as In-Service and Personal and Professional Learning Experiences Related to Legal Issues**

Types of Course	No: Courses	Duration Day(s)	Duration Up to 3 Hours
General Overview Covering a Number of Legal Issues	52	35	17
Workplace Health & Safety	20	20	0
Negligence (Duty of Care)	8	4	4
Family Law	5	3	2
Work Cover (Worker's Compensation)	4	4	0
Bullying	1	1	0
Copyright	1	1	0
Child Protection	2	2	0
Total	93	70	23

**7.7 Summary of Chapter 7**

Of the 124 principals who were invited to complete the Survey Questionnaire, 102 completed and returned the instrument. This gave an overall percentage return of just over 82%. There was an excellent return of 96% from the secondary principals invited to take part. However, the percentage return from principals in the primary schools was less impressive with a 79% return.

Male respondents outnumbered female respondents by approximately two to one. This reflected the ratio of male to female principals invited to take part in the project. The majority of respondents came from Catholic schools within the Greater Brisbane Region, which also reflected the geographical distribution of principals invited to take part in the study. The remainder of respondents were scattered across locations on the Sunshine and Gold Coasts and small rural

communities in South Eastern Queensland. However, there was a sufficient number of respondents from each of the geographical locations mentioned, to allowed statistical analyses in an examination of the impact of location on the questions posed in this study. In terms of school complexity, which was based on a rating scale of 1 to 5, calculated by reference to a number of characteristics in a school including student numbers, an analysis of the data revealed that the respondents carried out their roles in schools with medium to high complexity ratings.

The information gathered on the personal and professional learning and growth of the respondents indicates that all but a few of the principals had followed one of two major career paths in their journey to principalship. This pathway included being employed in the Catholic Education System for ten years or more, being a classroom teacher for a number of those years, (though as was pointed out, this may not necessarily have been teaching in a Catholic school), and then taking up a leadership position in a School Leadership Team as an Assistant to a Principal in an administrative role, or Assistant to a Principal in a Religious Education role. The findings reveal that most respondents attained a principalship within ten years of taking up one of these leadership positions. Two thirds of the respondents had occupied the role of principal for more than five years.

The results show that most principals who took part in the research study had undertaken studies in leadership almost exclusively in post graduate studies. When it came to law related matters, very few principals had undertaken studies in this area. Such studies were almost non-existent in the initial teacher training courses of the principals surveyed, and where such studies had been undertaken, they were included in post graduate studies, mainly in Graduate Diploma courses as part of an administration type degree, or as subject units as part of a Masters Degree. On the whole, very few formal studies were undertaken by principals in law related matters in Catholic institutions. Even when it came to in-service and personal and professional learning experiences geared to specific legal issues, approximately half of the respondents had

undertaken such activities. This raises issues of where and how the majority of principals of Catholic schools are gaining their understandings of legal issues that are impacting on their leadership roles as leaders of their school communities, and the expectations employers have of their leaders surrounding this issue.

The above analysis indicates that most participants had been considerably immersed in the culture and ethos of Catholic schools, with many of them having over ten years involvement with Catholic Education and with a large majority having undertaken leadership studies in relation to leadership within the Catholic School. One could predict, therefore, that the respondents would have a reasonable understanding of the characteristics of the Catholic school outlined in Section 2.8. However, formal exposure of the respondents to developing understandings of legal issues was less impressive, and one might ask from where principals are developing their knowledge and understandings in this area. The literature review Chapter 4 indicates that a number of legal matters are impacting on schools, and school leaders are being exposed more and more to dealing with legal issues. Therefore, the Specific Research Questions posed in this study are pertinent.

## **CHAPTER 8**

### **PRESENTATION AND ANALYSES OF DATA RELATING TO SPECIFIC RESEARCH QUESTION ONE GATHERED VIA THE SURVEY QUESTIONNAIRE**

#### **8.1 Introduction**

A review of the literature indicates that various areas of the law impact on schools in Australia. Outlines of these areas of the law (Edwards, Knott & Riley, 1997; Knott, Tronc & Middleton, 1980; Nolan & Spencer, 1997; Ramsay & Shorten, 1996; Tronc, 1996b; Tronc & Sleigh, 1989.) indicate that the sources of this influence originate from a range of statutes, in both state and federal jurisdictions and from common law, and that they have an effect on a number of school activities, policies and practices.

The presentation of the data in the previous chapter gathered under Items 10 and 11 on the Survey Questionnaire, indicates that some principals had undertaken academic study or attended in-service and personal and professional experiences associated with the law. The discussions there, indicate that these learning experiences covered a wide range of legal issues and that some areas were more prominent than others. Presumably, principals took part in these learning experiences to gain some knowledge and understanding of issues impacting on them in their roles as leaders in Catholic school communities.

Specific Research Question One was aimed at gathering data to identify those areas of the law with which principals in Catholic schools are involved and are having to deal with in carrying out their leadership roles. Items 13, 14 and 15 on the Survey Questionnaire were constructed with the intention of obtaining evidence from principals in relation to this issue. The purpose of this chapter is to present an analysis of the data gathered under Items 13, 14 and 15.



Items 13, 14 and 15 were designed to examine this question, by separating the two major areas of law, namely common law and statute law. However, as explained in the development of the Survey Questionnaire in Section 6.2.1.1, some criminal law issues were examined separately under Item 15. Also, it must be remembered that most criminal issues in Queensland are codified under the *Criminal Code* and are not dealt with in an interrelated manner of common law and various statutes, as is the case in some other Australian states (Herlihy & Kenny, 1984).

Items 13, 14 and 15 on the Survey Questionnaire listed the major areas of the law that were impacting on schools in Queensland. The areas listed were those which featured prominently in the literature as having an impact on schools, including those identified by Stewart's study (1996), which gave a breakdown of the legislation, common law and criminal law areas impacting on Government schools in Queensland. Also in developing this list, as indicated in the development of the Survey Questionnaire, information gathered by the researcher as a participant observer (see Section 6.2.2) in discussions and interactions with relevant personnel in the Brisbane Catholic Education Centre (BCEC) and with principals carrying out their roles in Catholic schools throughout the Brisbane Catholic Education System, was also taken into consideration.

Under Item 13, which dealt with statute law, principals were asked to indicate whether they had had involvement with the legislation listed. Involvement in this instance was defined on the survey instrument as, "where you as a Principal, or a member of your staff has had to access, be trained in the aspects of or utilise the statute, or part of the statute, or a court decision on the statute, or respond to a writ, summons and/or request to provide information, or a statement on a matter covered by the statute". Principals were also given the opportunity to add additional legislation not listed on the survey with which they had had involvement.

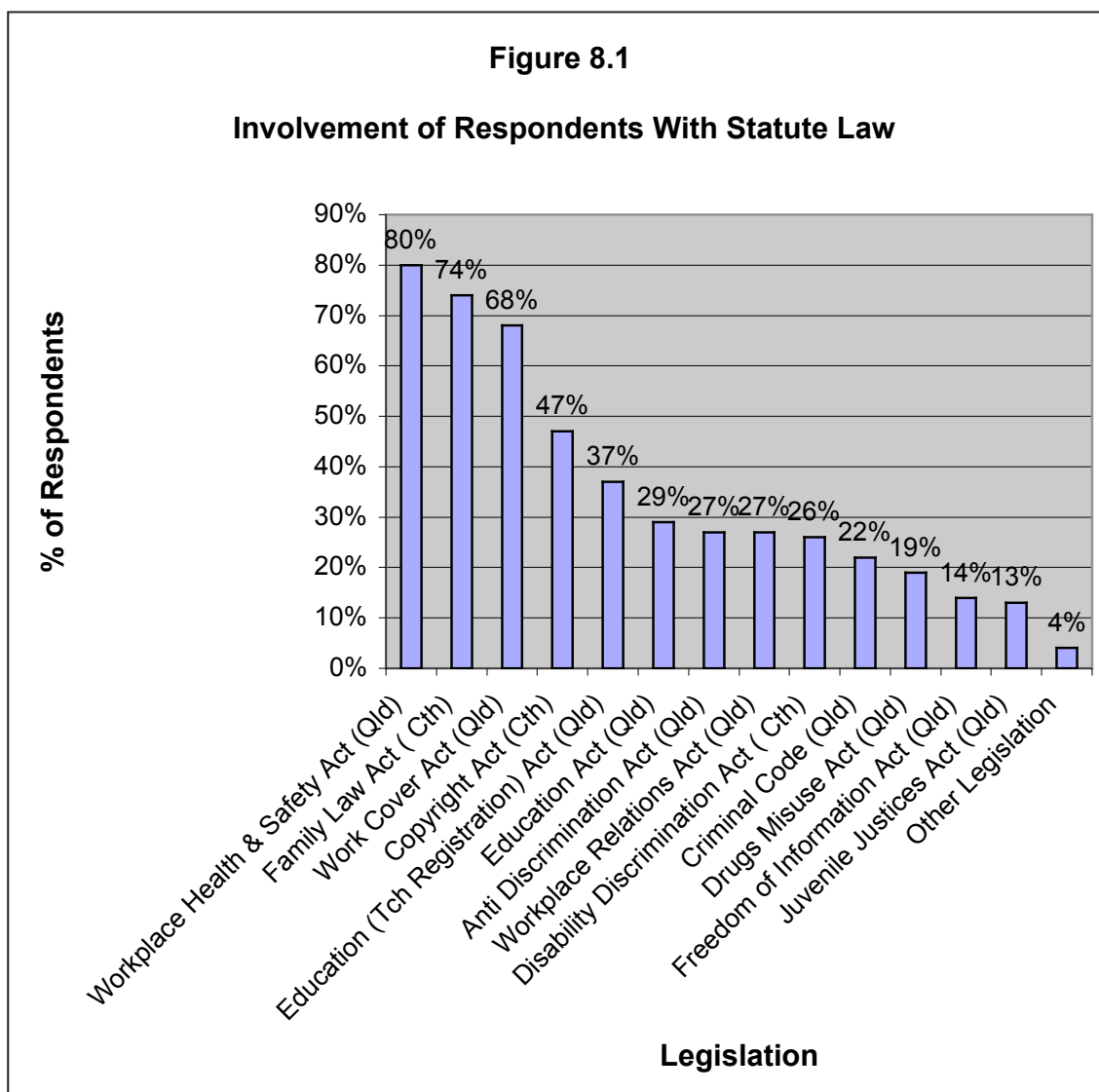
Common law and criminal law matters were examined under Items 14 and 15. Item 14 related to common law issues and Item 15 listed the prominent criminal issues faced by principals that were identified in Stewart's (1996) study. The latter were: breaking, entering and vandalism of school premises and equipment; physical abuse: assault by students; physical abuse: assault by teachers; physical abuse: indecent dealings; theft; and, use of illegal substances. These were listed as separate items for principals to respond to on the survey instrument. Involvement for both Items 14 and 15 was defined on the instrument as, "where you as Principal, or a member of your school staff has had to respond to a writ, or a summons and/or a request to provide information, or a statement on a matter" relating to any of the areas listed.

## **8.2 Statute Law Impacting on the Administration of Catholic Schools**

A break down of responses by principals who took part in this study in relation to their involvement with the items of legislation listed under Item 13, is provided in Figure 8.1. This figure reveals the respondents had had involvement with all the statutes listed on the questionnaire and that this involvement ranged across state and federal jurisdictions. It also indicates that there were some aspects of legislation with which principals were involved that were not listed in Item 13.

### **8.2.1 Workplace Health and Safety Act (Qld)**

The data gathered under Item 13, indicate that the highest involvement with legislative matters was associated with the Queensland *Workplace Health and Safety (WH&S) Act*, with 80% of principals having had some involvement. The comments returned with the survey instrument seem to indicate that dealing with this statute is associated with "numerous time consuming issues related to WH&S regulations" (R026). One respondent perceived the involvement as "simply determining appropriate responsibilities" (R004), while another commented on what he believed was a need to seek clarification on the issues raised by the WH&S legislation (R078).



Other comments on the involvement with this act referred to the training that principals and others were being asked to undertake in order to comply with the legislation (R002; R025; R076; R081). Another respondent commented on a notice received under this legislation which necessitated a check on all substances in the school, removal from the school of those considered inappropriate, development of a register of substances held within the school and providing a risk assessment of those on the register (R079). There is no doubt with the percentage of respondents having involvement with this act, and the comments made on that involvement, that this legislation is having an impact on leaders in Catholic schools.

### **8.2.2 Family Law Act (Cth)**

Figure 8.1 indicates 74% of principals had some involvement with the *Family Law Act*, which comes under commonwealth legislation. In the comments returned with the survey, principals indicated that the major involvement with this act centred around custody, access and residency issues (R004; R026; R052; R056; R060; R079; R081; R121; R122; R123). Other comments referred to having to provide statements to courts about the physical welfare of students, the subject of Family Court proceedings (R019), providing documentation and information to courts and solicitors (R117; R123) such as class rolls (R026), and being subpoenaed to court to give evidence (R037; R044; R060; R079). As outlined above in Section 4.7.1.3, this involvement can be complicated by protection and restraining orders, and this was supported by comments returned with the survey questionnaire (R026). There can be little doubt that this is an area of the law that is having a large impact on principals and their leadership of schools.

### **8.2.3 WorkCover Act (Qld) / (Workers Compensation) Legislation**

Figure 8.1 reveals that principals have had a high involvement with the Queensland *WorkCover Act*, which replaced the previous workers' compensation legislation. Well over two-thirds of the principals (68%), indicated some involvement with this legislation. Comments returned with the survey indicated the involvement with this area of the law covered such matters as, attending personal and professional learning and training relating to the act and associated *Workplace Rehabilitation Act* (R032; R076; R081; R125), dealing with and submitting claims for employees injured on the way to work (R025) and while on school campus sites (R026; R125), managing the rehabilitation of injured workers back into the workplace and carrying out the detailed procedures involved in these circumstances under the associated rehabilitation legislation and regulations (R004; R032; R122). The comments also referred to being interviewed by and providing information and documentation to WorkCover personnel relating to claims made under the act (R052; R079), especially when

appeals occurred against WorkCover decisions (R078). Involvement also extended to dealing with claims for permanent disability and associated superannuation and insurance issues (R022). This information demonstrates that a large number of principals are involved with this area of the law.

#### **8.2.4 Copyright Act (Cth)**

The survey returns reveal that 47% of respondents had had involvement with copyright law. Involvement here extended to issues associated with school musical performances (R032, R081), copyright audits in schools (R059), issues associated with copying videos (R113), ensuring that staff had access to the regulations relating to copyright law (R076) and new staff being made aware of the legislation in induction procedures (R079). The extent to which respondents indicated an involvement with this legislation confirmed its impact on Catholic schools, and also support the inclusion of a scenario on this area of the law in Section C on the questionnaire.

#### **8.2.5 Education (Teacher Registration) Act (Qld)**

The registration of teachers, which gives them authority to be employed as a teacher, has become an important issue across many of the state jurisdictions within Australia. A number of states have a legislative framework for the registration of teachers (Ramsay & Shorten, 1996), and others, such as New South Wales, are in the process of establishing such a framework (Ramsey, 2000). This registration does not only relate to achieving a particular level of understanding and expertise by attaining recognised academic achievement and a certain level of competency based skills, but also relates to the notion of people being fit and proper persons to be employed as teachers.

This move to register teachers to be eligible for employment as a teacher, has not only been attributed to an undertaking to lift the quality of teachers, and learning and teaching, but also as a screening process relating to child abuse matters.

The latter has surfaced in the education sector in the past few years as a result of inquiries into child abuse issues. This awakening to the extent of child abuse in the education sector and increased awareness of such behaviours, and the legislative consequences was referred to in Section 4.7.2.5. In light of these developments and from information gathered as a participant observer, it was considered important to include the *Education (Teacher Registration) Act (Qld)* in Item 13. As can be observed from Figure 8.1, 37% of respondents revealed some involvement with this legislation. These results vindicate the inclusion of this act in the list of legislation in the questionnaire, and confirm the involvement of a considerable percentage of principals with this statute.

### **8.2.6 Education Act (Qld)**

As pointed out in Section 4.7.2.1, the various states have legislation and regulations covering the provision of schooling within their jurisdiction, as the constitutional arrangements which set up the Commonwealth of Australia as a Federation, designated Education as part of the states' jurisdiction. In Queensland, therefore, Catholic schools, are subject to various sections of the State *Education Act*. Figure 8.1 indicates that 29% of respondents had been involved with this act. The extent of this involvement also justified the inclusion of a scenario relating to this statute in Section C of the Survey Questionnaire.

### **8.2.7 Anti-Discrimination Legislation**

In relation to anti-discrimination legislation, the analysis of the data gathered under Item 13 indicates that principals had had involvement with both the state and commonwealth legislation. In Section 4.4 of this study, it was indicated that under s.109 of the Commonwealth Constitution where there is inconsistency between a federal and state law, the federal law prevails. However, where it is clear that the federal legislation does not intend to cover the field associated with the statute, state laws also apply. This is the case with regard to anti-discrimination legislation, as the Federal Government has left state governments

free to enact their own legislation in this area. Thus, principals of schools have been faced with having to comply with both sets of legislation where these exist, as is the case in Queensland, where that state has enacted its own anti-discrimination legislation. Almost one third of the respondents had had involvement with both the federal and state legislation. Figure 8.1 indicates that 27% had had involvement with the *Anti-Discrimination Act* of Queensland, and 26% with the federal legislation, the *Disability Discrimination Act*.

Comments returned with the survey instrument indicated that much of the involvement with the anti-discrimination legislation, was related to enrolment and continued enrolment of students with special education needs in regular classrooms (R007; R032; R059; R103). For example, one respondent relayed a situation where a claimant argued that “a Year 2 child [was] being discriminated against for not being placed in an ‘enrichment’ class” (R015). However, involvement with anti-discrimination legislation was not confined to enrolment, as other comments returned in with the survey instrument indicated respondents had had involvement with allegations of discrimination on racial grounds (R025), and another respondent reported being involved with this act through having to appear before a tribunal, because a sacked teacher claimed to have had his employment terminated based on his political affiliations (R113).

#### **8.2.8 Workplace Relations Act (Qld) / Industrial Relations Legislation**

It was surprising to note that only 27% of the respondents had had involvement with industrial relations legislation, as a whole unit in Employee Services had been set up within the BCEC to deal with legal matters of this nature. Comments returned with the survey instrument indicated that the involvement in this area of the law covered issues like: dealing with complaints emanating from the teachers’ union such as a “complaint by a teacher to the union about being overworked - hours of duty” (R055), having to seek advice and clarify issues relating to dealing with the performance of incompetent staff; both teachers and support staff (R078; R104; R118), and dealing with unfair dismissal laws (R113).

### **8.2.9 Legislation Associated With Criminal Matters**

Some matters of a criminal nature expounded in Stewart's study (1996) were addressed separately under Item 15. The most prominent issues of a criminal nature in which respondents had been involved are therefore analysed under that item. However, Figure 8.1 indicates 22% of respondents had had involvement with the *Criminal Code* per se, and also a number of them had dealt with other legislation of a criminal nature.

In Queensland, the *Drugs Misuse Act* is a separate act to the *Criminal Code*, and was an area of the law identified in discussions prior to developing the questionnaire (see Section 6.2.1.1) as having an impact on principals in Catholic schools, particularly in secondary colleges. The results outlined in Figure 8.1 confirm that this area of the law is having an impact on Catholic schools, with 19% of the respondents indicating that they had had some involvement with this act.

It is feasible to expect that with the percentage of respondents indicating involvement with the *Criminal Code* and the *Drugs Misuse Act*, that there would be involvement also with the *Juvenile Justices Act* (Qld). As was expressed by one of the respondents (R076), there is a relationship between criminal issues and the juvenile justice system. This relationship was confirmed by the responses to Item 13, with 13% of respondents indicating involvement with this act. These percentages revealed in Figure 8.1 indicate that matters of a criminal nature are having an impact on Catholic schools.

### **8.2.10 Freedom of Information Legislation**

Although Catholic schools were not directly subject to the *Freedom of Information Act* in Queensland, as indicated by the discussions earlier (see details outlining substituting the scenarios relating to this legislation in Stewart's (1996) questionnaire, Section 6.2.1.1), a decision was made to include the legislation in



Item 13, as discussions with others relating to this study revealed that this legislation seemed to be having an indirect impact on Catholic schools. The fact that 14% of principals indicated some involvement with the act justifies its inclusion, and that this legislation is having some indirect influence on Catholic schools.

### **8.2.11 Involvement With Other Legislation**

Respondents were given the opportunity to list additional legislation with which they had been involved. Some respondents recorded other legislation than that presented to them under Item 13, with which they had had involvement. This additional involvement related to heritage and environmental legislation (R026; R074), legislation dealing with dangerous weapons (R052; R117) and the *Trade Practices Act* (R121).

## **8.3 Issues of a Criminal Nature Impacting on Catholic Schools**

The presentation of the data gathered under Item 13 indicates that over 22% of respondents had had some involvement with the *Criminal Code*. It was mentioned above that most criminal issues in Queensland are codified under the *Criminal Code*, and are not treated in an interrelated manner of common law and various statutes as is the case in some other Australian state jurisdictions. Thus, in Queensland, issues of a criminal nature that principals in Catholic schools are faced with, will mean some involvement with the *Criminal Code*.

The types of criminal issues faced by principals in Government schools in Queensland were identified in Stewart's study (1996). As indicated in Section 6.2.1.1, these issues were listed under Item 15 as separate items for principals to respond to on the Survey Questionnaire. The items listed were: breaking and entering and vandalism of school premises and equipment; physical abuse: assault by (students); physical abuse: assault by (teachers); physical abuse: indecent dealings; theft; and, use of illegal substances. As outlined above, the

latter is linked to the *Drugs Misuse Act*. Respondents were asked to indicate if they had had involvement with these items. Involvement with these items was as outlined for Items 14 and 15 in the introduction to this Chapter. Figure 8.2 gives an analysis of respondents' involvement with these items.

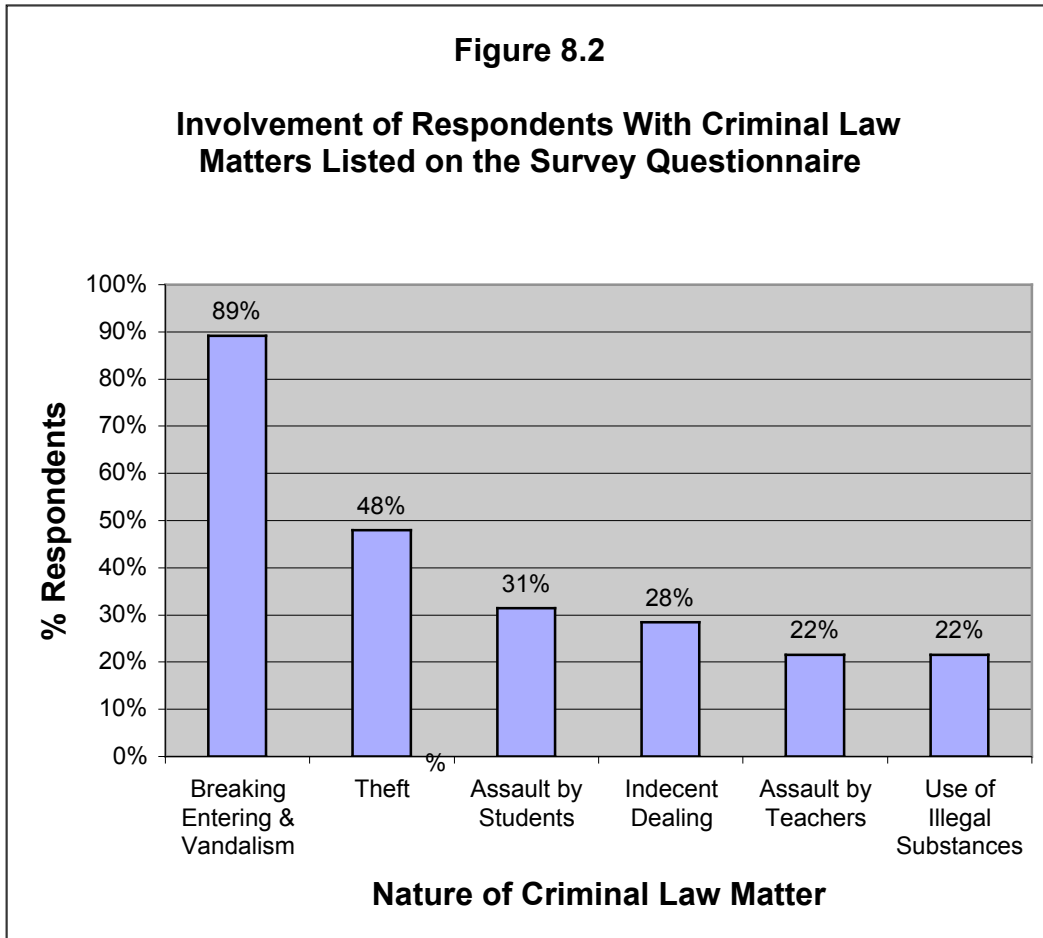
### **8.3.1 Breaking and Entering and Vandalism of School Premises and Equipment**

Figure 8.2 provides an outline of the involvement of respondents with the criminal law matters listed on the survey instrument. From this analysis it can be seen that over 89% of the respondents had had some involvement with matters associated with breaking and entering, and vandalism of school premises and equipment. A number of respondents (R002; R007; R019; R040; R047; R063; R081; R103; R108), indicated numerous episodes of involvement with this criminal law area. One respondent reported "vandalism; thrashing of offices, smashing of doors, windows, skylights, and fire hose furniture" (R055).

Respondents commented on the amount of time taken up over breaking and entering, and vandalism episodes (R002; R007; R019; R040; R047; R079; R081; R094; R103; R122). This involvement had a range of facets: "having to be ready to go to court to present an account of what had been reported to police" (R091), reporting to and holding discussions with the police (R019; R124), and making and preparing statements for the police (R094; R100; R125). Other involvement related to supporting the gathering of finger prints (R047), being called as a witness to such incidents (R025; R122), involvement with contract cleaners and insurance companies in restoring premises to their original state (R002) and involvement with security firms (R081). As one respondent indicated, the involvement in this area amounted to "continual reports, dealing with the police and insurance companies" (R079). It appears that sometimes the impact of this involvement is not acknowledged or recognised, and insufficient follow up occurs to bring issues to a close. One respondent commented:

It has surprised me to see valuable resources expended chasing minor matters and absolutely no feedback on a matter that went to court. I

believe we need more communication with police and prosecution personnel to allow some time on our part and greater understanding of the processes following a complaint to police (R025).



There is no doubt that these criminal matters are having an impact on schools and leaders in Catholic schools.

### 8.3.2 Theft

Almost half the respondents (48%), had had involvement with matters of theft. The comments provided on the Survey Questionnaire indicated some respondents had had to deal with numerous incidents in this regard (R016; R019; R060; R067; R092; R094; R096; R100; R116; R124; R125). A number of these comments revealed a relationship between this area of the criminal law and the area mentioned above, breaking and entering and vandalism (R010; R060; R092; R094; R100; R125), which is not surprising. Some respondents, however, noted that the theft did not always relate to breaking and entering and vandalism, but

involved theft by students (R100; R116), staff and contractors engaged by the school (R116). Other instances involved theft by students outside the school in public places (R124). Where students were involved and police made contact with the school to arrange interviews with the students, the need for respondents to be aware of the legal proceedings about questioning of students became an issue. Other matters associated with such circumstances, were the necessary procedures to be taken into account in the event of having to serve as a support person at an interview for a student, or to appear in court as a witness (R059; R100; R124).

### **8.3.3 Assault by Students and Assault by Teachers**

Approximately one third (31%), of respondents had dealt with issues involving assault by students. Additional comments returned with the survey indicated that these matters included assaults by students of other students (R019; R027; R040; R113; R124), and one of the respondents associated these physical assaults with bullying (R019). Other comments indicated that involvement with this area of the law was associated with incidents that occurred off school campuses (R120; R124). Some comments revealed assault of teachers by students (R050; R087; R113), and in one case the involvement included a teacher being assaulted by an ex-student (R118). In relation to this area of the law, a number of respondents indicated that while parents and caregivers threatened to take legal action and pursue charges, the charges did not eventuate, and the issues were resolved through mediation at the local school level (R027; R040; R051).

Almost one fifth (22%), of respondents had had to deal with issues relating to assault of students by teachers. In a number of instances it appeared that a similar process in resolving these assaults was followed as was the case with student assaults, namely, that threats by parents and caregivers to press charges over these issues did not eventuate and they were resolved through mediation at the local level (R019; R025). However, occasionally charges were brought and

teachers had to appear in court, and principals were subpoenaed to appear as witnesses in the proceedings (R100; R101).

#### **8.3.4 Physical Abuse: Indecent Dealings**

Almost a third of principals (28%), had had involvement with physical abuse relating to indecent dealings. Comments returned with the survey instrument indicated that dealings with this area of the law related to cases of abuse involving parents, caregivers and family members, (R025; R055; R101; R118; R120). Other cases involved members of staff and others in the community (R060; R094). One respondent indicated that he had “sat in on several cases of alleged indecent dealings by parents” (R025). Some comments also revealed that involvement with this aspect of the law extended to having to work with school counsellors (R124), and relevant Brisbane Catholic Education Centre (BCEC) personnel, Family Services and police officers whose responsibilities were related to child abuse and child protection.

The scope of involvement also covered being present as witnesses to students’ disclosures and being support persons for students when they were interviewed by relevant personnel from the police or Family Services (R092; R094). Respondents also revealed that they had been subpoenaed to appear in court as witnesses for students (R019; R031; R113) and teachers (R060), and others revealed that they had been requested to provide various documents for hearings relating to this area of the law (R031; R101). This involvement reflects the awakening in educational settings and in the public at large to the extent of child abuse within Australian society (see Section 4.7.2.5) this awakening is not confined to Australia.

The frustration associated with some of these issues was highlighted by the comments returned with the survey instrument by two respondents:

[The] whole area of a teacher being suspended for alleged improper conduct is an apparent minefield. What is the risk of being personally sued for defamation? How to avoid this disclosure to staff? Counselling

issues. Dealing with a teacher or ancillary staff member. A long 13/14 step process (R104);

and,

A child was encouraged to leave their regular route whilst walking home by another student from another school. He took the child behind a building and exposed himself to this child (Year 2); Next day details emerged. There was checking carried out. The older student was interviewed by school guidance officer, the young child questioned by guidance officer, there existed many uncertainties about the incident. Contact with the parent was attempted and they were not able to be contacted. In the end the child (Year 2) got home before contact was able to be made, they hit the roof and contacted the police. Police accused us of withholding information. Police wanted to get the student for attempted rape. Statements were taken, court hearing organised, school Principal was to be called to give evidence. Case was not even taken to court because of insufficient evidence (R047).

### **8.3.5 Use of Illegal Substances**

The analysis of the data gathered under Item 15 on the Survey Questionnaire revealed that 22% of the respondents had been involved with matters associated with the use of illegal substances. The comments provided, indicated this involvement ranged from having to deal with situations where students used illegal substances and/or were in possession of illegal substances on the school campus (R100; R118), to the use of drugs while on work experience (R121) and to “having students charged with possession and distributing drugs at school” (R113). While most of the comments came from principals in secondary schools, some principals from primary schools commented that they had had contact with such behaviours (R015; R019; R025), and two of these revealed that the involvement amounted to students bringing substances to school and offering them for sale, but which then turned out to be ‘fake drugs’ (R015; R025).

The involvement with the use of illegal substances brought the principals into contact with the police, and comments provided, revealed that this contact ranged from having police attend the school to search for drugs (R092) to attending the school to investigate instances of substance abuse (R019). One respondent indicated this had happened “a number of times” (R116). Another respondent

commented that for him “drug use by students, or more particularly, the selling of illicit drugs, [had] been [his] only significant contact with the legal system” (R105). There is no doubt that dealing with illegal substances is an issue impacting on Catholic schools.

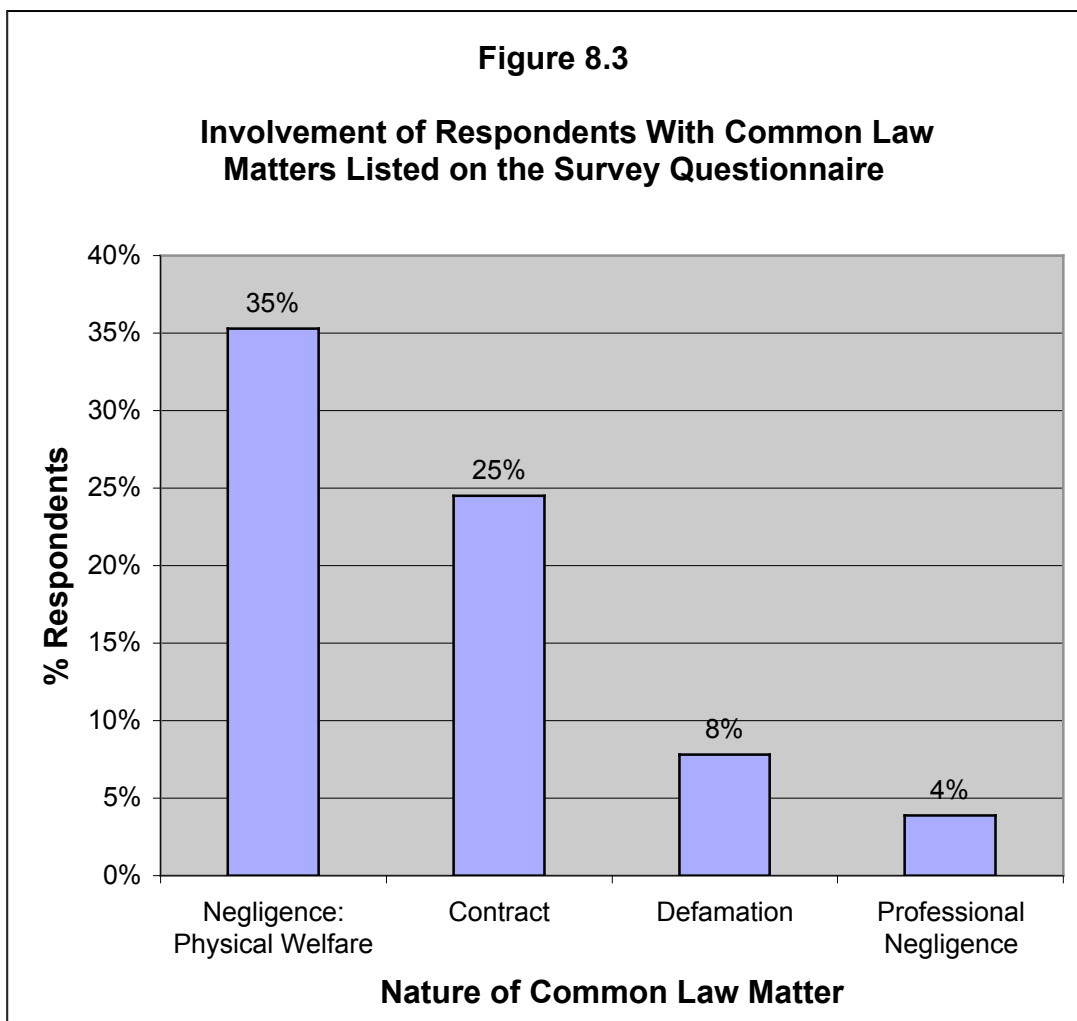
#### **8.4 Common Law Issues Impacting on Catholic Schools**

Issues of a criminal and civil nature were separated on the survey instrument, and Item 14 collected data on principals’ involvement with civil issues associated with common law. The areas of law listed under this item were identified in the literature and canvassed in Sections 4.6 to 4.6.4, and concerned the areas of negligence associated with the physical welfare of students, professional negligence relating to the intellectual welfare of students, defamation, and matters relating to contractual arrangements. The latter was added, as discussions with personnel in BCEC and information gathered as a participant observer indicated that legal contractual matters were having an impact on the leadership and administration of Catholic schools. Professional negligence was included as commentators such as Hopkins (1995) and Williams (1996a, 1995b) indicated that this was an emerging issue facing school leaders.

##### **8.4.1 Negligence Involving the Physical Welfare of Students**

Figure 8.3 indicates that 35% of respondents had been involved with negligence issues associated with the physical welfare of students. Comments provided by the respondents revealed that this involvement ranged from principals having to contact relevant personnel in Family Services, where evidence indicated that parents were not meeting their responsibilities in providing basic care for their children (R002; R092), to having parents and caregivers seeking compensation under negligence for injuries sustained at sporting events and Physical Education lessons (R015; R052; R101; R103; R118), to incidents occurring in the playground where alleged lack of supervision pointed to possible negligence claims (R094; R125), and where accidents occurred in classrooms (R101). In

relation to the latter, one principal reported an incident where “a boy had the tip chopped off his finger in a manual arts class and parents sued the school for negligence” (R101). Other comments provided by respondents indicated that the involvement extended to providing information to investigators and other relevant personnel about incidents affecting the physical welfare of students (R044) and also appearing in court as a witness (R118). In addition, respondents revealed that involvement with this area of the law necessitated contact and dialogue with the employer’s insurers (R096).



#### **8.4.2 Contract Law**

The results of the analysis on the data collected under Item 14 reveals that 25% of respondents had had involvement with the law of contract. Comments returned with the survey instrument revealed the involvement with the law of



contract covered areas such as employment contracts of staff (R047; R124), contracts of people providing maintenance and other services to schools (R118) and principals were in need of some understanding of their own contracts of employment (R058). The results offer justification for including a scenario on this aspect of the law in Section B of the survey instrument.

### **8.4.3 Professional Negligence**

The responses to Item 14 in relation to professional negligence affecting the intellectual welfare of students revealed a limited involvement of participants with this area of the law. Only 4% of respondents indicating they had had some involvement with this area of the law. This is not surprising given that the literature indicates that it is an emerging area of the law affecting administration of schools.

### **8.4.4 Defamation**

Figure 8.3 also illustrates limited contact of respondents with the legal area of defamation, with only 8% of respondents registering involvement with defamation issues. Comments returned with the survey instrument indicated that respondents had been drawn into a variety of circumstances which gave rise to issues associated with this area of the law. These included: parents taking defamation action against other members of a local Parents and Friends Association and other members of the school community (R019); a parish priest taking action against members of the school community (R025); and, parents instigating action against a teacher for comments made about their daughter and the standard of care they were providing for her (R058). Other circumstances referred to a teacher taking out a defamation action against another colleague (R113) and where principals had initiated defamation proceedings themselves, against members of the school community. In relation to the latter, one respondent (R052) indicated that at the time of the study, he was currently involved in an action where he had “initiated defamation proceedings against an

auditor over comments to a Parish Finance Committee”. While only 8% of respondents indicated involvement with this area of the law, it is certainly present within the Catholic School System and is noticeably confronting some principals in exercising their role as leaders in schools.

## **8.5 Variables Affecting the Involvement of Respondents With Statutes, Common Law and Criminal Matters Listed on the Survey Questionnaire**

The above analysis gives a generic indication of the areas of law identified by this study with which principals of Catholic schools were being involved. However, this study also set out to examine the possible influence particular variables might have on principals’ involvement with areas of the law. To this end, a number of t-tests, analyses of variance (ANOV) and Scheffe comparisons were carried out to identify any statistical significant differences ( $p < 0.05$ ), that might be attributed to primary and secondary school settings, the sex of principals, geographical location of schools and the complexity of schools, and the involvement of principals in personal and professional learning experiences associated with areas of the law. A full outline of the statistical analysis carried out in relation to this examination is contained in Volume II <sup>(9)</sup> of this study. Only statistically significant results, relating to each variable, are provided in the tables below.

### **8.5.1 Primary and Secondary School Settings and Involvement With Legal Issues**

The first variable examined in relation to involvement of principals with areas of the law was that of primary and secondary school settings. Table 8.1 outlines the statistically significant results from t-tests, which were carried out to identify differences in the involvement with statute law between principals in primary school and secondary school settings.

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9. Volume II was provided to the thesis examiners to allow them to gain a full indication of the work undertaken by the researcher to meet some of the issues of validity and reliability raised in Chapter 6 of the thesis, ‘Design of the Study’.

**Table 8.1**

**Statistically Significant Differences of Involvement of Respondents from  
Primary and Secondary Settings With Statute Law Affecting  
Catholic Schools**

**T-Test Group Statistics**

Area of the Law	No: Respondents		Mean		S D	
	Pmy	Sec	Pmy	Sec	Pmy	Sec
Criminal Code	78	24	0.14	0.46	0.350	0.509
Drugs Misuse Act	78	24	0.04	0.67	0.194	0.482
Workplace Health & Safety Act	78	24	0.76	0.96	0.432	0.204

**Independent Sample Tests**

Area of the Law		Levene's Test for Equality of Variance		T-Test for Equality of Means		
		F	Sig.	t	df	Sig. (2 tailed)
Criminal Code	Equal variance assumed	24.155	0.000 #	-3.463	100	0.001
	Equal variance not assumed			-2.853	30.003	0.008 *
Drugs Misuse Act	Equal variance assumed	82.578	0.000 #	-9.388	100	0.000
	Equal variance not assumed			-6.238	25.325	0.000 *
Workplace Health & Safety Act	Equal variance assumed	33.351	0.000#	-2.209	100	0.029
	Equal variance not assumed			-3.142	82.999	0.002 *

# Because the Levene F value is < 0.05 the equal variance not assumed row is used to determine the significance.

\* Significant Difference  $p < 0.05$ .

The areas of law which indicated a statistically significant difference of involvement between the settings were: the *Criminal Code*, the *Drugs Misuse Act* (Qld) and the *Workplace Health and Safety Act* (Qld). In relation to all the other legislation listed in Item 13 on the survey instrument (*Anti-Discrimination Act* (Qld), *Copyright Act* (Cth), *Disability Discrimination Act* (Cth), *Education Act* (Qld),

*Education (Teacher Registration) Act (Qld), Family Law Act (Cth), Freedom of Information Act (Qld), Juvenile Justice Act (Qld), WorkCover Act (Qld) and Workplace Relations Act (Qld),*) there were no statistically significant differences in principals involvement between the primary and secondary school environments. As can be demonstrated from the means provided in Table 8.1, where the differences were significant, the larger involvement occurred in the secondary settings.

The statistically significant greater involvement of principals from secondary school settings with criminal matters identified in Table 8.1 was highlighted further by the tests of comparison carried out on the data gathered under Item 15 on the survey instrument. Table 8.2 outlines that respondents from secondary schools had statistically more involvement with matters related to assaults by students, areas of theft and use of illegal substances. The latter being highly significant.

Analysis carried out on the data gathered under Item 14 of the Survey Questionnaire relating to negligence, associated with both students' physical safety and professional negligence, contract and defamation, indicates that there were no statistically significant differences in the involvement of principals from primary and secondary settings relating to these common law areas. The analysis here indicates that this study identified a numbers of legal matters that were having a more significant impact on the leadership and management of secondary schools when compared to the primary school setting, and these matters related mainly to issues of a criminal nature.

### **8.5.2 Sex of Respondents and Involvement With Legal Issues**

Analysis carried out on the data gathered under Items 13, 14 and 15 indicated that statistically significant differences were identified in relation to the sex of principals and some criminal matters and some areas of common law. Tables 8.3 and 8.4 demonstrate these significant differences.

**Table 8.2**

**Statistically Significant Differences of Involvement of Respondents From  
Primary and Secondary Settings With Matters of a Criminal Nature  
Affecting Catholic Schools**

**T-Test Group Statistics**

Area of the Law	No: Respondents		Mean		S D	
	Pmy	Sec	Pmy	Sec	Pmy	Sec
Assault by Students	78	24	0.24	0.54	0.432	0.509
Theft	78	24	0.42	0.67	0.497	0.482
Illegal Substances	78	24	0.08	0.67	0.268	0.482

**Independent Sample Tests**

Area of the Law		Levene's Test for Equality of Variance		T-Test for Equality of Means		
		F	Sig.	t	df	Sig. (2 tailed)
Assault by Students	Equal variance assumed	7.872	0.006 #	-2.832	100	0.006
	Equal variance not assumed			-2.596	33.831	0.014 *
Theft	Equal variance assumed	3.363	0.070	-2.114	100	0.037
	Equal variance not assumed			-2.150	39.304	0.038 *
Illegal Substances	Equal variance assumed	36.829	0.000 #	-7.662	100	0.000
	Equal variance not assumed			-5.732	27.525	0.000 *

# Because the Levene F value is < 0.05 the equal variance not assumed row is used to determine the significance.

\* Significant Difference: p < 0.05

When it came to issues of a criminal nature, as Table 8.3 indicates, the analysis revealed that male principals had statistically significant higher involvement with, physical abuse: assault by teachers. However, the other legal issues of a criminal nature listed on the survey did not indicate any statistically significant difference when it came to examining the involvement of respondents with legal matters and the sex of principals.

**Table 8.3**

**Statistically Significant Differences of Involvement of Male and Female Respondents With Matters of a Criminal Nature Affecting Catholic Schools**

**T-Test Group Statistics**

Area of the Law	No: Respondents		Mean		S D	
	Female	Male	Female	Male	Female	Male
Assault by Teachers	33	69	0.06	0.29	0.242	0.457

**Independent Sample Tests**

Area of the Law		Levene's Test for Equality of Variance		T-Test for Equality of Means		
		F	Sig.	t	df	Sig. (2 tailed)
Assault by Teachers	Equal variance assumed	50.001	0.000 #	-2.701	100	0.008
	Equal variance not assumed			-3.307	98.856	0.001 *

\*# Because the Levene F value is < 0.05 the equal variance not assumed row is used to determine the significance.

\* Significant Difference:  $p < 0.05$

Table 8.4, outlines the two areas where statistically significant differences ( $p < 0.05$ ) were identified in relation to common law issues. These were both associated with negligence.

The results in Table 8.4 indicate that male principals were more likely to be involved with matters of negligence associated with the physical welfare of students and also professional negligence when compared with their female colleagues. It must be remembered, however, that the latter has only a slight impact on schools as identified earlier in Section 8.4.3. All the other areas of common law listed on the Survey Questionnaire did not reveal statistically significant differences when examining the variable of the sex of respondents.

The analysis carried out in relation to Items 13,14 and 15 indicated there were no statistically significant relationships with regard to the statute law identified on the Survey Questionnaire affecting the administration of Catholic schools and the sex of respondents.

**Table 8.4**

**Statistically Significant Differences of Involvement of Male and Female Respondents With Matters of Common Law Affecting Catholic Schools**

**T-Test Group Statistics**

Area of the Law	No: Respondents		Mean		S D	
	Female	Male	Female	Male	Female	Male
Negligence- Student Physical Welfare	33	69	0.21	0.42	0.415	0.497
Professional Negligence	33	69	0.00	0.06	0.000	0.235

**Independent Sample Tests**

Area of the Law		Levene's Test for Equality of Variance		T-Test for Equality of Means		
		F	Sig.	t	df	Sig. (2 tailed)
Negligence- Student Physical Welfare	Equal variance assumed	23.181	0.000 #	-2.082	100	0.040
	Equal variance not assumed			-2.218	74.474	0.030 *
Professional Negligence	Equal variance assumed	9.042	0.003 #	-1.411	100	0.161
	Equal variance not assumed			-2.046	68.000	0.045 *

# Because the Levene F value is < 0.05 the equal variance not assumed row is used to determine the significance.

\* Significant Difference:  $p < 0.05$

### **8.5.3 Geographical Location and Involvement With Legal Issues**

As indicated by Item 2 on the Survey Questionnaire, schools who took part in this study were categorised into five locations, namely, the Brisbane Metropolitan Area, Provincial Cities or Shires surrounding Brisbane, the Gold Coast, the Sunshine Coast and Rural Towns. Analysis of variance and Scheffe comparisons were applied to the data gathered under Items 13, 14 and 15 to examine any significant differences in the involvement of principals with legal issues that might be attributed to these different locations. Table 8.5 indicates the statistically significant differences identified in this analysis.

**Table 8.5**

**ANOVA and Scheffe Comparisons Showing Statistically Significant Differences of the Involvement of Respondents With Legal Issues Associated With the Geographical Location of Catholic Schools**

**ANOVA : Geographical Location**

Area of the Law		Sum of Squares	Df	Mean Square	F	Sig.
Criminal Code (Qld)	Between Groups	2.223	4	0.558	3.605	0.009*
	Within Groups	15.022	97	0.155		
	Total	17.255	101			
Workplace Relations Act	Between Groups	2.451	4	0.613	3.416	0.012*
	Within Groups	17.402	97	0.179		
	Total	19.853	101			
Defamation	Between Groups	0.851	4	0.213	3.163	0.017*
	Within Groups	6.522	97	0.067		
	Total	7.373	101			

\* Significant Difference :  $p < 0.05$

**Scheffe**

Area of the Law	Geographical Location	No:	Subset for alpha = 0.05	
			1	2
Criminal Code	Rural Town	15	0.13*	
	Brisbane Suburban	50	0.14*	
	Provincial City or Shire Near Brisbane	25	0.28	0.28
	Gold Coast	7	0.29	0.29
	Sunshine Coast	5		0.08*
	Sig.		0.938	0.062
Workplace Relations Act (Qld) Industrial	Rural Town	15	0.13*	
	Brisbane Suburban	50	0.20*	0.20
	Provincial City or Shire Near Brisbane	25	0.28	0.28
	Sunshine Coast	5	0.60	0.60
	Gold Coast	7		0.71*
	Sig.		0.176	0.106
Defamation	Brisbane Suburban	50	0.00	
	Rural Town	15	0.07	
	Provincial City or Shire Near Brisbane	25	0.16	
	Sunshine Coast	5	0.20	
	Gold Coast	7	0.29	
	Sig.		0.176	

\*Significant Difference



Three areas of the law revealed some variations of involvement of principals according to the location of schools. Two areas of statute law, namely the *Criminal Code* (Qld) and the *Workplace Relations Act* (Qld), which deals with industrial relations matters, revealed significant differences, while in the common law area only the area of defamation revealed a difference. The Scheffe comparisons carried out on the data indicate that there were statistically significant higher involvement of principals with the *Criminal Code* from schools in Rural Towns and Brisbane Suburban schools, when compared with their counterparts carrying out the role of principals in schools on the Sunshine Coast.

In relation to the *Workplace Relations Act*, the analysis indicates that principals on the Gold Coast had a statistically significant higher involvement than principals in Rural Towns and Brisbane Suburban schools. When it came to examining defamation law, while a statistically significant difference between groups was indicated, the Scheffe comparisons did not reveal any two locations as being significantly different when taken as a pair.

All the other statutes listed in Item 13 and the common law issues and matters of a criminal nature listed in Items 14 and 15 did not reveal statistically significant differences ( $p < 0.05$ ) in the involvement of principals when comparing school locations. This analysis indicates that in relation to location of schools there were some variations in involvement, with particular areas of the law impacting on schools.

#### **8.5.4 Complexity of Catholic Schools and Involvement With Legal Issues**

As pointed out in Section 6.2.3.1, with the exception of a few schools built in more recent years, each school which took part in this study was given a complexity rating on the scale of 1 to 5, based on the Complexity of School Environment Index developed within the Brisbane Catholic Education System. This Index was calculated on the basis of a number of variables, which added to the complexity of the school environment. These variables included socio economic issues, the

number of student enrolments, special educational needs of students, particular issues related to the individual schools themselves and the distance schools were located from the BCEC. The percentage of schools that took part in this project and which fell into the various categories on the scale of 1 to 5 were outlined in Section 7.5, which revealed that there were no schools in the study in categories one or two.

Considering the variables that contributed to the complexity rating of schools and the theoretical perspectives underpinning this study, one could be inclined to suggest that the more complex the school environment the more likelihood principals would be involved with legal issues. Again, analysis of variance and Scheffe comparisons were used to investigate possible variations in the involvement of principals with areas of the law that might be attributed to the complexity of schools.

This analysis indicates that of all the areas of the law listed in Items 13, 14 and 15 on the Survey Questionnaire, only the criminal matter of physical abuse involving indecent dealings revealed any statistically significant variation of involvement of principals with regard to complexity ratings. Table 8.6 outlines this statistically significant variance and points out that as a school environment increases in complexity, so too does the likelihood of principals having to deal with physical abuse involving indecent dealings.

This table highlights the relationship between complexity and principals' involvement with physical abuse involving indecent dealings, by not only indicating that the means calculated from the data were increasing as the complexity ratings increased, but by revealing a statistically significant difference ( $p < 0.05$ ) in the involvement of principals with this area of the law between principals in schools with a complexity rating of 3, as compared with principals in schools with a complexity rating of 5. This analysis indicates that this area of the law is one with which principals are more likely to be confronted, as the

complexity of their schools increase, that is, viewing complexity in terms of the variables used to calculate the complexity index as used in this study.

**Table 8.6**  
**ANOVA and Scheffe Comparisons Showing Statistically Significant Differences in the Involvement of Respondents With Legal Issues Associated With the Complexity of Catholic Schools**

**ANOVA : School Complexity**

Area of the Law		Sum of Squares	Df	Mean Square	F	Sig.
Criminal Matters: Physical Abuse	Between Groups	1.278	2	0.639	3.316	0.041
	Within Groups	17.531	91	0.193		
Indecent Dealings	Total	18.809	93			

**Scheffe**

Area of the Law	Complexity of Schools	No:	Subset for alpha = 0.05	
			1	2
Criminal Matters: Physical Abuse, Indecent Dealings	Complexity Rating 3	13	0.08*	
	Complexity Rating 4	62	0.26	0.26
	Complexity Rating 5	19		0.47*
	Sig.		0.420	0.294

\* Significant Differences

**8.6 Summary of Chapter 8**

Chapter 8 provided a presentation and analyses of the data relating to Specific Research Question One gathered via the survey questionnaire. The findings from these analyses indicate that there is some involvement for principals in Catholic schools with all the statutes, common law issues and matters of a criminal nature listed on the Survey Questionnaire. Respondents also indicated a number of legislative areas as emerging areas of involvement for principals in Catholic schools. The involvement with some of the areas of law listed on the survey instrument was more pronounced than others. This is evidenced by the high percentage of principals involved with statutes such as the *Workplace Health and Safety Act* (Qld), the *Family Law Act* (Cth) and the *WorkCover Act* (Qld), and the criminal issues of breaking and entering, and the vandalism of school

premises and property, compared with the lower percentage of principals involved with such issues such as professional negligence and defamation. The analyses established that a higher proportion of principals are involved with legislative matters when compared to common law issues, and that the influence of legislative issues stems from both federal and state statutes. The comments returned with the survey instrument indicate that the extent of this involvement ranges across a number of policies, practices and responsibilities, and necessitates interaction with a wide range of people within schools and from external agencies and support personnel.

An examination of the influences of the variables of primary and secondary school settings, sex of respondents, the location of schools and the complexity of schools, on the involvement with the areas of the law listed on the survey instrument, revealed that on the whole the involvement was fairly uniform across all schools irrespective of these variables. However, some statistically significant differences were identified. Principals in secondary school settings indicated significantly higher involvement with a number of issues associated with criminal matters and the *Workplace Health and Safety Act*. Male principals were more likely to be involved with negligence matters associated with student physical welfare and the criminal area of, physical abuse: assault by teachers. Geographical location of schools indicated some variances in involvement with specific issues such as a higher involvement with the *Workplace Relations Act* (Qld) in schools on the Gold Coast when compared with their counterparts in Rural Towns and schools in the Brisbane Metropolitan Area. An analysis of the data gathered which related to school complexity indicated that the more complex the school, the more likely that principals in Catholic schools would be involved with issues of a criminal nature associated with physical abuse: indecent dealings.

It is clear from this analysis that principals in Catholic schools are involved with an array of legal matters and have had to deal with the circumstances surrounding them. This raises issues of what understandings principals have of

these legal matters, how they acquire these understandings and how compatible these understandings are with the current interpretations of these areas of the law. Specific Research Question Two of this study focused on an examination of these issues.

## **CHAPTER 9**

### **PRESENTATION AND ANALYSES OF DATA RELATING TO SPECIFIC RESEARCH QUESTION TWO GATHERED VIA THE SURVEY QUESTIONNAIRE**

#### **9.1 Introduction**

Specific Research Question Two posed for this study was: What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings? The object of this question was to examine the sources principals use in gaining understandings they have of the areas of the law impacting on Catholic schools and to explore how congruent these understandings are with the current interpretations of the law. The purpose of this Chapter is to present analyses of the data gathered via the Survey Questionnaire in relation to this question.

The review of the literature indicates that a number of areas of the law are impacting on schools and that these areas of law originate from a number of sources, including federal and state legislation and areas of the common law, particularly the area of negligence, as expounded by the High Court and Federal Courts of Australia, and the courts and tribunals of the state jurisdictions in which the various Catholic schools operate. In relation to this study, the pertinent state courts and tribunals are those within Queensland's jurisdiction. However, as also noted in the literature, decisions of courts and tribunals in other states, and from other countries, whose growth and development of legal issues stem from a Westminster System, are not disregarded as irrelevant, but considered from the point of view of carrying persuasive authority, and in many cases are very pertinent.

The analyses of data, outlined in the previous chapter, gathered via the Survey Questionnaire in relation to Specific Research Question One, and the data gathered

as a participant observer, confirm the involvement of principals of Catholic schools with areas of law originating from these various sources.

It has been pointed out in this study that the areas of the law impacting on schools are not static (see Chapter 4), for they develop over time to cater for the needs and issues confronting people within the various jurisdictions. As outlined in that chapter a number of developments in the law have taken place within Australia and Queensland within in recent years, through court decisions and by the Queensland State Parliament passing various legislation. As explained, the influence of the High Court of Australia has been increased since that court has replaced the Privy Council of the House of Lords, as the apex of the triangle from which the principles of law; the basis of decisions in cases, filter down through the various courts and jurisdictions within Australia via the concept of precedent.

Sections B and C of the Survey Questionnaire presented principals with various scenarios relating to areas of the law and a number of alternative responses, one of which was the most appropriate response in relation to the current understanding of the area of law associated with the scenario at the time the survey instrument was distributed. These scenarios were constructed on similar lines to those developed by Stewart (1996), and adjustments, modifications and additions were made to Stewart's scenarios to align them with the Catholic Education System, to address new and revised legislation, to take into account courts decisions handed down since they were first developed, and to provided data relating to the questions posed for this study. Full details of the development of these scenarios can be seen in Sections 6.2.1 to 6.2.1.2, and as reported there, a prominent lawyer in the area of education law attested to the appropriateness of the structure of the scenarios and the selection of responses provided with them.

Section B of the Survey Questionnaire provided a number of scenarios relating to areas of common law, and focused on the areas of negligence and contract law. With regards to the latter, the relevance of including a scenario in this area of the law has already been canvassed above. In relation to negligence, the scenarios

presented, relate to prominent and more recent decisions by courts in this area of the law, particularly by the High Court of Australia. Many of these decisions and cases have been referred to in the discussion on the literature and are documented in Stewart's study (1996). The scenarios and appropriate responses reflected the current state of the law in this area at the time the Survey Questionnaire was distributed.

Section C of the Survey Questionnaire followed a similar pattern to that developed for the areas of common law in Section B. However, for this section the scenarios related to legislation. It was considered not appropriate to develop a scenario for each of the statutes listed in Item 13 of the Survey Questionnaire, as that would have developed a very lengthy document and may have been detrimental to the participation by respondents in the study. However, the following legislative areas were covered: The *Copyright Act* (Cth), *Criminal Code* (Qld), *Education Act* (Qld), *Family Law Act* (Cth), *Workplace Health and Safety Act* (Qld), and anti-discrimination legislation. These legislative areas correlate highly with areas of law, having a major impact on the leadership of Catholic schools as shown by the analyses of data in the previous chapter. The responses of the participants to the scenarios in Sections B and C, were analysed to identify particular aspects about the understandings principals have of these areas of the law.

As with other questions posed for this study, the influences of a number of variables on the data gathered, was also examined. In this instance, the influences examined included the geographical locations of schools, primary and secondary school settings, complexity of schools, experience in administrative positions outside education, years spent working in Catholic Education, studies undertaken in areas of the law and years of experience as a principal. To examine possible significant differences associated with these variables and the understandings developed of legal issues impacting on schools, Pearson Chi-Square Tests were carried out on the responses to the scenarios and the data gathered under items in Section A of the Survey Questionnaire, which provided information relating to the variables identified.



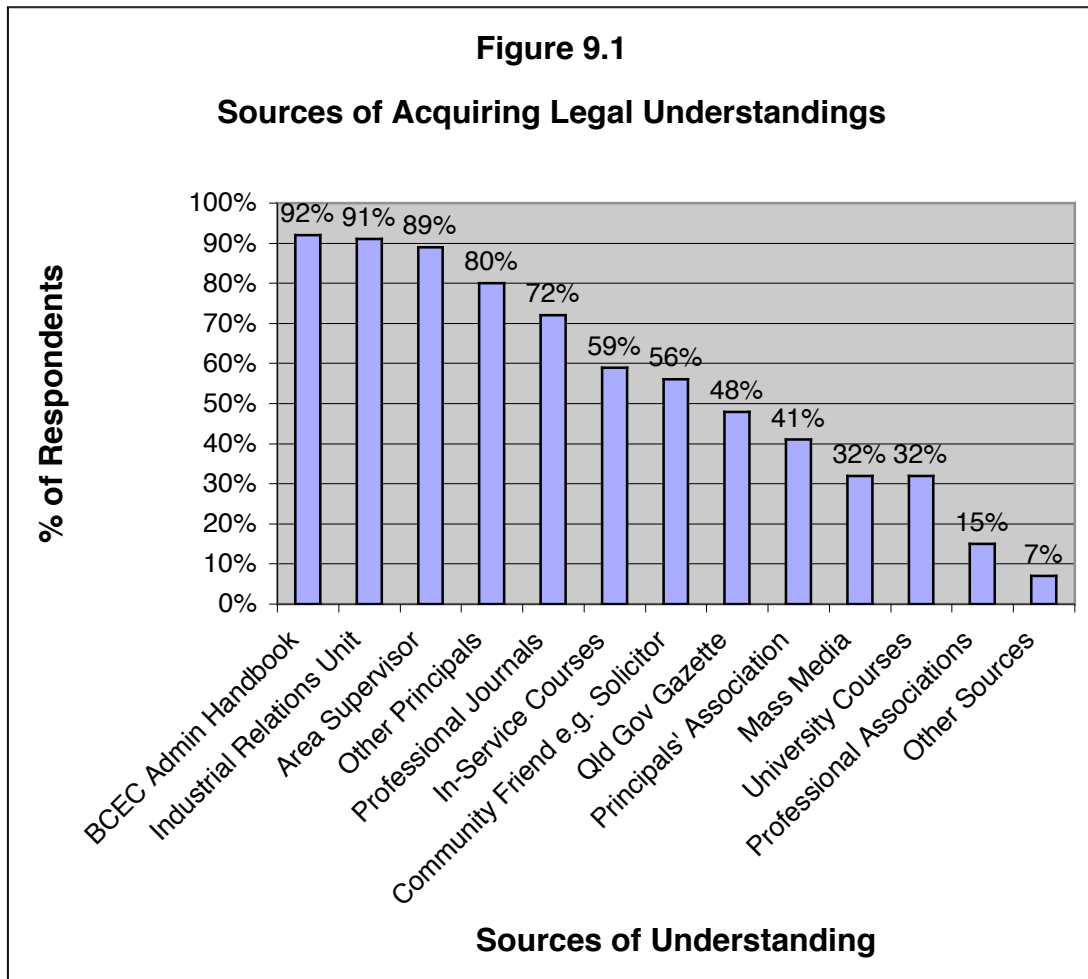
Later in this section when examining the tables provided with the analyses, it can be seen that some respondents did not indicate a response to all scenarios. It may have been that in relation to some of the scenarios, the respondents could not relate to one of the response provided as the most appropriate response, or it could have been that they had little idea of the area of the law presented. In most cases the non responses amounted to one or two, but in some instances, like the scenarios dealing with anti-discrimination legislation, Items 39 and 40, these non responses increased to five and four respectively, while in relation to the *Criminal Code* scenario associated with assault, touching of students, Item 38, four respondents also did not provide a response.

One of the aspects of Specific Research Question Two was aimed at acquiring some information about the sources principals used to develop their understandings of the law impacting on their schools. To provide data in this area, Item 12 on the survey instrument listed a number of possible sources which may have contributed to principals developing understandings of the law. These sources were similar to the sources provided in Stewart's (1996) study and some of these were modified to align them with the Catholic Education System, and others items were added. Principals were invited to indicate if the items listed had been sources which contributed to their legal understandings. Participants were then asked to rank each of the items they chose as sources of gaining understandings in order of importance. It was this latter area, the sources of acquiring legal understandings, which is analysed initially in this Chapter in presenting the findings associated with data gathered via the Survey Questionnaire, relating to Specific Research Question Two.

## **9.2 Sources of Acquiring Legal Understandings**

As indicated in the previous section, Item 12 on the Survey Questionnaire listed a number of items as possible sources of acquiring legal understandings. Principals were asked to indicate next to each of the items listed, if that item had been a source for them in acquiring legal understandings, and then the respondents were asked to rank their responses in order of importance. An opportunity was also provided for

respondents to list additional sources of acquiring legal information. Figure 9.1 outlines the items listed under Item 12 as sources of acquiring legal understandings, and the percentage of respondents who indicated the items were a source of acquiring legal understandings for them.



This figure illustrates that the main source of acquiring legal understandings was the Brisbane Catholic Education Centre (BCEC) Administrative Handbook, with 92% of principals indicating that this was one of their sources of acquiring legal understandings. This Handbook was developed as a reference for principals in relation to a number of issues they faced in their everyday leadership of school communities, including some legal issues. The findings here correspond with the findings in Stewart's study (1996) which found that the Queensland Department of Education Manual was the major source of information for principals in Queensland Government Schools. It is interesting to note, that while this manual referred to by Stewart and the Queensland Government Gazette (also listed here as a possible

source of obtaining legal understandings) are published for Government departments, it seems that a large number of principals in this study (48%), use these documents as a source of gaining legal understandings. In the comments returned with Item 12 on the survey instrument, one respondent indicated that he used the Queensland Department of Education Manual to gain information in specific areas such as police investigations and safety instructions (R104).

The Industrial Relations Unit of the BCEC featured highly as a source of acquiring legal understandings for respondents. This unit was set up within BCEC to supported principals in relation to industrial issues, and as indicated by the information gathered as a participant observer, principals saw this unit as not only providing information and support on industrial matters but on a whole range of issues relating to legal matters.

Interaction with other people within the education profession also featured prominently as sources of gaining legal understandings. In this regard, the Area Supervisors who offered support and supervision for principals, were key personnel, while one respondent (R077) indicated BCEC personnel as a whole were a source of gaining legal understandings. Fellow principals also featured prominently as sources of understandings, and the Principals' Association was a source of gaining legal understandings for 41% of respondents. It was surprising to see that other professional associations had a low percentage rate of 15%, and such bodies featured lower than friends within the community as a source of legal information.

Besides the Administrative Handbook, respondents indicated that printed material was an important source of gaining legal information, and it was pleasing to see professional journals were a prominent source in this regard. In relation to printed material, three respondents (R019; R121; R125) listed books as an additional sources of obtaining legal understandings.

Professional Courses undertaken through tertiary institutions such as universities, rated as a source of acquiring legal understandings for almost a third of principals

(32%), while in-service courses were a much more prominent source with almost 60% of principals using such courses as a means of acquiring legal understandings. These findings support the data referred to earlier in Section 7.6.7, which reveal a higher involvement of principals with in-service type courses to gain legal information, than formal study type courses in tertiary institutions. It was interesting to discover that the Mass Media featured as prominently as a source of acquiring legal understandings as did the university courses.

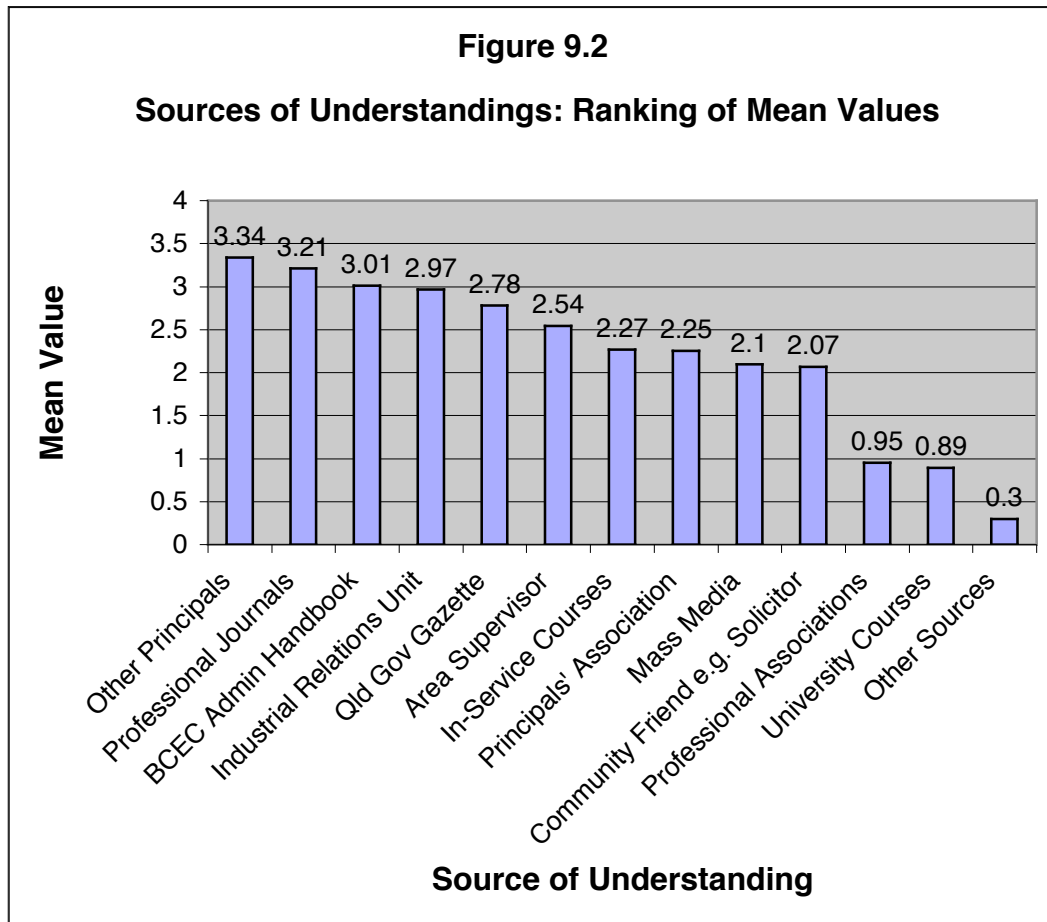
Respondents provided some additional sources of acquiring legal understandings besides those listed in Item 12. These included the Teachers Union (R059), that provided legal information to respondents by conducting in-service type courses on legal matters and through their publications, attendance at Justice of the Peace Courses (R102), and interactions with law enforcement bodies such as the Police (R118) were also mentioned as additional sources of obtaining legal knowledge.

### **9.2.1 Ranking the Sources of Acquiring Legal Understandings**

When it came to ranking the items listed as sources of acquiring legal understandings, some interesting changes emerged in comparison to listing the items per se as sources of gaining legal understandings. The mean values of these rankings are provided in Figure 9.2.

While 92% of principals used the Administrative Handbook as a source of acquiring legal information, the respondents ranked their fellow principals as the most important source of acquiring legal understandings. Printed material was also a very important source of information, with professional journals rated second and the Administrative Handbook third. Other personnel within the Catholic Education System then began to appear in the rankings of importance, with the Industrial Relations Unit of BCEC and the Area Supervisors being ranked fourth and fifth respectively. Sources from the wider education community and the community as a whole then began to emerge, with in-service and personal and professional learning experiences, professional associations and the media being listed. Formal courses

of study in universities featured last in order of importance of the items listed in Item 12 on the Survey Questionnaire. However, the analysis indicates that respondents tapped into a variety of sources in developing legal understandings, and as one respondent commented in relation to Item 12 on the survey, “I find it difficult to rank these in any order, since I would seek information from a number of these sources on one issue” (R099).



### **9.3 The Understandings of Respondents of Some Current Common Law Issues Impacting on Catholic Schools**

Section B of the Survey Questionnaire, provided a number of scenarios relating to common law issues impacting on schools. Ten scenarios, Items 23 to 32 inclusive, were provided in this section of the survey instrument, and these focused on the areas of negligence and contract law. Nine of the scenarios dealt with negligence, involving duty of care issues relating to a number of situations and settings within and surrounding schools and associated with school activities. The other scenario

was structured around an employment contract, focusing on when a legally binding agreement had been entered into by the parties involved. It was this issue associated with contract law, that information gathered as a participant observed had indicated principals were having difficulties within their role as leaders.

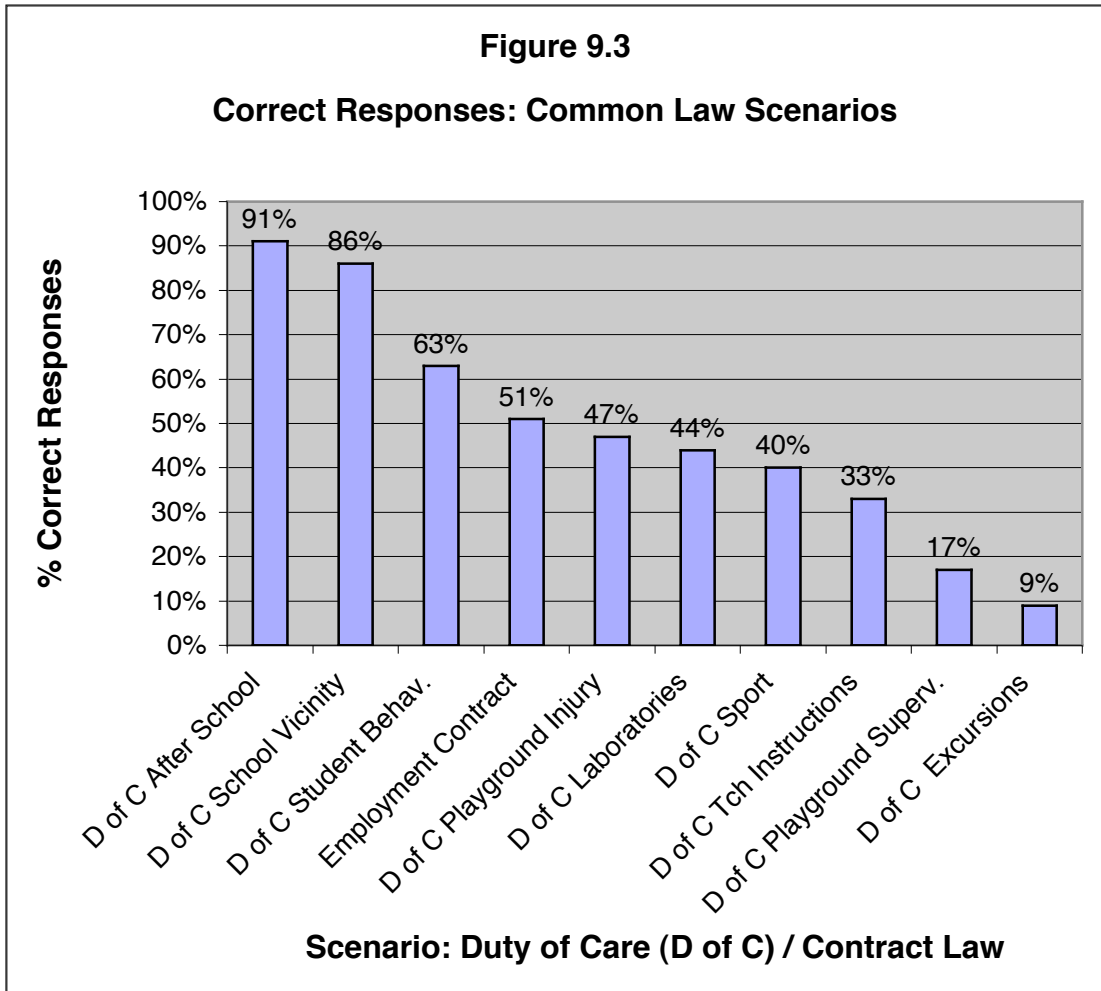
Principals, who took part in the study, were asked to read the scenarios and then respond by indicating from the number of alternative responses provided, the response they considered to be the most appropriate. As already explained, one of the responses outlined the current interpretation of the law in relation to each scenario at the time the Survey Questionnaire was distributed. Figure 9.3 outlines the percentage of principals who selected the correct responses.

This figure demonstrates that Principals' understandings of current interpretations in these areas of the law were mixed. The percentages of correct responses to the items regarding the duty of care responsibilities expanding beyond normal school hours (91%), and the physical boundaries of the school campus (86%), were encouraging.

However, responses to other scenarios relating to negligence on the whole, indicated a degree of uncertainty about current interpretations of the law. A number of principals saw themselves as the prime person responsible in many of the situations portrayed by the scenarios, and ignored the responsibilities others had in the circumstances. In the duty of care scenarios relating to the classroom laboratory, 23% of the respondents saw themselves as the sole person responsible, 35% saw themselves similarly in relation to Item 25 which concerned playground supervision, and 29% saw themselves as the sole responsible person in the sporting injuries scenario. In relation to the latter, only 35% of all respondents acknowledged contributory negligence from the student perspective, and the responses to Items 23 and 31 indicated there was limited understanding of the concept of vicarious liability.

In other circumstances, where the scenarios called for action by the principal such as in Item 24, 84% of respondents turned to alternate ways of addressing the issue.

However, it must be said, that with the exception of one respondent's selection to Item 24, where some intervention was required by the circumstances created by the scenarios, all respondents saw the need to take some action to rectify the situation presented. On the whole, 6 of the 9 scenarios relating to negligence had a correct response rate below 47%.



Over 50% of participants selected the correct response to Item 32 relating to contract law. Further scrutiny of the results also revealed that a further 33% of respondents indicated they would seek advice from their employing authority about the situation presented by the scenario, before taking action. This was an encouraging feature, not only in relation to this scenario, but also in relation to the scenarios developed around statutes dealt with in the next section of this analysis and presentation of findings.

#### **9.4 The Understandings of Respondents of Some Current Statute Law Issues Impacting on Catholic Schools**

Section C of the Survey Questionnaire provided a number of scenarios relating to various Statutes impacting on schools. Ten scenarios, Items 33 to 42 inclusive, were provided and these focused on the statutes referred to in the introduction to this section, namely, *Copyright Act* (Cth), *Criminal Code* (Qld), the *Education Act* (Qld), *Family Law Act* (Cth), *Workplace Health and Safety Act* (Qld), and anti-discrimination legislation. As in Section B, respondents were asked to read the scenarios and indicate which response they considered the most appropriate. One of the responses outlined the current interpretation of the law in relation to each scenario at the time the Survey Questionnaire was distributed.

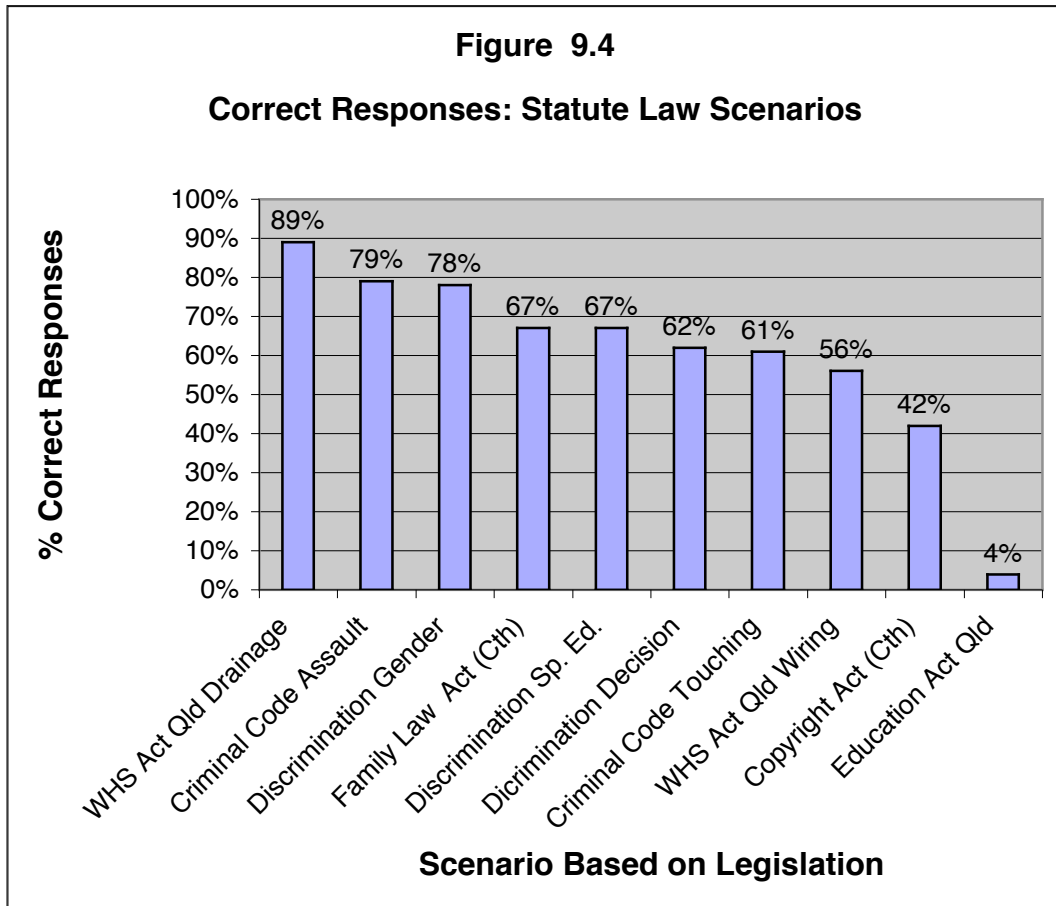
Figure 9.4 provides the percentage of participants who selected the correct responses to the scenarios based on the legislation examined. This outline indicates that the respondents had a much clearer idea of the legal requirements associated with the legislation dealt with in the survey instrument, than they did with the issues raised in the common law scenarios in Section B of the Survey Questionnaire.

Understanding of the requirements under the *Workplace Health and Safety Act* (Qld) were mixed, with a pleasing result of 89% of participants providing the correct response to one scenario but a less pleasing result to the second scenario, with a 56% correct response from participants. There was a similar mixed response in relation to the understandings associated with the criminal law issues, with 79% of participants providing correct responses in relation to Item 37, but 61% providing correct responses to Item 38.

Responses to scenarios associated with anti-discrimination legislation and the *Family Law Act* indicated principals' understandings were developing in a positive direction, but the findings indicate additional efforts need to be focused on the *Copyright Act*, particularly recalling that almost 50% of principals indicated involvement with this legislation as outlined in Section 8.2.4. Some focus on developing principals' understandings of the requirements under some sections



of the *Education Act* (Qld) would also seem warranted on the findings presented here with only 4% of participants providing the correct response. However, in relation to the latter, an encouraging aspect of the participants was that a large number of them (91%), indicated they would seek advice from the Catholic Education Centre before taking action in such circumstances.



Seeking advice from the employing authority was also available as one of the alternate responses in Item 34 relating to the WH&S legislation, and Item 36 which concerned a family law issue. As indicated above, a similar response was available in Item 32 dealing with the common law issue involving contract law. In relation to the WH&S scenario no respondents chose to seek advice, and this would appear to indicate that the respondents were sufficiently confident to take action in relation to this issue. This is reflected in the 89% correct responses to this item. However, when it came to the scenario relating to the *Family Law Act*, 26% indicated they would seek advice from their employer, while in the circumstances created by the common law scenario, 33% of respondents chose this option.

## **9.5 The Influence of Certain Variables on the Understandings of Respondents of Areas of Law Impacting on Catholic Schools**

The above analysis gives an outline from a generic perspective of principals' understandings of the current interpretations of some of the common law and statute law issues impacting on Catholic schools at the time the Survey Questionnaire was circulated. As indicated in the introduction to this Chapter the intention was also to examine the influences that a number of variables might have on the development of these understandings. To this end, a number of Pearson Chi-Square Tests were carried out on the data gathered under the responses to the scenarios provided in Items 23 to 42 on the Survey Questionnaire, and the data gathered from other items in Section A of the survey instrument.

### **9.5.1 The Influence of Primary and Secondary School Settings on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

Of all the scenarios provided in Section B and Section C in the Survey Questionnaire, there were only three items that identified statistically significant differences in the responses, when comparing the understandings of principals in primary and secondary school settings. The results are outlined in Table 9.1.

This table indicates that these differences relate to negligence, duty of care associated with student behaviour (Item 27), and the scenarios relating to the anti-discrimination legislation (Items 39 and 40). In reference to duty of care relating to student behaviour, the findings indicate that respondents from the secondary school settings have statistically significant ( $p < 0.05$ ) higher correct responses. Very few of the respondents from secondary school settings chose option three, whereas a substantial proportion of respondents from the primary context chose this option. This seems to indicate that participants from the primary sector were more inclined to respond to the scenario from a general overall duty of care rather than their responsibility to students, irrespective of student behaviour.

**Table 9.1**

**Statistically Significant Differences in the Responses of Participants from Primary and Secondary Catholic School Settings to the Common Law and Statute Scenarios**

Area of the Law	Item	Response	School Setting		Total
			Prmy	Sec	
Negligence	Item 27, Duty of Care; Supervision: Student Behaviour	1	0	1	1
		2	48	17*	65
		3	30	4*	34
		Total	78	22	100

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	6.275 (a)	2	0.043
No: Valid Cases	100		

a 2 cells (33.3 %) have expected count less than 5. The minimum expected count is 0.22.

\*Secondary higher on response 2, correct response, and lower on response 3.

Area of the Law	Item	Response	School Setting		Total
			Prmy	Sec	
Discrimination Legislation	Item 39, Gender Discrimination: Subject Choice for Girls	1	67	13*	80
		2	9	7*	16
		3	0	1	1
		Total	76	21	97

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	9.601 (a)	2	0.008
No: Valid Cases	97		

a 3 cells (50.0 %) have expected count less than 5. The minimum expected count is 0.22.

\*Secondary higher on response 2, and lower on response 1, correct response.

Area of the Law	Item	Response	School Setting		Total
			Prmy	Sec	
Discrimination Legislation	Item 40, Gender Discrimination: Likely HREOC Finding	1	21	14*	35
		2	55	8*	63
		Total	76	22	98

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	9.633(b)	1	0.002
No: Valid Cases	98		

b 0 cells (0.0 %) have expected count less than 5. The minimum expected count is 7.86.

\*Secondary higher on response 1 and lower on response 2, correct response.

This statistically significant difference in correct responses from the secondary setting may also be linked to the findings earlier in Section 8.5.1, which identified a higher involvement of secondary principals with matters associated with WH&S and a transfer of the principles underlying this act to common law areas of negligence, as a number of principals indicated that they saw a link between the WH&S act and the common law issues of negligence (R029; R087; R098; R104).

In connection with the scenarios linked to the anti-discrimination legislation (Items 39 and 40) which were associated with gender discrimination, the number of correct responses from participants from secondary school settings was statistically, significantly lower in relation to both these items. The respondents from secondary schools were more inclined to align themselves with the responses in the scenario which refused to provide the same access to the subject areas for the female student and which saw it as unreasonable for a body such as The Human Rights and Equal Opportunity Commission (HREOC) to support the student's action to have the discrimination rectified.

The principals in primary schools settings, on the other hand, probably because they are less exposed to the issues of subject choice per se, but more concerned with the issues surrounding the integration of children with particular needs into the mainstream classroom, viewed this scenario generically from the principles underlying the anti-discrimination legislation itself. Again, it was surprising to see the differences exposed here between the primary and secondary school settings, as this scenario was closely aligned with the principles outlined in the judgment by the NSW Court of Appeal in a particularly prominent case in this area in Australia, *Haines v. Leves*, 1987.

#### **9.5.2 The Influence of the Sex of Respondents on the Understandings of Legal Issues Impacting on Catholic Schools**

In regard to investigating the influence of the sex of principals on their understandings of the legal issues embodied in the scenarios, Pearson Chi-Square

Tests were again carried out on the responses to the scenarios in Section B and C of the Survey Questionnaire from female and male participants. These analyses indicated there was only one item where a statistically significant difference was revealed in relation to this variable. This item related to the common law area of contract law (Item 32) which examined the issues of when a legitimate binding contract was established between parties to an agreement. Table 9.2 gives the details of this difference.

**Table 9.2**  
**Statistically Significant Differences in the Responses of Male and Female**  
**Participants to The Common Law and Statute Law Scenarios**

Area of the Law	Item	Response	Sex		Total
			Female	Male	
Contract Law	Item 32, Employment Contract	1	3	1	4
		2	7*	4	11
		3	12	40*	52
		4	11	23	34
		Total	33	68	101

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	10.23 (a)	3	0.017
No: Valid Cases	101		

a 3 cells (37.5 %) have expected count less than 5. The minimum expected count is 1.31.

\*Female responses higher response 2 and Male responses higher response 3, correct response.

Male participants provided statistically significant higher correct response to Item 32, when compared with female participants. The latter were more inclined to respond to the scenario by indicating that a contract of employment had not been entered into by the parties, as the principal had operated outside her actual authority. This indicated that the female respondents had less understanding of ostensible authority than did their male counterparts. There did not seem to be any particular reason why this significant difference occurred. However, one plausible explanation for the difference

may be that male respondents, through a past male dominated social/cultural perspective of society, may have been exposed to legal contractual matters to a greater degree, and having been more involved with such matters, may have developed deeper understandings in this area of the law.

### **9.5.3 The Influence of School Location on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

The earlier analysis outlined in Section 8.5.3 indicates some variation in the involvement with areas of the law associated with different locations. The findings from that analysis indicated that some variance occurred in relation to involvement with the *Criminal Code* and industrial relations matters, and that these differences occurred when comparing the responses of participants from schools on the Sunshine Coast and Gold Coast areas with respondents carrying out their roles in schools from other geographical locations. The analysis in this section aimed at examining whether any differences could be identified in the understandings gained by principals that might be attributed to the geographical location of schools.

Table 9.3 outlines the statistically significant differences identified by Pearson Chi-Square Tests on participants' responses to the scenarios in Sections B and C of the Survey Questionnaire and geographical locations. As can be seen from this table, this bears no relationship with the areas of involvement mentioned above in which statistically significant differences were revealed in the earlier analyses. The items which indicated a statistically significant difference in the present analysis were Item 26, which was associated with duty of care responsibilities in supervising students before and after school, and Items 39 and 40 which dealt with anti-discrimination legislation. Table 9.3 indicates that in relation to Item 26, respondents from Provincial Cities and Shires surrounding the City of Brisbane, such as the Ipswich area, showed a lower response rate to the correct response, response 2, which indicated that a duty of care was owed to any student on school premises before and after school.

**Table 9.3**

**Statistically Significant Differences in the Responses of Participants From Various Geographical Locations to the Common Law and Statute Law Scenarios**

Areas of the Law	Item	Response	Location				Total
			B#	P#	C#	R#	
Negligence	Item 26, Supervision Before and After School	1	0	3	0	0	3
		2	48	19 *	11	15	93
		3	2	3	1	0	6
		Total	50	25	12	15	102

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	13.024 (a)	6	0.043
No: Valid Cases	102		

a 8 cells (66.7 %) have expected count less than 5. The minimum expected count is 0.35

\* P # lower response rate to response 2, correct response, than other geographical locations

Area of the Law	Item	Response	Location				Total
			B#	P#	C#	R#	
Discrimination Legislation	Item 39, Gender Discrimination: Subject Choice for Girls	1	42	20	5 *	13	80
		2	4	4	6	2	16
		3	1	0	0	0	1
		Total	47	24	11	15	97

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	13.024 (a)	6	0.022
No: Valid Cases	102		

a 7 cells (58.3 %) have expected count less than 5. The minimum expected count is 0.11

\* C # lower response rate to response 1, correct response, than other geographical locations

Area of the Law	Item	Response	Location				Total
			B#	P#	C#	R#	
Discrimination Legislation	Item 40, Gender Discrimination: Likely HREOC Finding	1	13	13	7	2	35
		2	34	12*	4*	13	63
		Total	47	25	11	15	98

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	11.224 (a)	3	0.011
No: Valid Cases	98		

a 1 cells (12.5 %) have expected count less than 5. The minimum expected count is 3.93.

\* P & C # lower response rate to response 2, correct response, than other geographical locations

# B = Brisbane, P = Provincial Shires, C = Gold Coast & Sunshine Coast and R = Rural Town

The reason or reasons behind this difference is difficult to evaluate. Similarly, the table indicates that participants from schools on the Gold and Sunshine Coast schools have a lower correct response rate to Items 39 and 40. As indicated above, these items refer to anti-discrimination legislation, and in relation to the latter item (Item 40), participants from Provincial Cities and Shires surrounding Brisbane also gave a lower correct response rate.

#### **9.5.4 The Influence of Complexity of Schools on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

As outlined in Section 6.2.3.1, with the exception of a few recently built schools, the schools lead by the respondents were allocated a complexity rating. The thinking behind examining this variable was that the more labyrinth the social/cultural environments, indicated by the higher complexity rating on the complexity index, the more likely would be the impact of legal issues on schools, and in turn this could influence the development of understandings of principals of the law impacting on their leadership. The analyses here identify a statistically significant difference in the responses to only one of the scenarios presented in Sections B and C of the survey instrument. This scenario, outlined in Item 41, dealt with anti-discrimination legislation. Table 9.4 indicates the statistically significant difference in responses to this scenario.

Item 41 focused on enrolment and continued enrolment of students with special needs in mainstream classrooms, and particularly where behaviour was a factor in meeting the needs of the students involved. This scenario was very closely aligned with a prominent case, *L v. Minister for Education for the State of Queensland*, 1995. This decision was handed down by the Queensland Anti-Discrimination Tribunal in January 1996 and had considerable exposure and comment in educational circles around the time the survey instrument was distributed. As explained in Section 4.7.2.2, in the review of the literature, the action by the school in excluding the student in this case was considered not to be unlawful on the grounds that it would



impose unjustifiable hardship on the educational authority in meeting the student's needs.

**Table 9.4**

**School Complexity Ratings and Statistically Significant Differences in the Responses of Participants to the Common Law and Statute Law Scenarios**

Area of the Law	Item	Response	Complexity Rating			Total
			3	4	5	
Anti-Discrimination Legislation	Item 41, Discrimination: Enrolment of Students With Special Needs	1	2	0	0	2
		2	2	9	1	12
		3	8	41	16*	65
		4	1	11	2	14
		Total	13	61	19	93

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	15.227 (a)	6	0.019
No: Valid Cases	93		

a 7 cells (58.3 %) have expected count less than 5. The minimum expected count is 0.28.

\* Complexity Rating 5 higher correct response to response 3, correct response

In examining these findings it is worth noting that one of the variables used to develop the complexity index for schools, was the number of students in the schools with exceptional needs. It is therefore feasible to deduce that principals with higher complexity ratings would have more exposure to issues involving the enrolment of students with special needs, and be more aware of the issues and principles involved in the case *L v. Minister for Education for the State of Queensland*, 1995. This explanation is reasonable, as it was revealed earlier that the respondents who took part in this study came from schools with medium to high complexity ratings, and as Table 9.4 indicates, there is a general trend to choose option 3; the correct response to this scenario, the higher the complexity rating of the school.

### **9.5.5 The Influence of Undertaking Study of Leadership in Catholic Schools on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

The findings from an analysis of the data gathered under Item 9 on the Survey Questionnaire outlined in Section 7.6.6 indicated that 84% of the respondents that took part in this study had undertaken studies in leadership in Catholic schools, and that 82% had undertaken these studies in postgraduate courses. It was pointed out in those discussions, that having leaders in Catholic schools undertake studies in leadership was a focus for senior administrators in Catholic Education, and particularly from the 1980's onwards. This focus was aimed at developing an understanding of leadership from the perspectives of the ethos of the Catholic School amongst Catholic school leaders, as the laity replaced the diminishing numbers of religious carrying out the roles in Leadership Teams within Catholic schools.

As pointed out in Sections 2.8 to 2.8.7, which dealt with the characteristics of the Catholic School, important characteristics which contribute to the ethos of Catholic Education are the emphasis on the dignity of the human person, respect for individual rights and the call for justice. Gleeson (2001) believes that this Christian perspective has a connection with the development of persons' rights and the legal systems in societies which are grounded in the Westminster system of law and order. Therefore, analysis was carried out to examine whether undertaking these studies in leadership of Catholic schools might have an influence on the construction of principals' understandings of the legal issues confronting them in leading their school communities. Again Pearson Chi-Square Tests were carried out on the responses to the scenarios in Sections B and C of the survey instrument to identify any significant differences in the responses that might be attributed to undertaking these studies.

These analyses indicated that only two scenarios revealed statistically significant differences when comparing the responses to the scenarios, and respondents who had undertaken studies in Leadership in Catholic Education. Table 9.5 indicates these differences occurred in Items 26 and 29, both of which dealt with common law

issues relating to negligence. There was no statistically significant differences ( $p < 0.05$ ) associated with this variable with any of the other eighteen scenarios outlined in the Survey Questionnaire, including all the scenarios relating to statute law.

**Table 9.5**  
**Statistically Significant Differences in the Responses of Participants**  
**Who Had Studied Leadership in Catholic Schools to the Common Law**  
**and Statute Law Scenarios**

Area of the Law	Item	Response	Studied Leadership		Total
			Yes	No	
Negligence	Item 26, Duty of Care: Supervision Before and After School	1	1	2	3
		2	80*	13	93
		3	5	1	6
		Total	86	16	102

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	6.105(a)	2	0.047
No: Valid Cases	102		

a 3 cells (50.0 %) have expected count less than 5. The minimum expected count is 0.47.

\*Studied Leadership in Catholic Schools higher on repose 2, correct response

Area of the Law	Item	Response	Studied Leadership		Total
			Yes	No	
Negligence	Item 29, Duty of Care: Supervision During Sporting Activities	1	0	0	0
		2	35	6	41
		3	31	1	32
		4	19	9	28
		Total	85	16	101

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	9.507(a)	2	0.009
No: Valid Cases	101		

a 1 cells (16.7 %) have expected count less than 5. The minimum expected count is 4.44.

### **9.5.6 The Influence of Studying Law Related Subjects on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

The analysis of the data outlined in Section 7.6.7 revealed that 40% of the respondents who replied to the survey instrument had undertaken some studies associated with legal matters. The notion in examining this variable was that believing part of the interactions that contribute to the construction of one's generalised other of society, includes the experiences within specific learning institutions, such as universities. Such studies could influence the development of respondents' understandings of legal issues affecting Catholic schools. Again, in examining this variable, Pearson Chi-Square Tests were carried out on the responses to the scenarios in Sections B and C of the Survey Questionnaire, and data gathered under Item 10 in Section A on the document which provided data on respondents who had formally studied law related subjects. Table 9.6 outlines the results of these tests.

These analyses reveal that only two items provided a statistically significant difference, namely Items 29 and 32, and again these significant differences appeared in responses to scenarios relating to common law issues. Table 9.6 indicates that respondents who had undertaken studies in legal matters had statistically significant higher correct responses in both these items. Why this is so is difficult to explain, however, the findings again indicate that on the whole, the formal study of law related subjects did not reveal a biasness towards having more overall correct understandings of the range of law related issues affecting Catholic schools.

### **9.5.7 The Influence of Attending In-Service and Personal and Professional Learning Experiences on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

The findings in Section 7.6.6 indicated that when it came to examining the data gathered from the survey instrument under Item 11, which dealt with principals involvement with in-service and personal and professional learning experiences

designed to cover specific legal issues, the participation rate of respondents in such learning experiences increased, albeit the participation rate increased to 52%.

**Table 9.6**  
**Statistically Significant Differences in the Responses of Participants**  
**Who Had Studied Law Related Subjects to the Common Law**  
**and Statute Law Scenarios**

Area of the Law	Item	Response	Studied Law Subjects		Total
			Yes	No	
Negligence	Item 29, Duty of Care: Supervision During Sporting Activities	1	0	0	0
		2	22*	19	41
		3	8*	24	32
		4	10*	18	28
		Total	40	61	101

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	6.416(a)	2	0.040
No: Valid Cases	101		

a 0 cells (0.0 %) have expected count less than 5. The minimum expected count is 11.09.

\*Studied Law Related Subjects higher on repose 2, correct response lower on 3 and 4

Area of the Law	Item	Response	Studied Law Subjects		Total
			Yes	No	
Contract Law	Item 32, Employment Contract	1	0	4	4
		2	2	9	11
		3	28*	24	52
		4	11	23	34
		Total	41	60	101

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	9.769(a)	3	0.021
No: Valid Cases	101		

a 3 cells (37.5 %) have expected count less than 5. The minimum expected count is 1.62.

\*Studied Law Related Subjects higher on repose 3, correct response

In relation to this study, it was felt important to examine the influence such activities might have on the development of understandings principals have of legal issues impacting on their schools. These analyses of the data gathered under Item 11 and the responses to the scenarios, indicate that there was only one item, Item 29, which showed a statistically significant difference when examining this variable. Table 9.7 outlines this difference.

**Table 9.7**  
**Statistically Significant Differences in the Responses of Participants Who**  
**Had Attended In-Service and Personal and Professional Learning**  
**Experiences to the Common Law and Statute Law Scenarios**

Area of the Law	Item	Response	Attendance at PD Activities		Total
			Yes	No	
			Negligence	Item 29, Duty of Care: Supervision During Sporting Activities	
2	25*	16			41
3	10	22			32
4	17	10			27
Total	52	48			100

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	8.143(a)	2	0.017
No: Valid Cases	100		

a 0 cells (0.0 %) have expected count less than 5. The minimum expected count is 12.96.

\*Attended In-service and Personal and Professional Learning Experiences higher on response 2, correct response

Item 29, which related to the duty of care when supervising sporting activities, has appeared already in examining the influences of other variables on the development of principals' understandings of legal issues impacting on Catholic schools. Table 9.7 reveals that respondents who had attended in-service and personal and professional learning experiences had statistically significant higher correct response rate to this scenario. Why this one scenario revealed a

significant difference in this instance, is again difficult to explain. However, it appears, as with the examination of other variables in this Chapter, that the small number of items showing statistically significant differences in relation to this variable, (the attendance at in-service and personal and professional learning experiences geared to specific legal issues and legal matters in general), does not have an overall impact on the understandings of the range of legal issues impacting on Catholic schools.

This is a little surprising as the discussions in Section 7.6.7 indicated that a majority of such learning experiences attended by respondents was of a generalised nature, and one might have predicted as a result that the general understandings of participants and range of understandings of legal issues impacting on Catholic schools would have been enhanced. However, it could be that what these sessions are doing is only exposing participants to what other respondents have gained through interactions in the social/cultural melee in which they live in carrying out their work related duties and responsibilities.

#### **9.5.8 The Impact of Administration Experience Outside Education on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

The analysis of data in Section 7.6.5 indicated that 12% of respondents had carried out leadership roles in fields outside education before taking up their appointments as principals. It was felt that exposure to holding administrative roles outside education might highlight the importance of legal matters and expose people holding these positions to a range of legal matters, some of which would have an impact on schools as well as the wider community. It was felt that such experiences could have an important influence on the development of understandings of legal issues and these understandings could then be transferred to the school setting. This study, therefore, examined the impact this experience had, if any, on the development of understandings of legal issues impacting on the leadership in Catholic schools.

Again, Pearson Chi-Square Tests were applied to the responses from participants to the items in Sections B and C on the survey instrument and Item 7, which related to administrative experience outside education. The results here revealed that three items showed statistically significant differences in the responses. These items were Item 24, which dealt with duty of care in relation to playground supervision, Item 26, relating to duty of care associated with supervision before and after school and Item 34, which was based on the *Workplace Health and Safety Act*. All other items in Sections B and C did not reveal a statistically significant difference when comparing the correct responses to this variable. The results in Table 9.8 indicate that respondents who had had administrative experience outside education had statistically significant lower correct response rates to the issues raised in three scenarios. These three scenarios concerned the safety and welfare of students from both a common law position (Items 24 and 26), and from a legislative basis (Item 34).

The differences revealed here, could possibly be attributed to the development of a heightened sense of understandings of the need for a duty of care to students, as a result of dealing with such issues on an ongoing basis as part of a Leadership Team within the school environment. As was demonstrated in the findings in Section 7.6.3, most of the respondents had held leadership positions as APRE/REC or APA/DP for a number of years before taking on the role of principal. Such a point of view is supported by constructionism and the theoretical perspective put forward in this study.

#### **9.5.9 The Impact of the Number of Years Working in Catholic Education on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

Taking up the notion referred to in the previous section and the theoretical perspectives put forward in this study, it was considered that the longer one worked within the Catholic System or Education, the greater understanding one would develop regarding the legal issues impacting on schools.



**Table 9.8**  
**Statistically Significant Differences in the Responses of Participants With**  
**Experiences in Administrative Positions Outside Education to the**  
**Common Law and Statute Law Scenarios**

Area of the Law	Item	Response	Outside Ed Admin Exp		Total
			Yes	No	
Negligence	Item 24, Duty of Care: Playground Supervision	1	4	61	65
		2	6*	11	17
		3	1	17	18
		4	1	0	1
		Total	12	89	101

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	19.042(a)	3	0.000
No: Valid Cases	101		

a 4 cells (50.0 %) have expected count less than 5. The minimum expected count is 0.12.

\*Admin Experience Outside Education lower response 2, correct response

Area of the Law	Item	Response	Outside Ed Admin Exp		Total
			Yes	No	
Negligence	Item 26, Duty of Care: Supervision before and After School	1	0	3	3
		2	9*	84	93
		3	3	3	6
		Total	12	90	102

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	9.240(a)	2	0.010
No: Valid Cases	102		

a 3 cells (50.0 %) have expected count less than 5. The minimum expected count is 0.35.

\*Admin Experience Outside Education lower response 2, correct response

Area of the Law	Item	Response	Outside Ed Admin Exp		Total
			Yes	No	
Workplace Health & Safety Act (Qld)	Item 34: Construction Work in Playground	1	9*	82	91
		2	3	6	9
		Total	12	88	100

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	4.262(b)	1	0.039
No: Valid Cases	100		

b 1 cells (25.0 %) have expected count less than 5. The minimum expected count is 1.08.

\*Admin Experience Outside Education lower response 1, correct response

To examine this notion the responses to Sections B and C of the survey instrument were compared with the data gathered under Item 4, which dealt with the number of years respondents were employed in Catholic Education. Tables 9.9 and 9.10 display the statistically significant differences identified when examining the impact of this variable on the understandings of principals of some of the areas of common law and statute law impacting on Catholic schools.

**Table 9.9**  
**Statistically Significant Differences in the Responses of Participants to the Common Law Scenarios When Comparing the Number of Years Employed in Catholic Education**

Area of the Law	Item	Response	Years In Catholic Education			Total
			< 2 Yrs	5-10 Yrs	> 10 Yrs	
Negligence	Item 25, Duty of Care: Responsibilities Playground Supervision	1	0	0	4	4
		2	0	0	1	1
		3	0	2	34	36
		4	0	0	12	12
		5	1	1	46*	48
		6	0	1	0	1
		Total	1	4	97	102

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	26.988(a)	10	0.003
	1.008	1	0.315
No: Valid Cases	102		

a 15 cells (83.3 %) have expected count less than 5. The minimum expected count is 0.01.

\* Longer Serving Employees significantly higher response 5, correct response

Area of the Law	Item	Response	Years in Catholic Education			Total
			< 2 Yrs	5-10 Yrs	>10 Yrs	
Negligence	Item 27, Duty of Care: Student Behaviour	1	0	1	0	1
		2	1	2	62*	65
		3	0	1	33	34
		Total	1	4	95	100

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	24.778(a)	4	0.000
No: Valid Cases	100		

a 7 cells (77.8 %) have expected count less than 5. The minimum expected count is 0.01

\* Longer Serving Employees significantly higher response 2, correct response

**Table 9.10**

**Statistically Significant Differences in the Responses of Participants to the Statute Law Scenarios  
When Comparing the Number of Years Employed in Catholic Education**

Area of the Law	Item	Response	Years in Catholic Education			Total
			< 2 Yrs	5-10 Yrs	> 10 Yrs	
Family Law Act (Cth)	Item 36 Parenting Plan	1	1	1	66*	68
		2	0	1	0	1
		3	0	1	4	5
		4	0	1	25	26
		Total	1	4	95	100

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	28.902(a)	6	0.000
No: Valid Cases	100		

a 10 cells (83.3 %) have expected count less than 5. The minimum expected count is 0.01.

\* Longer Serving Employees significantly higher response 1, correct response

Area of the Law	Item	Response	Years in Catholic Education			Total
			< 2 Yrs	5-10 Yrs	> 10 Yrs	
Anti-Discrimination Legislation	Item 39, Gender Disc: Subject Choice Girls	1	1	1	78*	80
		2	0	2	14	16
		3	0	1	0	1
		Total	1	4	92	97

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	27.927(a)	4	0.000
No: Valid Cases	97		

a 7 cells (77.8 %) have expected count less than 5. The minimum expected count is 0.01.

\* Longer Serving Employees significantly higher response 1, correct response

Area of the Law	Item	Response	Years in Catholic Education			Total
			< 2 Yrs	5-10 Yrs	> 10 Yrs	
Copyright Act (Cth)	Item 42, Copies of Music Work	1	0	0	5	5
		2	1	0	1	2
		3	0	2	41	43
		4	0	1	17	18
		5	0	0	24*	24
		Total	1	3	88	92

**Pearson Chi-Square Tests**

	Value	df	Asymp. Sig. (2-Sided)
Pearson Chi-Square	47.053(a)	8	0.000
No: Valid Cases	92		

a 12 cells (80.0 %) have expected count less than 5. The minimum expected count is 0.02.

\* Longer Serving Employees higher response to option 5, correct response

In Section 7.6.1, it was revealed that 95% of the respondents had spent over ten years employed in Catholic Education, while 4% had spent from 5-10 Years and only one respondent had spent less than 2 Years working in Catholic Education. There were no respondents employed in the 2-5 Years category. In evaluating these findings outlined in Tables 9.9 and 9.10, and considering the findings in the previous section, there appears to be some evidence to support the trend that involvement with and experiencing interactions within the Catholic School environment, contributes to the construction of more accurate understandings of the legal issues impacting on Catholic schools.

Looking at both these variables, seven of the twenty items contained in Sections B and C of the Survey Questionnaire (Items 24, 25, 26, 27, 34, 36, & 39 ), showed statistically significant differences, with an increased number of years of involvement with Catholic Education providing statistically, significantly more accurate understandings of the issues involved. A contributing factor here could also be the exposure to legal matters during the time spent as part of a School Leadership Team as outlined in Section 7.6.3.

#### **9.5.10 The Influence of the Number of Years Working as a Principal in Catholic Education on the Understandings of Respondents of Legal Issues Impacting on Catholic Schools**

From the findings outlined in Chapter 8 there is no doubt that principals are being confronted with a wide range of legal issues in carrying out their roles as principals in Catholic schools. One could consider that the longer respondents carried out their role as principal and were exposed to these legal issues, the more developed would be their understandings of areas of the law impacting on their school communities, and the more attuned their understandings would be to the current interpretations of those legal issues.

Therefore, one of the matters listed for investigation in relation to Specific Research Question Two, was whether there was any significant difference in the

understandings of principals who had carried out the role of principal for an extended period of time, when comparing the understandings developed by their colleagues who had occupied the role of principal for only a short period of time.

The presentation of findings from the data gathered under Item 6(iii) on the Survey Questionnaire in Section 7.6.4, indicated that 17% of the respondents had occupied the role of principal for less than 2 Years, 16% for 2-5 Years, 27% for 5-10 Years and 40% of the respondents had carried out the role for more than 10 Years. Analysis of Variance was carried out on this data and the correct responses to the scenarios in Section B and C of the survey instrument because it was felt this was an important. This analysis revealed that there were no statistically significant differences in the correct responses to the scenarios presented when comparing the length of time respondents had carried out their role as principal. This was a surprising finding, and as a result Pearson Chi Square tests were applied to the data. However, again no significant differences was revealed.

These findings were surprising, seeing the other variables examined in this section at least showed some statistically significant differences in relation to the various scenarios presented in Sections B and C, and the previous two variables examined disclosed a tendency towards the longer the involvement with Catholic Education the more accurate the understandings. However, it could be that the construction of these understandings are not confined to carrying out the role of principals per se, but that exposure to dealing with these issues in the wider society of which the school is part, being a part of the school system for some time before taking on the role of principal, and particularly as part of a Leadership Team, has prepared the respondents to deal with these issues, and their understandings continue to develop as part of the overall development as a person and as a leader. The trend identified in the previous two sections would seem to support this evaluation.

## 9.6 Summary of Chapter 9

Chapter 9 provided a presentation and analyses of data relating to Specific Research Question Two gathered via the Survey Questionnaire. Specific Research Question Two was concerned with gathering data relating to the sources principals used to gain understandings of the legal issues impacting on their leadership roles in Catholic schools, and examining how closely these understandings were aligned with current interpretations of the law.

Item 12 on Section A of the Survey Questionnaire gathered data relating to the resources principals used to acquire understandings about legal issues impacting on Catholic Schools. The analyses carried out on this data indicated that principals used a wide range of sources to acquire legal understandings, with a healthy balance between using personnel and printed material as reference points. The Administrative Handbook supplied by the employer, BCEC, was the most prominent source of gaining legal understandings followed by contact with the BCEC Industrial Unit, and then followed the Area Supervisors and fellow principals.

However, when it came to ranking these sources in order of importance, fellow principals were ranked as the most important, professional journals ranked second and these were followed by the Administrative Handbook provided by the system authorities that employed them. Personnel within the Catholic Education System, whose responsibilities included supporting principals in carrying out their roles, such as the Areas Supervisors and personnel in the Industrial Unit in BCEC, also featured prominently as important sources of information. Professional associations, while featuring as a source of gaining legal understandings, were less prominent in terms of importance. A similar situation existed for in-service courses and courses of formal professional studies.

Sections B and C of the Survey Instrument provided a number of scenarios relating to legal issues impacting on schools. Section B provided a number of

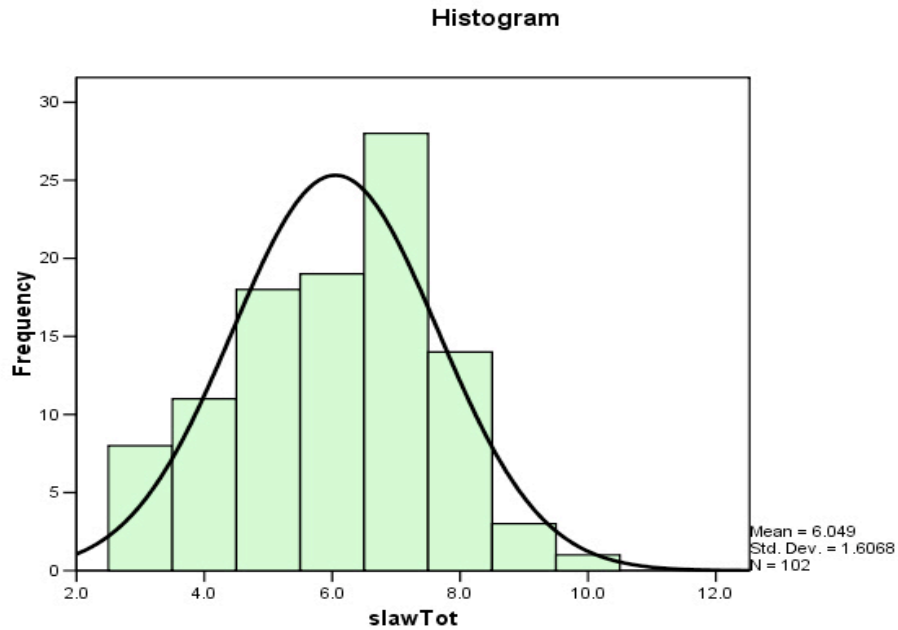
scenarios based on common law issues, particularly relating to negligence, and Section C scenarios associated with statute law issues. Principals responded to these scenarios by indicating from a number of alternatives the response they believed was the most appropriate way to deal with the issues outlined in the scenarios. Analyses were carried out on the responses of participants to these scenarios. These analyses revealed that respondents provided a higher percentage of correct responses to the scenarios associated with statute law issues in Section C, than was the case with the common law scenarios provided in Section B. The two histograms provided in Figures 9.5 and 9.6 indicate this finding.

Analyses of the correct responses to the scenarios related to common law revealed there were mixed understandings associated with the area of negligence. Principals' understandings relating to the supervision before and after school and in the vicinity of the school premises were very encouraging. However, there was uncertainty about other areas of negligence. Principals saw themselves as the prime person responsible in a number of situations created by the scenarios and the responsibilities on others within the school system were not well understood. This was indicated by a limited understanding of contributory negligence and vicarious liability. Overall 6 of the 9 scenarios relating to negligence had a correct response rate less than 47%.

In relation to the scenario associated with contract law, Item 32, 50% of respondents provided the correct response. However, in relation to this issue and also in relation to a number of the scenarios presented in Section C which dealt with issues of a legislative nature, a number of respondents took the option to contact their employers before taking action. This was an encouraging outcome and seemed to indicate that when principals were unsure of how to deal with issues, or uncertain of their rights and the rights of others, they would take the option of contacting personnel, whom their employer provided to support them.

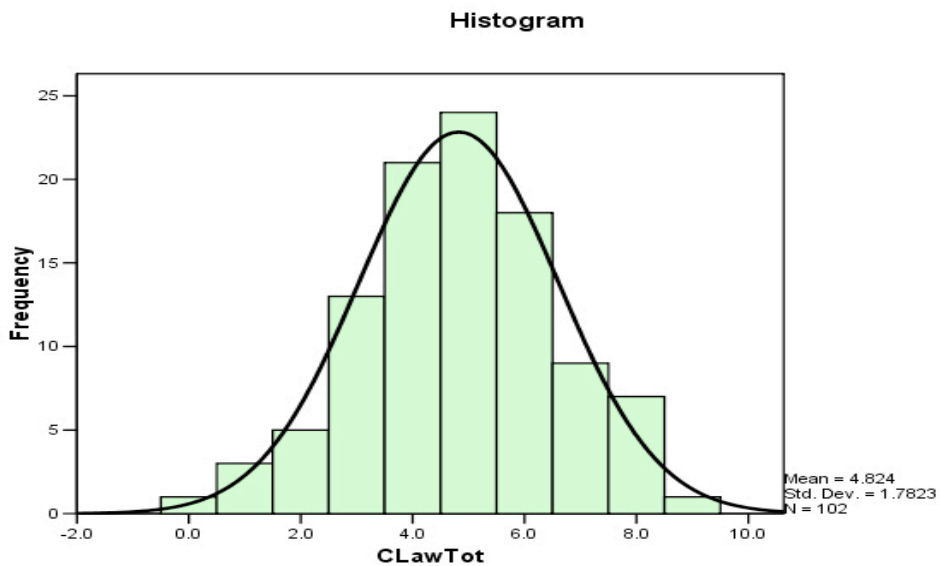
**Figure 9.5**

**Distribution of Correct Responses to Statute Law Scenarios**



**Figure 9.6**

**Distribution of Correct Responses to Common Law Scenarios**



Section C provided ten scenarios based on statute law impacting on Catholic schools. A reasonably high percentage of principals indicated correct responses to issues associated with the *Family Law Act* and anti-discrimination legislation, while the understandings of the *Workplace Health and Safety Act*, and criminal law areas were mixed, with a high percentages of respondents providing correct



responses to one scenario and a lower percentage of correct responses provided for another scenario. It also appears there is a need to develop understandings in relation to the *Copyright Act* (Cth) and the *Education Act* (Qld).

Pearson Chi-Square tests were conducted on the data gathered on a number of variables in Section A of the Survey Questionnaire and the responses to the scenarios in Sections B and C, to examine the possible influences of a number of variables on the development of principals' understandings of legal issues impacting on Catholic schools. These tests revealed a smorgasbord of results.

It appears the variables examined had influenced particular issues, but that no one variable appeared to have a significant effect on the overall development of principals' understandings of the range of legal issues confronting them in leading their schools. Tables 9.11 and 9.12 give a summary of the differences identified in examining these variables. Statistically significant differences were found with the individual items of common law and statute law with at least one of the variables, with the surprising exception being the number of years spent as a Principal in Catholic Education.

Examining these tables from the items in Sections B and C of the survey instrument, one discovers that eight items did not show a statistically significant difference on any of the variables examined. These were: Item 23, associated with duty of care in the classroom; Item 28, duty of care and supervision outside school grounds; Item 30, duty of care regarding sporting activities; Item 31, duty of care regarding excursions; Item 33, related to the *Education Act* (Qld); Item 35, the WH&S act (Qld); and, Items 37 and 38 associated with *Criminal Code* (Qld).

The Totals on Tables 9.11 and 9.12 indicate the highest number of statistically significant differences displayed by any one variable was five. These five differences related to Years Employed in Catholic Education. This variable revealed a higher correct response in relation to the *Family Law Act*, anti-discrimination legislation and two of the scenarios associated with negligence but

**Table 9.11**

**Summary of Variables Indicating Statistically Significant ( $p < 0.05$ ) Differences in the Correct Responses to Scenarios in Section B of the Survey  
Questionnaire Relating to Some of the Common Law Issues Impacting on the Leadership of Catholic Schools**

Variable	Common Law										Total
	Item 23	Item 24	Item 25	Item 26	Item 27	Item 28	Item 29	Item 30	Item 31	Item 32	
	D of C* Sup'visn Cls'rm	D of C Sup'visn Pl'gnd	D of C Sup'visn Pl'gnd	D of C Sup'visn Before Shl	D of C Sup'visn St'behvr	D of C Sup'visn Near Shl	D of C Sup'visn Sport	D of C Resp 'ties Sport	D of C Resp 'ties Ex'cions	EmPLY'mt Contract	
Secondary / Primary Setting					Sec +						1
Male / Female Respondents										Male +	1
Geographical Location				Provl Cities +							1
School Complexity Ratings											0
Leadership Studies in Catholic Ed				Yes +			Yes +				2
Formal Study of Law Subjects							Yes +			Yes +	2
Attendance at In-service & PD							Yes +				1
Admin Experience Outside Ed		Yes -		Yes -							2
Yrs Employed in Catholic Ed			Lngr +		Lngr +						2
Yrs as a Principal in Catholic Ed											0
<b>Total</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>12</b>

- \* D of C = Duty of Care
- + higher correct response rate
- lower correct response rate

**Table 9.12**

**Summary of Variables Indicating Statistically Significant ( $p < 0.05$ ) Differences Identified in the Correct Responses to Scenarios In Section C of the Survey Questionnaire Relating to Some of the Statute Law Issues Impacting on the Leadership of Catholic Schools**

Variable	Statute Law										Total
	Item 33	Item 34	Item 35	Item 36	Item 37	Item 38	Item 39	Item 40	Item 41	Item 42	
	Educ Act	WHS Act	WHS Act	Family Law	Crml Code	Crml Code	Anti-Disc Legis	Anti-Disc Legis	Anti-Disc Legis	Copyright Act	
Secondary / Primary Setting							Sec -	Sec -			2
Male / Female Respondents											0
Geographical Location							Sunshine & Gold Cst -	Prov Cities Sunshine & Gold Csts -			2
School Complexity Ratings									Rtng 5 +		1
Leadership Studies in Catholic Ed											0
Formal Study of Law Subjects											0
Attendance at In-service & PD											0
Admin Experience Outside Ed		Yes -									1
Yrs Employed in Catholic Ed				Lngr +			Lngr +			Lngr -	3
Yrs as a Principal in Catholic Ed											0
Total	0	1	0	1	0	0	3	2	1	1	9

+ higher correct response rate

- lower correct response rate

a lower correct response rate to the scenario associated with the *Copyright Act*. In contrast to this the variable, Administrative Experience Outside Catholic Education, revealed three statistically significant differences, and these were associated with lower correct responses to two scenarios related to negligence and the WH&S act (Qld).

In summary, these analyses of the data gathered via the Survey Questionnaire in relation to Specific Research Question Two, indicate that principals use a wide variety of sources to gain understandings of legal matters impacting on their Catholic schools, with their fellow principals being the most important source, and other support personnel provided by the system of education in which they work, and available printed material also being a very important sources of obtaining legal information. However, the congruency between the understandings developed through these sources and the current interpretations of legal issues impacting on their schools is not high. The findings indicate that only approximately 50% of principals have developed accurate understandings of common law issues impacting on their schools, while their understandings of statute law impacting on their schools is of a higher standard, and in relation to some legislation fairly encouraging.

The variables examined in Chapter 9 did not seem to have a major influence on the overall development of principals understandings of legal issues impacting on their schools, although the time spent working within Catholic Education appears to have a positive relationship in developing more accurate understandings of some of these legal issues. Surprisingly however, the analyses did not indicate a statistically significant relationship between the time spent as a principal per se, and the development of current understandings of the areas of law examined.

The analyses outlined so far in this study, have dealt with the data gathered via the Survey Questionnaire relating to the nature and extent of legal issues confronting principals in Catholic schools, and the development of the principals' understandings of these issues. The presentation of findings now turns to the

data gathered via the survey instrument associated with the impact these legal issues are having on the role of principals as leaders and managers of Catholic schools.

## CHAPTER 10

### PRESENTATION AND ANALYSES OF DATA RELATING TO SPECIFIC RESEARCH QUESTION THREE GATHERED VIA THE SURVEY QUESTIONNAIRE

#### 10.1 Introduction

The purpose of this chapter is to provide an analysis of the data gathered via the Survey Questionnaire in relation to Specific Research Question Three and to present the findings from that analysis. Specific Research Question Three relates to the impact legal issues are having on the administration of Catholic schools and, in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School.

The terms administration, leadership and management appear in the literature in some instances interchangeably (Sultmann & McLaughlin, 2000), and it was revealed in the discussions in Section 3.1, that there was a close relationship between leadership and management (Hodgkinson, 1992; Leithwood, 1994) and both were needed for the successful operation and in bringing about a sense of purpose within organisations (Fidler, 1997). For the purpose of this study, it was indicated that when referring to administration of Catholic schools the term subsumed an element of both leadership and management in the sense outlined by Covey (1989) which portrayed the visionary directional aspect of leadership and the managerial perspective of completing tasks along the way.

In Chapter 3, principals were portrayed as the leaders within their school communities, and along with their Leadership Teams, were being faced with issues of a managerial and leadership nature. For the principal of the Catholic school, the visionary aspects of leadership focus on the purpose of providing quality learning and teaching within a Catholic ethos and culture; a culture and

ethos which is aligned with the characteristics of the Catholic School outlined in Sections 2.8 to 2.8.7. The literature on effectiveness of schools (Australian Government, Department of Education, Science and Training 2004; Hargreaves, 1995) and recent studies on quality teaching and learning (NSW Department of Education and Training 2003a, 2003b) indicate that the quality of schooling does not solely depend on the instruction and implementation of syllabuses, but is also closely linked to the quality of relationships within a school, the development of physical, psychological and social climates conducive to positive learning outcomes, and the respect for the rights of those involved with the school community. The characteristics of the Catholic School which have a particular emphasis on the development of community, respect for the individual and upholding the dignity of the human person, and a sense of justice, align closely with many of these indicators identified in this literature as contributing to the effectiveness and quality of schools.

On reflection, the legal issues with which Catholic schools are involved, confront principals from a leadership perspective, in terms of the vision, ethos, culture and purpose of the school, and from a managerial nature to do with the everyday running of the school. Sometimes these issues are entwined with both a leadership and managerial perspective. For example, from a management perspective, where a principal is faced with having to provide additional physical facilities to upgrade access and movement around a school within a very tight budget under the requirements of the *Workplace Health and Safety Act*, and to comply with the anti-discrimination legislation, for the enrolment of a student with special education needs, and which from a Catholic ethos perspective would support the integration of such a student from the point of view of the dignity of the human person. At times, in dealing with such matters, the leadership and management issues not only integrate but as suggested by Duignan (2002) can confront principals with having to resolve dilemmas and conflicts where both parties seemingly have legitimate but conflicting needs and rights.

Considering principals in Catholic schools are seen as leaders of their school communities in providing an effective school with quality learning and teaching within a Catholic ethos and culture, and the extent and range of legal issues with which principals in Catholic schools are being confronted, and of which they are having to gain some understanding, this study now turned to examine Specific Research Question Three. The focus of this question was to examine the impact these legal issues are having on Catholic schools and the principals that lead them within the social/cultural context in which they operate.

A number of items on the Survey Questionnaire were designed to gather data associated with Specific Research Question Three. Item 16 examined the perceived time principals spent on dealing with legal issues and Item 17 gathered data on whether principals perceived the impact of legal issues on schools was increasing or decreasing. Items 19 and 20 explored the leadership dilemma issues, by exploring the compatibility of the ethos of the Catholic School with the resolutions reached and the processes used in resolving legal matters. Item 21 probed into the stress levels that legal issues were placing on leaders of Catholic schools, Item 22 explored the sources of this stress associated with legal issues, while Item 18 gathered data on the warning signs that principals used to detect that a legal issue was developing in their schools.

As with other questions in this study, variables such as school location, school complexity and geographical location were examined to identify any significant differences in the data gathered that might be related to their influence. In relation to these variables, t-tests, independent sample tests, analysis of variance (ANOVA) and Scheffe comparisons, and Pearson Chi Square tests were used where applicable to identify any statistically significant differences ( $p < 0.05$ ) that may have been attributed to the variables under consideration. These statistically analyses are contained in Volume II <sup>(10)</sup> and the tables provided in this chapter provide details of those variables which revealed significant differences.

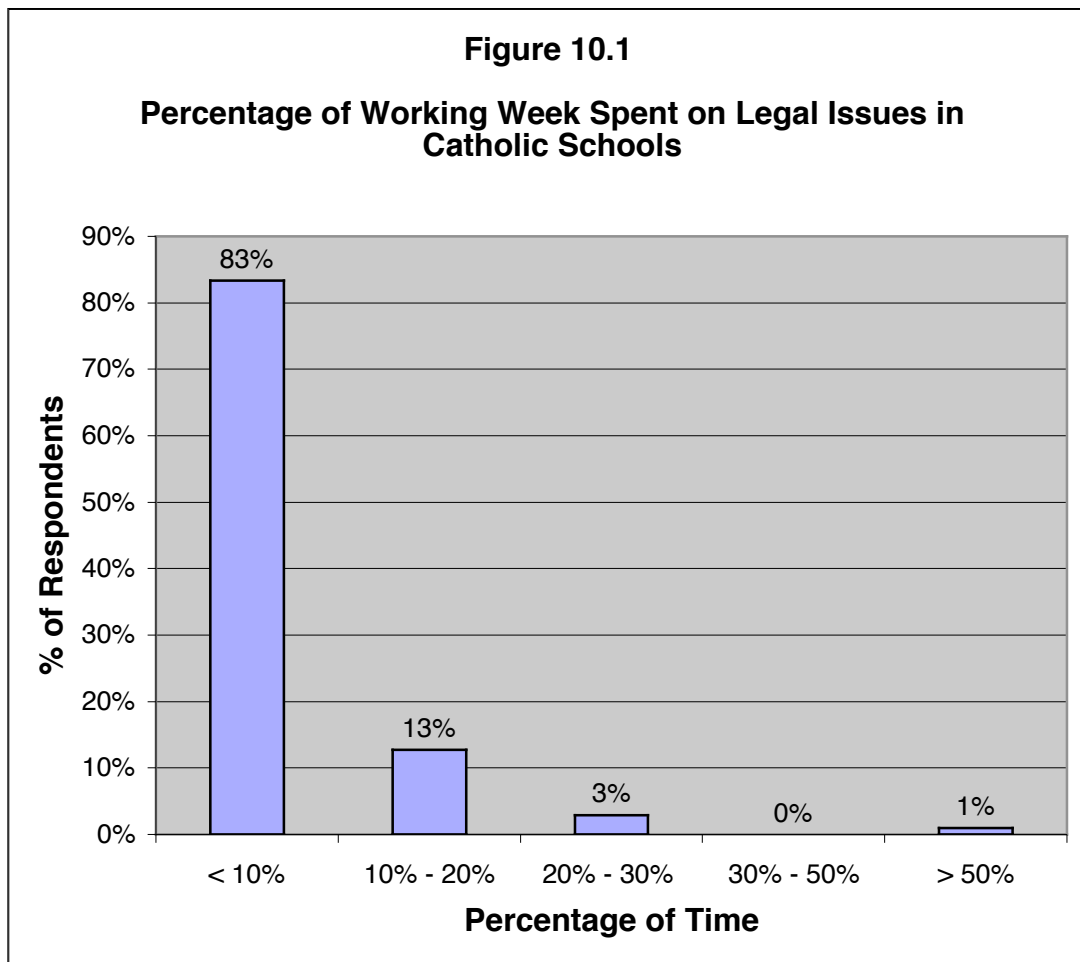
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10. Volume II was provided to the thesis examiners to allow them to gain a full indication of the work undertaken by the researcher to meet some of the issues of validity and reliability raised in Chapter 6 of the thesis, 'Design of the Study'.



## 10.2 Perceived Time Spent on Legal Matters in Catholic Schools

As indicated above, Item 16 on the Survey Questionnaire dealt with the time principals perceived they spent on legal issues. This item asked respondents to indicate what percentage of time during their working week they perceived they spent on legally related matters. The participants were asked to indicate their involvement by responding to five options which ranged from less than 10% of their week to over 50% of their week. Figure 10.1 outlines the options and a break down of the responses to them.



As can be seen from Figure 10.1, the large majority of respondents perceived themselves as spending 10% or less per week on legal issues. This is equivalent to approximately half a working day or less being taken up with dealing with legal matters. This was an interesting result, for considering the range of the legal issues impacting on schools that have been identified in this study, one might have thought that a larger amount of time would have been spent by principals

dealing with legal issues. However, the data also indicated that there were some principals who perceived themselves as spending more than a day a week dealing with legal issues, and the occasional situation over 50% of the working week.

In the comments returned with the survey instrument, it was not surprising to see participants clarify their responses to Item 16, and indicate that the time spent on legal issues “varies considerably” (R060) and the involvement was often proportional to the matter at hand. As one respondent remarked, the “time spent really depends on specific occasions. On several occasions I have spent more than 50% of a week on legally related matters”, and another commented that one could “spend days on end investigating and reporting/problem solving some legally related matters” (R019). One other respondent indicated that the time he spent on legally related matters could be “less than 10% in a normal week but more than 50% when a case [was] on” (R113).

### **10.2.1 Influence of Variables on Perceived Time Spent on Legal Matters in Catholic Schools**

In an attempt to discover possible significant differences in the time spent on legal issues that might be attributed to particular variables, a number of t-tests and ANOV were carried out on data gathered under Item 16, and the information obtained from Section A of the Survey Questionnaire relating to complexity ratings of schools, geographical location of schools, school settings and the sex of the respondents.

One might be inclined to think that a person leading a school in the secondary setting or in a community whose social/cultural environment was more complex, would spend more time on legally related matters. The analyses carried out on all these variables indicated there were no statistically significant differences in the percentage of time spent in the working week on legal issues that could be attributed to them. Therefore it appears, that primary or secondary school

settings, geographical location, sex of principals and complexity of schools, (taking into account those variables such as socio/economic circumstances, student population and the numbers of students with special learning needs, used to construct the complexity index used in this study), do not affect the time principals spend on legal matters. These results were in some ways not surprising, seeing the large majority of respondents (84%), had indicated that they perceived that they spent less than 10% of their time in the working week on legal issues.

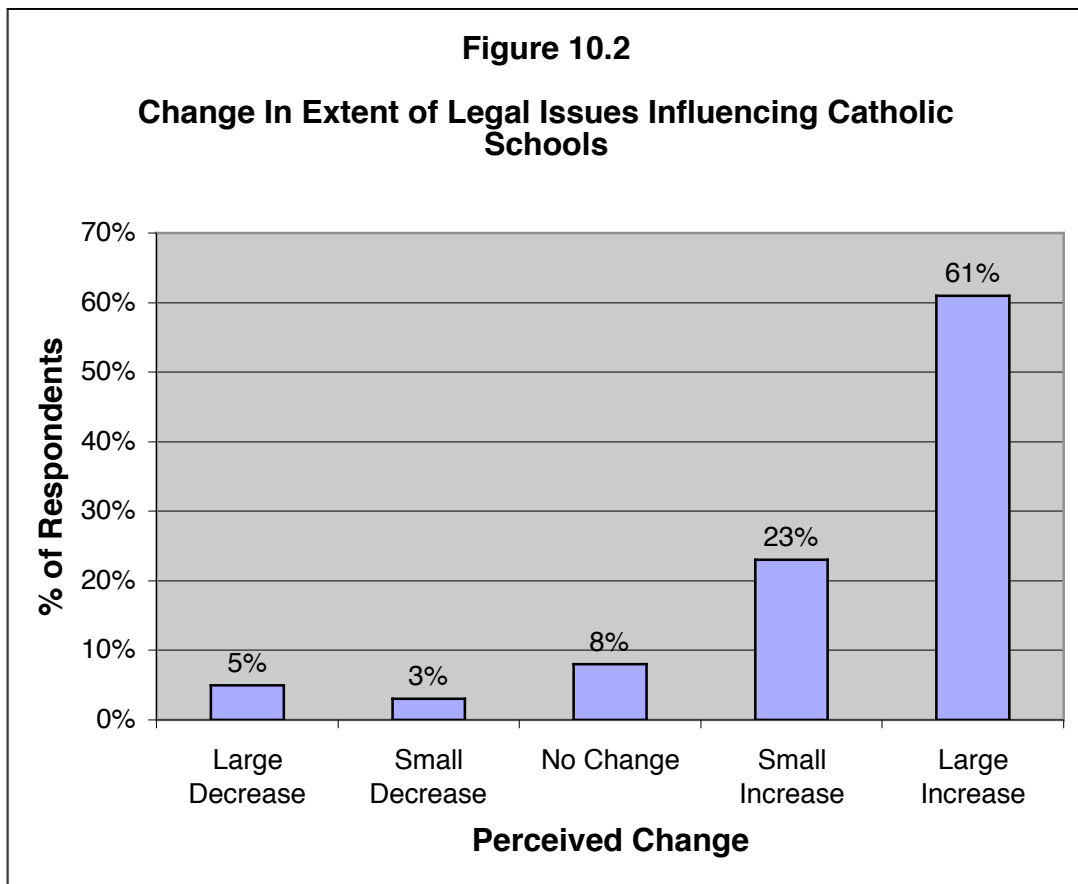
### **10.3 Change in the Extent to Which Legal Issues Have Been Impacting on Catholic Schools**

Item 17 on the Survey Questionnaire asked respondents to indicate if they perceived that the influence of legal issues on the leadership, policies and practices of their schools had changed during the time they had carried out the role of principal. In relation to this item, respondents were again give the choice of five options from which to respond to the question. The options provided were: large decrease, small decrease, no change, small increase and large increase. Figure 10.2 gives the percentage of responses to these options.

The analysis of this data indicates that 84% of respondents saw an increase in the extent to which legal issues were influencing the leadership, policies and practices of Catholic schools, and of these over 60% saw this as a large increase in influence during the time they had spent as principal of a school. In the comments returned with the survey instrument relating to Item 17, one respondent (R002), made mention of what he saw as a large increase generally of the administrative tasks impacting on the role of principals, and indicated that he felt the legal issues had not been proportional to the overall increase in administrative tasks.

However, many respondents spoke of “a large increase in dealing with legal issues” (R060) and others remarked that most areas of school administration had

legal implications (R004; R081; R095; R109). Some respondents remarked that while legal issues per se had not increased, the extent to which principals had to be aware of legal issues, to provide documentation and place legal risk management issues in place to meet requirements, had increased (R016; R066, R069, R071, R089, R092). As one respondent remarked, “a part of most significant decisions, which affect the individual or the whole community, now incorporates a legal consideration” (R105), and another commented on the “increase[ed] awareness of legal ramifications of decisions that cover all aspects of school life” (R107).



A number of respondents (R018; R044; R045; R048; R051; R055; R089; R101; R119) aligned the increase in influence to an increase towards litigation to resolve issues within society itself, and a number remarked that this had led to parents being less reluctant to seek legal redress to issues associated with the education of their children (R019; R023; R032; R033; R045; R057; R078; R098; R112; R113; R116). Some respondents (R038; R091; R121) saw this even drifting towards issues associated with professional negligence; an area identified

in Section 8.4.3 as an additional area of involvement with legal issues for principals. As one respondent remarked, “parents are more likely now to take action against anything they do not see as satisfactory to them” (R015) and commenting on this trend another respondent (R040) indicated that in some circumstances he believed this tendency had gone too far.

One respondent reflected that “as a principal I have no choice but to be more aware of the implications of the law in relation to my work” (R007) and another remarked that “there is an atmosphere that suggests all our actions, policies etc are bound by some legal requirement” (R004). Many respondents revealed that this increase in influence had been manifested by recent legislation and the responsibilities associated with the implementation of these legislative changes, such as the necessity to attend courses and training. In relation to the latter, the *WorkCover Act*, *Workplace Health and Safety Act*, and the legislation dealing with the rehabilitation of employees with work related injuries in the workplace, including stress, featured prominently (R006; R007; R008; R010; R014; R026; R029; R031; R032; R047; R052; R055; R061; R063; R065; R074; R075; R076; R078; R079; R080; R082; R087; R088; R090; R091; R093; R095; R096; R102; R103; R108; R111; R113; R117; R118; R122; R125).

Others attributed the increase to anti-discrimination legislation, family law and child abuse issues (R010; R016; R018; R031; R032; R037; R038; R040; R051; R059; R061; R063; R074; R075; R076; R078; R079; R080; R086; R088; R091; R093; R094; R100; R102; R103; R116; R121; R124; R125). Copyright legislation also featured in comments returned with the survey instrument (R061; R076; R079; R100; R118) as did criminal law issues, particularly breaking entering and vandalism (R033; R076; R124). One of the other interesting outcomes from this examination was the number of principals who again made comments to what they observed as a relationship between negligence and the safety issues emerging from the WH&S legislation (R029; R087; R098; R104).

Later in this chapter, the issue of stress on principals caused by the impact of legal issues on Catholic schools will be examined, but it is worth noting that a number of the comments by respondents to Item 17 of the Survey Questionnaire referred to the impact legal issues were having on their staff as a whole. One respondent indicated that as a result of the increasing influence of legal issues on the school environment, “teachers [were] becoming very fearful about courts” (R010), and others commented on the contribution this environment was making to the pressure on teachers and to their anxiety and stress levels (R023; R026; R048; R051; R055; R082; R092). A number of respondents referred to this increase being associated with the documentation surrounding legal matters and the need to keep accurate and comprehensive records of events, incidents and issues, (R007; R018; R019; R023; R055; R058; R059; R079; R081; R089).

Some respondents (R074; R098; R105) argued that this increase in legalism is detracting from the ethos and characteristics of the Catholic School, especially with regard to building and maintaining a sense of community and the emphasis placed on the pastoral care environment within Catholic schools. The other side of the coin here is, that the clarification of the rights of others supports the elements of the Catholic School which focus on justice and respect for the dignity of the human person.

The increased influence of law on the administration, policies and practices of Catholic schools could be summed up in the general comments made by two respondents in relation to Item 17:

WH&S requires large increase in administration duties. e.g. committees, risk assessment, physical maintenance of buildings, removing and/or replacing playground equipment, maintaining playground equipment, Workplace Health and Safety Officer Training, In-servicing staff re protocols, equipment issues, discriminatory issues, changes in approach to children some emphasis on ‘hands off’...Coping with the stress/fear of parents making demands that have never been made before. A little knowledge of some has become a dangerous thing (R098);

and,

This is now a much more litigious society. Whereas once, it was sometimes ‘our call’, today *every* incident which could lead either to a police investigation or/and court action needs to be documented and

witnessed. It's sad really, because I feel our roles are very depersonalised by this; it has taken a lot from our pastoral role (R123).

From this analysis one can confidently conclude that the law is having a far reaching influence on the administration, policies and practices in Catholic Schools.

### **10.3.1 Influence of Variables on the Change in the Extent to Which Legal Issues Have Been Impacting on Catholic Schools**

The variables of primary and secondary school settings, geographical location and complexity ratings of schools, and the sex of principals were again examined to identify any significant difference these variables might have on the perceived extent of change in legal issues influencing leadership, policies and practices in Catholic schools. These analyses reveal that there were no statistically significant differences in principals' perceived changes in the extent of the law influencing the administration, policies and practices of Catholic schools that might be attributed to any of these variables. These findings are consistent with those of the previous section where the same variables did not reveal a statistically significant difference with regard to the time spent on legal issues.

### **10.4 Compatibility of the Ethos of the Catholic School with the Resolutions Reached and Processes Used When Dealing With Legal Issues in Catholic Schools**

The paradoxes which leaders in Catholic schools encounter when dealing with legal issues was touched upon in the previous section, when reference was made by some respondents that the increased legalism was impacting on the sense of community and interpersonal nature of the Catholic School. As outlined in Sections 2.8 to 2.8.7 of Chapter 2, which examined the characteristics of the Catholic School, it was pointed out that the ethos of the Catholic School places a strong emphasis on the dignity of the human person, building of community and a sense of justice. Also in Chapter 2, it was pointed out that while Catholic schools

have a close ecclesial relationship with the Catholic Church, they are also part of a wider social system and must engage with the society of which they are part; a point emphasised by Vatican II for the whole Church and a perspective congruent with the theoretical perspectives underpinning this study. When discussing the development of Catholic schools throughout Australia, it was pointed out that the dominant current structure that has emerged, is a system of schools administered by Catholic authorities, and the schools and personnel within them are subject to the laws and regulations applicable to the state jurisdictions in which each school exists, and the federal laws which surpass state boundaries.

As pointed out by Gleeson (2001), that while the separation of Church and State has emerged within our society, there is a historical relationship between the Westminster System of governance and the basis of morality as expounded in the Christian religions. While this separation may be more marked in the present development of our more secular and pluralistic society, principals of Catholic schools face an intersection of these two worlds in their everyday leadership and management of Catholic school communities. Within this melee, leaders of Catholic schools are confronted with striving to develop the Catholic ethos, climate and culture by imitating Christ in meeting the needs of others and providing service as servant leaders.

When examining leadership earlier in this study, one of the suggestions was, that leadership was associated with people, purpose and process. Purpose was not only associated with vision and mission, but also with getting the tasks completed along the way, something akin to the leadership management issues discussed earlier. It was seen in that discussion that some leaders in the past may have been labelled as task orientated. This task orientation towards dealing with legal issues was reflected in the comments in the previous section where respondents made reference to spending days on legal issues when they arose.

Therefore, considering the desire to have issues associated with legal matters resolved, and the interconnectedness between the Catholic School with its

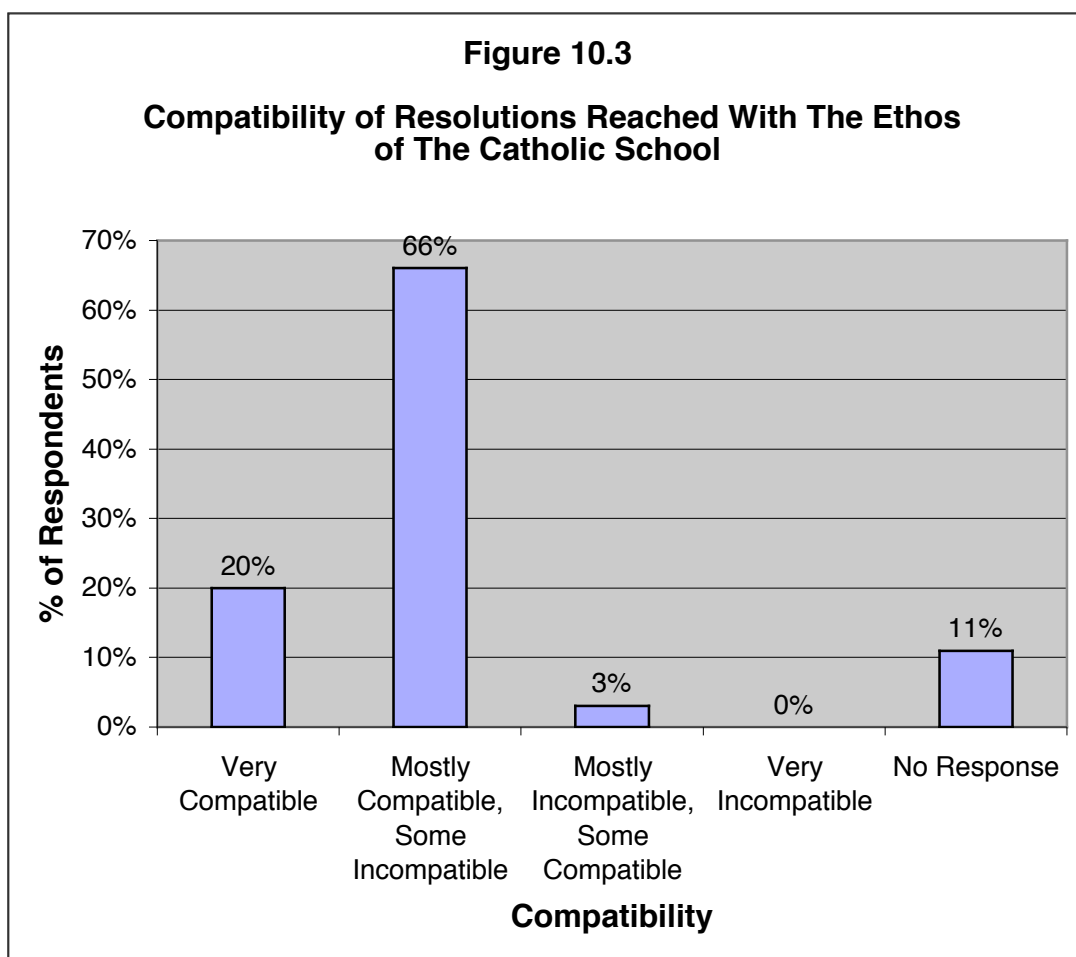


ecclesial nature, ethos and culture, the society of which it is part and the extent of legal issues impacting on Catholic schools, it was considered important in relation to Specific Research Question Three, to examine the perceptions principals had of the compatibility between the ethos of the Catholic School and the resolutions reached, and the processes used in reaching those resolutions, when dealing with legal issues.

#### **10.4.1 Compatibility of the Ethos of the Catholic School with the Resolutions Reached When Dealing With Legal Issues in Catholic Schools**

Item 19 on the Survey Questionnaire was structured to gather data to help examine this perceived compatibility principals had of the resolutions reached in dealing with these legal issues and the ethos of the Catholic School. Respondents were asked to rate this compatibility using the following options: very compatible, mostly compatible but some incompatible, mostly incompatible but some compatible, and very incompatible. Figure 10.3 gives an outline of the percentages of responses to each of these options. It should be remembered that earlier in this study in Section 7.7.6, it was revealed that 84% of respondents had undertaken courses in Leadership in Catholic schools. Therefore, one could assume a high degree of understanding of the ethos of the Catholic School among those who responded to Item 19.

This figure reveals that 11% of participants chose not to respond to this question. No respondents saw the resolutions reached as being very incompatible with the ethos of the Catholic School, and only 3% saw them as mostly incompatible but some compatible. However, the large majority of respondents saw a strong compatibility between the resolutions reached and the ethos of the Catholic School, with 20% choosing the very compatible rating and 66% choosing the mostly compatible but some incompatible rating.



It appears therefore, that although there may be a propensity for principals to have legal issues confronting them resolved, the symbolic and cultural aspects underpinning their leadership of Catholic schools on the whole, is not disregarded in the type of resolutions being sought. Also assuming the resolutions reached are congruent with the law, it appears that in most cases, the clarification of rights of persons as depicted by the common law and statute law impacting on Catholic schools from the Queensland and Commonwealth jurisdictions, and which are manifested in the legal issues with which principals are involved in leading their school communities, is not far aligned from what would be expected from the ethos underpinning the Catholic School. As one respondent remarked, “divergent problems are generally resolved by appeal to a ‘higher level’ e.g. love, justice, truth. Both Catholic ethos and the law are commensurate in this regard” (R103).

There is, however, some degree of incompatibility revealed in this analysis dealing with the resolutions reached, when one considers the 3% response to the

rating mostly incompatible but some compatible, and the largest rating of 66% which rated the resolutions as mostly compatible *but some incompatible*. As one respondent remarked on the survey instrument, “while legal issues are justice based, the Catholic ethos isn’t, because legal solutions have winners and losers, while justice in the Catholic sense needs to accommodate the loser as well as the winner” (R002), and another commented that “often the resolution reached by a court is not the appropriate Christian one” (R008).

Such was the case where an insurance company settled a claim with those involved, while many persons in the school community knew the claim to be vexatious (R122). This sentiment, that sometimes the resolution was considered not the ‘right’ one, was shared by other respondents (R019; R069; R102) and particularly in relation to family law matters (R058; R063; R102). The other issues which seems to arise and which was commented on in this study, is the perception of an over emphasis on the rights of the individual at the expense of the common good within a community, and where “justice becomes focused on an individual at the expense of the majority” (R032).

#### **10.4.2 Compatibility of the Ethos of the Catholic School with the Processes Used in Reaching Resolutions When Dealing With Legal Issues in Catholic Schools**

It was acknowledged above, that leadership did not only involve a focus on purpose and getting tasks completed, but also involved the processes used along the way in reaching one’s objective. In examining the notion of compatibility therefore, it was considered appropriate to not only examine the perceptions of principals in relation to the resolutions reached when dealing with legal issues, but also the compatibility of the processes used in reaching those resolutions. While an examination of resolutions reached in dealing with legal issues, places a highlight on the aspect of justice, a focus on the processes used in the context of resolving issues, discloses a natural justice and procedural fairness perspective. The latter is aligned closely with the notion of respect for the dignity of the human

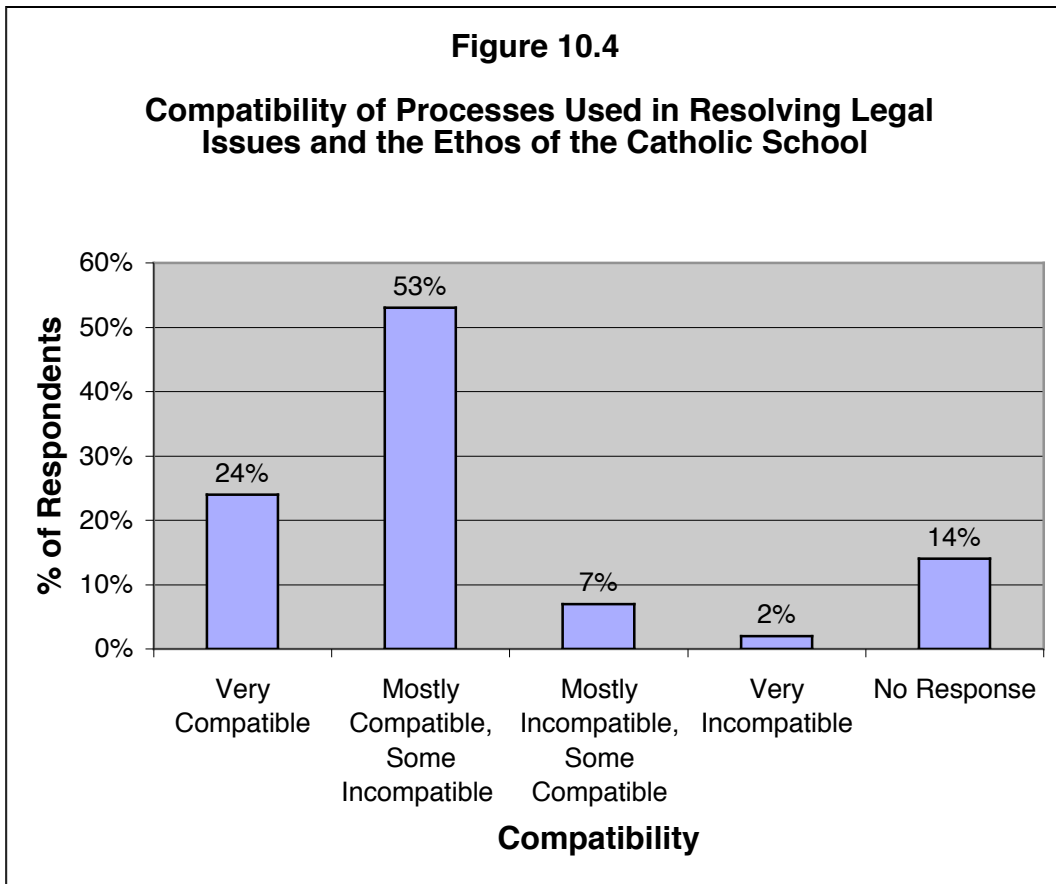
person; a central element of the Catholic ethos. One could anticipate therefore, that a high degree of compatibility would exist between the processes used and the ethos of the Catholic School when arriving at resolutions to legal issues.

Item 20 on the Survey Questionnaire was constructed to provide data on this aspect of compatibility. Respondents were given the same rating scale as used in Item 19 to respond to this question, and Figure 10.4 gives an outline of these responses. Figure 10.4 displays a similar pattern to the responses to the resolutions compatibility question.

From a general perspective this indicates that the processes used in resolving legal issues were compatible with the ethos of the Catholic School. This was confirmed by a number of comments from respondents who returned the survey instrument. One respondent when commenting on legal issues he had dealt with remarked that, "most related to following due process and respecting the rights of others, which is consistent with our ethos" (R078), and another stated, "I believe that in the situations I have experienced, due process has been followed, giving different parties ample opportunity to put their case " (R026). Other respondents concurred with these sentiments (R025; R029; R051; R090; R096; R111; R116; R120; R122; R124).

However, in comparing the response ratings to the two questions; the resolutions reached and the processes used, there were some interesting variations in percentages of each of the ratings. The number of respondents who chose not to answer the processes question rose to 14% compared to 11% on the resolution question. The very compatible rating for the processes question was 24%, which was 4% higher than the corresponding responses to the resolution question. The, mostly compatible but some incompatible rating dropped over 10% from the resolution question, to be 53% for the processes used question. There was a 4% rise, to 7% in the rating mostly incompatible but some compatible, with regard to the processes question when comparing the same rating to the resolution

question, and while no respondents indicated very incompatible ratings for the resolution question, 2% gave this rating to the processes question.



When comparing the two positive compatibility ratings for both questions, there is a discrepancy of almost 10% less compatibility on the processes used question, than on the resolutions reached question, and when one considers the increase in the incompatibility ratings for the process question, this trends to indicate that respondents were less confident in their perceptions that the processes used in resolving legal matters were aligned with the ethos of the Catholic School, than when it came to their perceptions of the resolutions reached.

These findings indicated that in terms of justice; reaching a just outcome, principals saw a close compatibility with the ethos expounded by the Catholic School, but in the processes used in reaching these resolutions and dealing with people concerned, where natural justice/procedural fairness and respect for those involved came to the fore, principals were less convinced of the compatibility.

A number of comments returned with the survey instrument supported this finding. While respondents acknowledged their central role in arriving at resolutions to legal matters, many made mention of the positive support of the personnel from the Brisbane Catholic Education Centre, (R007; R038; R051; R076; R081; R101; R111), which one respondent considered crucial (R025), and in acknowledging the latter made comment of the demonstrated characteristics of calmness, honest, compassion and respect for the people involved (R006; R026).

However, there was some dissatisfaction from principals in that they saw themselves often called upon to “deliver the messages or handle the problem” (R089), and being the meat in the sandwich between catering for individual’s needs and rights, and considering the common good of their communities (R045; R063; R098). In carrying out such a role, not all respondents believed they received the support they required (R007; R103; R015). Some commented that at times they felt their needs were not catered for in terms of pastoral support (R089; R098), sometimes they felt left out, or not kept informed of the progress of discussions and negotiations (R010; R104; R113) and at other times the debriefing and follow up they considered appropriate, was lacking (R007; R016; R059; R061). Other respondents commented that at times they believed the dignity of the persons involved was not fully considered (R019), such as catering for the “norms due to the cultural backgrounds of families” (R092). From comments provided by respondents, it also appeared that at times the personal management issues could have been handled more effectively, especially where the processes were associated with matters of child abuse (R060; R076; R082).

One respondent (R125) spoke of the incompatibility created in the process, when personnel or agencies outside the Catholic School community, who did not share the same ethos, dealt with issues. Another respondent commented, “often the process is not transparent. It’s difficult to understand how process A can arrive at resolution B” (R014). Others spoke of the process of legalism, where “forgiveness seems not to be a legal virtue” (R101) and the aim in the process

was to attribute fault to a particular party, ignoring the Christian notions of forgiveness and reconciliation (R074).

The findings from the above analysis indicate that the resolution reached in dealing with legal matters are fairly congruent with the ethos of the Catholic School, however, there are some reservations in the compatibility between the ethos of the Catholic School with the processes used in reaching those resolutions, particularly where the interpersonal relationship issues are considered.

### **10.5 Stress on Principals and the Involvement With Legal Issues in Catholic Schools**

In Section 10.3, reference was made to comments returned with the survey instrument that indicated legal issues were contributing to the increased pressure on the staff of schools, and in particular to the stress and anxiety of teachers. As part of examining Specific Research Question Three it was considered important to explore this aspect of the law's impact on principals in Catholic schools. Items 21 and 22 on the Survey Questionnaire were designed to gather information relating to this aspect of the study.

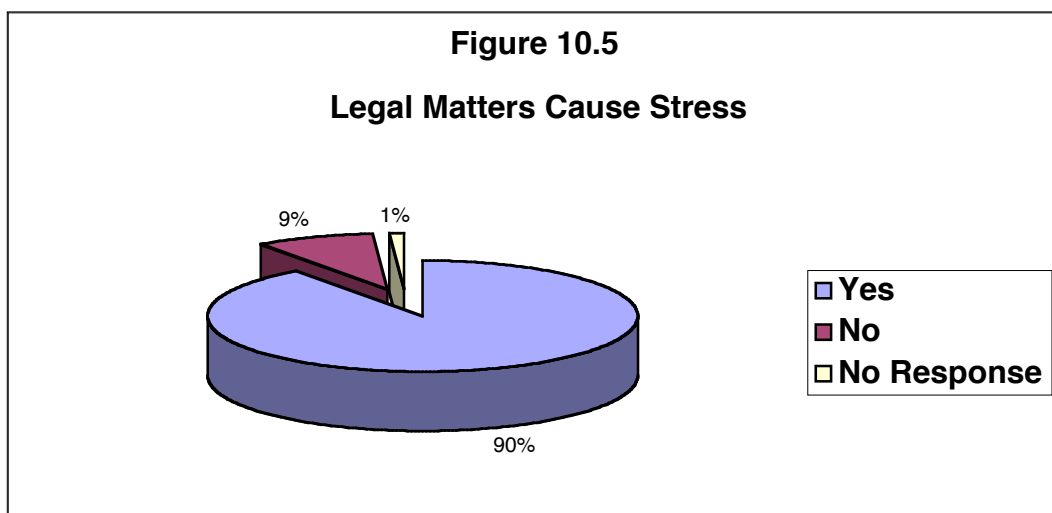
Item 21 had three parts to its construction. The first part asked respondents to indicate whether legal matters associated with school administration caused them stress, the second element explored whether legal matters caused the respondents more stress than other administrative tasks, and the third component asked respondents whether legal matters were more stressful than in previous years.

Item 22 had two components to its structure. The first element listed a number of items as sources of stress for principals when dealing with legal matters. A number of these sources of stress were identified in Stewart's study (1996), and others were added following data gathered as a participant observer.

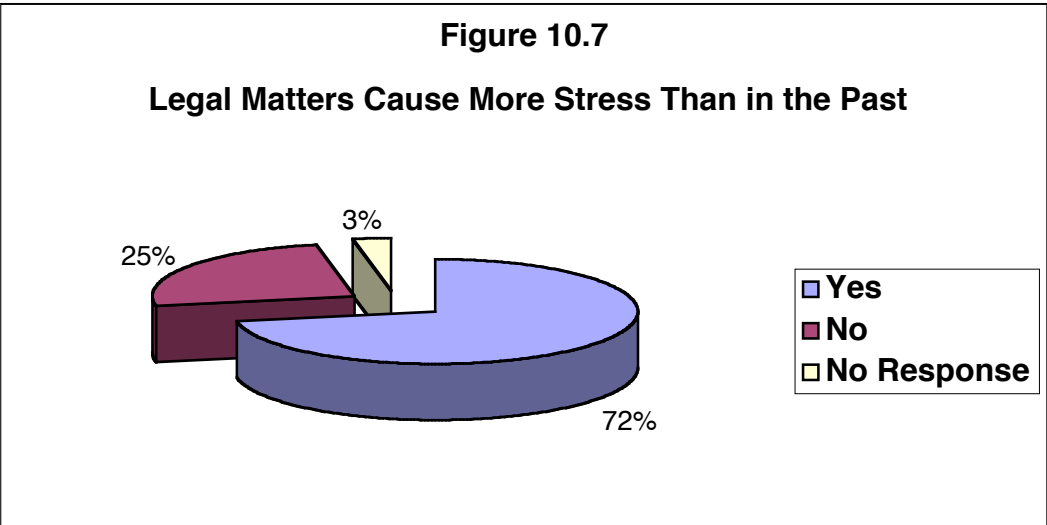
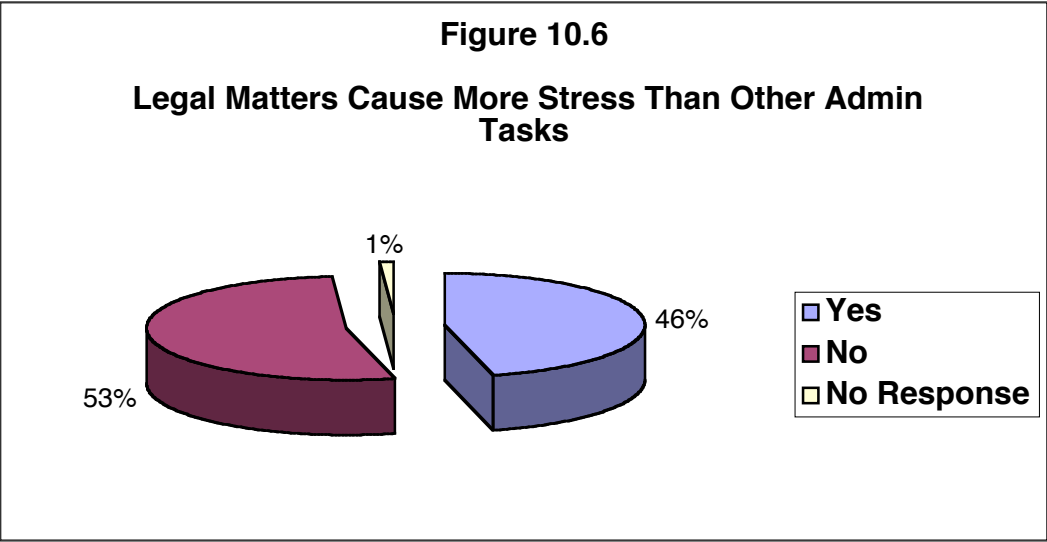
Respondents were asked to indicate whether the items listed had been a source of stress for them when handling legal issues. The second feature of Item 22 asked respondents to rank the items identified by them as sources of stress in order of importance. Respondents were also provided with the opportunity to list other sources of stress that were not listed on the instrument, and to add any additional comments they wished to make regarding the relationship between stress and involvement with legal issues.

### 10.5.1 Relationships Between Legal Matters and Stress on Principals in Catholic Schools

Item 21 examined the relationship between legal matters and stress on principals. Respondents were asked to provide simple yes/no responses to three questions; whether legal matters cause them stress, whether legal matters caused them more stress than other administrative matters and whether legal matters caused them more stress than in previous years. Figures 10.5, 10.6 and 10.7 give an outline of the percentage of respondents who gave yes and no responses to these questions. One participant did not respond to the first two questions and three participants did not provide a response to the third question.







The profiles in these figures reveal that 90% of respondents indicated that legal matters caused them stress, 72% revealed that legal matters caused them more stress now than in the past and 46% responded by indicating legal matters were causing them more stress than other administrative tasks.

These profiles also reveal that, while all administrative tasks related to the role of principal possess a degree of stress, identified by 53% of respondents indicating legal matters were on a par with other administrative tasks when it came to stress relatedness, the legal matters with which principals deal have a high component of stress affiliated with them and that this aspect associated with the impact of the law on school principals was increasing. These outcomes correspond with the

findings discussed earlier in this study, which indicate increasing influences of the law on school administration, policies and practices.

### **10.5.2 Influence of Variables on the Stress Caused From Dealing with Legal Matters in Catholic Schools**

As with other issues examined in this study, particular variables were considered to identify any significant influence they might have on the particular aspect of the law under review. The variables examined here were: primary and secondary school settings; the sex of principals; geographical location; complexity of schools; time spent as a principal in a school; exposure to studies in legal issues; and, exposure to personal and professional learning experiences. In relation to these variables, a number of t-tests, ANOV and Scheffe comparisons, and Pearson Chi-Square tests were carried out where applicable on the data gathered under Item 21(i) and other information collected in Section A of the survey instrument. As with other analyses carried out in this study, calculations that revealed a significant difference are provided in this text and the results of other analyses are contained in Volume II.

The first two variables examined were primary and secondary school settings, and the sex of principals. Group t-tests and independent sample tests for variance were carried out on the data here to identify any significant relationships between the variables. These analyses revealed that there were no statistically significant differences ( $p < 0.05$ ) identified with regard to these variables and the cause of stress on principals.

ANOV and Scheffe comparisons were carried out on the second two variables examined in relation to stress caused by legal matters, namely school complexity and geographical location of schools. These analyses indicated no statistically significant difference between the cause of stress of legal matters and complexity of schools. This was a little surprising as one might have thought the more complex the school environment the more likely there would be stress caused by

legal matters. A statistically significant difference, however, was identified in stress caused by legal matters and the geographical location of schools. Table 10.1 outlines this difference.

**Table 10.1**  
**Stress Caused by Legal Matters and the Influence of**  
**School Geographical Location**

**ANOVA Geographical Locations**

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	0.631	3	0.210	2.697	0.050*
Within Groups	7.567	97	0.078		
Total	8.198	100			

\* Significant Difference:  $p = 0.05$

**Scheffe Comparisons: Geographical Locations**

	Variable: Geographical Location	No: Respondents	Subset for Alpha = 0.05	
			1	2
Stress Caused by Legal Matters	Sunshine /Gold Coast	12	1.00*	
	Brisbane Provincial City/Shire	25	1.04	1.04
	Brisbane Suburban	49	1.08	1.08
	Rural Town	15		1.27*
	Sig.		0.846	0.107

\* Significant Difference

The statistically significant difference identified here existed between the respondents from Rural Town schools when compared with the coastal schools of the Gold Coast and Sunshine Coast. Why this difference occurs is difficult to ascertain, but it might have something to do with respondents in Rural Towns feeling more isolated because of their location, which is further away from the support of the Queensland State Capital, and the Brisbane Catholic Education Centre. The other possible explanation might be the frequency and closeness of interactions that principals in small isolated communities have with people with whom they might be in dispute. As one respondent remarked:

Stress is increased in a small country town setting such as the one I'm now in. Here the people with whom problems are being contested are unavoidable in daily life e.g. on a recent Thursday I was in the Small Claims Tribunal pursuing a fee defaulter. On the next Saturday the check-

out person serving me at Woollies was the woman from Thursday's hearing (R113).

The next variable examined in this analysis was length of time respondents had spent in the role of principal. One might contemplate that the longer one carries out the role of principal and deals with legal matters, the less stressful would be the impact of dealing with these issues. In Section 7.6.4, it was shown that 17% of respondents had occupied the role of principal for less than 2 Years, 16% from 2-5 Years, 27% from 5-10 Years and 41% for more than 10 Years. Pearson Chi-Square analyses carried out on this data and that gathered under Item 21, revealed there was no significant difference between the stress caused by legal matters attributed to the length of time spent as a principal.

The final two variables examined in this analysis were associated with respondents' exposure to personal and professional learning experiences. Firstly, the influence of exposure to formal legal studies was examined to see if this had a significant influence on the stress caused by having to deal with legal matters and secondly, the significant effect of the attendance at professional development and in-service courses was also examined.

One could contemplate that the more one is exposed to formal and less formal learning experiences associated with legal matters, the more one would develop an understanding of legal matters and the way the law operates, and this in turn would lessen the stress caused when dealing with legal issues. To examine this, t-tests were carried out on the data gathered under Item 21(i), and the information collected on personal and professional learning experiences in response to Items 10 and 11 in Section A of the Survey Questionnaire. These analyses revealed no statistically significant effect on the stress caused by having to deal with legal matters and the attendance at formal or less formal personal and professional learning experiences. This finding correlates with the earlier findings which indicated exposure to such learning experiences had little impact on the understandings of respondents to the legal issues impacting on schools.

Of all the analyses carried out on the variables identified in this section, only geographical location had any statistically significant influence ( $p < 0.05$ ) on the stress caused from dealing with legal matters. This difference emerged in a comparison between principals in Rural Country Town schools when compared with their colleagues in schools on the Gold Coast and Sunshine Coasts. It is suggested that this difference may have something to do with the isolation and closer interpersonal relationships of the rural country towns.

This table indicates that when comparing male and female respondents, male principals were more likely to see legal issues as causing more stress than other administrative tasks. It is difficult to ascertain what created this difference, but it might have some relationship to the findings revealed earlier in this study, where male principals had displayed statistically significantly higher involvement with issues of assault by teachers and the negligence issues associated with the physical welfare of students. Being more heavily involved with these areas of physical welfare of students therefore, might account for the statistically significant difference revealed here.

### **10.5.3 Influence of Variables on Legal Matters Causing More Stress Than Other Administrative Matters in Catholic Schools**

A number of variables were examined to see if they exercised any significant influence on the perceived stress created by dealing with legal matters, when compared to other administrative tasks linked to the principalship role. The first two variables examined in relation to this issue were school settings and sex of principals. T-tests and independent sample tests on this data revealed there were no statistically significant differences ( $p < 0.05$ ) with regard to school settings, but when it came to examining the variable, sex of principals, a statistically significant difference was revealed. Table 10.2 outlines this difference.

The next two variables examined with regard to identifying possible significant influences upon the comparison of stress caused by law related matters and other administrative tasks carried out in the role of principal, were school geographical location and school complexity ratings. ANOV analyses carried out on these variables revealed no statistically significant differences with either of these variables.

**Table 10.2**

**Legal Matters Causing More Stress Than Other Administrative Tasks in Catholic Schools and the Influence of Sex of Principals**

**T-Test Group Statistics**

Item	Sex of Principals	No: Respondents	Mean	S..D.
Legal Matters More Stress Than Other Admin Tasks	Female	33	1.39	0.496
	Male	67	1.61	0.491

**Independent Sample Tests**

Item		Levene's Test for Equality of Variance		t-test for Equality of Means		
		F	Sig.	t	Df	Sig. (2-tailed)
Legal Matters More Stress Than Other Admin Tasks	Equal variance assumed	0.012	0.912	-2.081	98	0.040*
	Equal variance not assumed			-2.073	63.182	0.042

\*Significant Difference:  $p < 0.05$

**10.5.4 Influence of Variables on Legal Matters Causing More Stress Than in Previous Years in Catholic Schools**

We saw above that 72% of respondents indicated that legal matters were causing more stress for them in carrying out their role of principal than had been the case in previous years. It was considered that the findings already referred to in this study, particularly with regard to legal matters of a criminal nature, that primary and secondary school settings and the complexity of schools might reveal some significant influence on these increasing stress levels. Again, t-tests and ANOV were carried out on the data gathered via the Survey Questionnaire in relation to these areas. The analyses carried out indicated that there were no statistically

significant differences ( $p < 0.05$ ) identified with these variables and the increasing stress levels created by principals having to deal with law related matters.

## **10.6 Sources of Stress Caused by Dealing With Legal Matters in Catholic Schools**

Stewart's (1996) study revealed a number of sources of stress for principals in Government schools when dealing with legal matters. As indicated in Section 6.2.1.1, a number of these sources of stress were listed on the Survey Questionnaire. In addition to the items extracted from Stewart's study, two items were added, namely, handling emotive and conflict matters and the length of time it took for legal matters to be resolved. Discussions, interactions and observations as a participant observer indicated that these latter two items were areas of concern and stress for principals when dealing with legal matters.

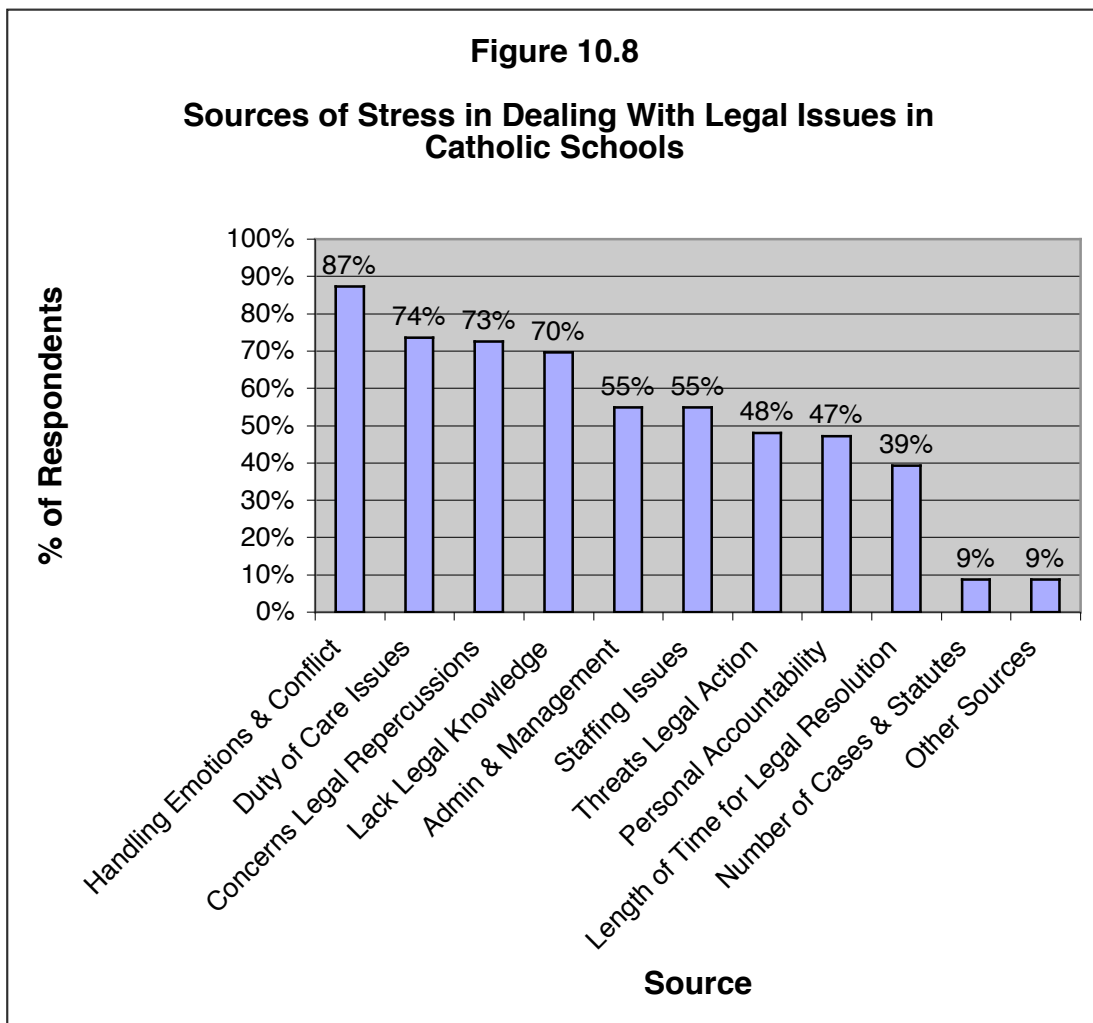
The sources of stress were listed on the survey instrument as follows: awareness of and concern about legal repercussions; handling emotive and conflict matters; involvement in legal problems and/or the administration and management of legal problems; issues relating to duty of care; lack of legal knowledge; length of time for legal matters to be resolved; number and extent of statutes and court cases; personal accountability; staffing issues; and, threats of legal action from parents and community.

Participants were asked to indicate on the survey if the items listed were sources of stress for them when dealing with legal issues and to leave blank those items which were of no significance. Participants were also given the opportunity to provide additional sources of stress they experienced when dealing with legal matters that were not listed on the survey instrument. Figure 10.8 displays these sources of stress and the percentage of respondents who identified the items as sources of stress for them in the context of dealing with legal matters while carrying out their roles as principals.

Figure 10.8 indicates that with the exception of one area, the number and extent of statutes and court cases, those items listed were prominent sources of stress for principals in dealing with legal issues. Some respondents who returned comments relating to Item 22 with the survey instrument, pointed out that the sources of stress listed on the survey instrument sometimes overlapped (R006) and had an accumulative effect on stress levels (R053).

Two respondents gave examples of this accumulation:

Being the receptor of threats of legal action from parent and community is not a pleasant experience and very personally stressful even if the threat is not a personal one. The handling of this type of emotive issue is what I find extremely emotionally draining, exceptionally time consuming, (can go on for days weeks before a resolution is reached) may never be resolved and the threat continues to 'hang' and at this stage almost becomes psychological blackmail (R098);





and,

The stress is in making sure the issues are handled well from the outset, that induces stress. Weighing up the pros and cons of actions, ensuring information collected filed etc. A lack of specific knowledge adds to the stress, not sure of what you are doing is right/enough, too much etc. As you then find out the possible ramifications that adds to the stress. Knowing that legal action *may* be taken by parents is stressful, and the length of time means that you re-live the entire incident (many years down the track possibly). This is likely for me in event of the accident at school (a child fell from a height onto a paved area and suffered a fractured skull; actions pending). Knowing it is always there ready to resurface at any time. Stress levels are high (extremely) during times of actions, but the incident is always there (R125).

The major source of stress, as identified by 87% of respondents, was handling emotive and conflict matters. This was one of the sources of stress added to the list as a result of discussions and observations as a participant observer. A number of respondents provided comments on this source of stress (R010; R015; R018; R019; R024; R053; R058; R059; R074; R087; R092; R095; R098; R103; R113; R117; R121). One respondent remarked that “emotive and conflict matters [were] the most stressful because most people react according to emotions that at the time are logical. They tend to work from a point of view where they want to win and have you lose.” (R087) and others commented on the frequent encounter with emotive and conflict issues affiliated with legal issues in the school setting (R019; R092). The comment referenced above (R098), demonstrates the link between the emotive element of stress caused by being involved with legal matters in the school context and other sources listed on the survey instrument. Another respondent indicated this source of stress “underpins all [other] sources of stress” (R103). Other respondents commented on how the anxiety created by emotive and conflict matters “limits the normal school process” (R024). However, a comment was made by one respondent that these matters “usually resolve themselves, but at a high cost of stress” (R015).

The second most prominent source of stress identified was related to duty of care issues. The high percentage of responses to this source of stress, corresponds with the high involvement of principals with the area of safety of people within

school communities associated with the *Workplace Health and Safety* WH&S Act and the common law area of negligence, discussed earlier in this study. One respondent referred to this area of stress as “a very complex area, requiring much more in-service and updating for principals” (R019), and another saw it as “the ‘shifting sand’ of education” (R052). Others linked the stress in this area to the WH&S legislation and the onus on principals to comply with that legislation (R059; R095; R124). One respondent indicated that the cause of stress here was that the fear of being sued was greater than taking the position to operate vigilantly “out of humane and Christian motives” (R059).

Awareness of and concern about legal repercussions was also prominent on principals’ minds when it came to stress associated with legal matters. In the comments returned with the survey, a number of respondents spoke about the threat of legal action hanging over their heads. As one respondent remarked, the threat of legal action “is always in the back of your mind. I have an awareness of legal responsibilities but do not have a good working knowledge of the legalities” (R081). Another respondent put it as being faced with “the constant dominant legal ethic” (R119). Referring to the WH&S legislation another commented on “an unease with the unknown and onerous nature of WH&S” (R124).

Lack of legal knowledge also featured prominently as a source of stress and comments were made by a number of respondents in relation to its impact (R002; R004; R025; R026; R030; R076; R077; R089; R095; R096; R101; R120; R125). A more detailed discussion on this sources of stress is undertaken in the following section of this study which related to the ranking of these sources of stress.

In relation to the stress caused by administration and management of legal issues, the increased administration caused by new legislation such as WH&S featured in the comments returned with the survey (R048), and a number of respondents (R026; R058; R108) referred to the stress caused by having to keep and have at hand particular documentation. One respondent indicated that the

“lack of suitable records” (R025) was in itself a sources of stress and another respondent indicated that “one of the greatest stressors [was] the level of time available to record sufficient details of events that may only emerge as legal situations years later” (R108).

In terms of mitigating the stress caused by the administration and management of legal issues, some respondents (R038; R076; R081) commented on the support from the Brisbane Catholic Education Centre (BCEC). Another respondent compared managing legal issues with the stress associated with other matters confronting him in his role as principal. In commenting on the sources of stress listed in the instrument he stated:

While these are causes of stress and, I believe, interfere in terms of time, with me performing other aspects of the role effectively, I adopt the attitude that if I take ‘reasonable’ steps then most problems will be avoided. I refuse to become ‘paranoid’ about legal issues (R078).

One other participant concurred with this comment and indicated that the way legal issues were managed could reduce stress:

Stress is greatly reduced by not responding to issues/allegations until you have collected all the data, checked your position and any legal implications, know the related policies/procedures, so one can be objective and remain with the issue (R029).

Similar advice was expressed by another participant in helping to mitigate the emotiveness and conflict in dealing with legal matters, “I rarely take these issues personally and tend to remain objective and seek advice” (R058).

Staffing issues were seen by over 50% of the respondents as a sources of stress, and a number of participants (R025; R032; R103; R113; R121) referred to this issue when commenting on Item 22. One respondent (R032) believed that the most stressful situation in which he was involved was associated with the process to dismiss a teacher. Other comments referred to staffing issues adding to the stress of emotive and conflict situations. As two respondents indicated:

When staff are involved it’s particularly stressful, as I consider them to be of prime concern for the principal. It is difficult to maintain all the expected

courtesies and pleasantries when I am in contest with a staff member (R113).  
and,

Staffing issues create stress because so much of what we achieve happens when staff relationships are high. Nothing destroys morale quicker than a dispute of this kind with a staff member, particularly when all the facts cannot be discussed (R025).

The stress associated with the length of time it takes to resolve legal issues emerged as a source of stress in discussions and observations as a participant observer in this study (see Chapter 11). The finding that 39% of respondents indicated this as a source of stress, confirmed these observations. One issue identified as being associated with the stress created by the duration of resolving legal matters was that the ‘time commitment can be enormous’ (R111).

Respondents were given the opportunity to provide other sources of stress not listed on the Survey Questionnaire. Figure 10.8 indicates that 9% of participants provided additional sources of stress associated with dealing with legal issues. Some of the comments returned with the survey instrument indicated that the feeling of isolation, not knowing the process or progress of matters through the courts, the confidentiality surrounding legal issues and not being able to reliably inform clients and those involved with the school community about the development of legal matters, caused stress (R060; R111; R123). The comment by R098 which made mention of the stress placed on other personal and professional aspects of principals’ lives while dealing with a prolonged legal issue was supported by another respondent:

When these pressures are on the stress and worry can be quite significant, yet in amongst it all, you still have to be able to operate effectively on the normal day-to-day issues and in your own personal and family life. The juggling of all these can be very stressful (R045).

Other comments revealed stress associated with having to deal with students being involved with the use of illegal substances (R116), lack of follow up by outside agencies such as police and officers from government departments responsible for children’s welfare (R007), the feeling of being alone and unable to acquire legal advice quickly from a solicitor or equivalent person (R030; R089;

R101; R123), matters associated with the suspension and exclusion of students and the recovery of school fee debts (R103).

The issue of feeling isolated when dealing with legal matters and not having access to accurate legal advice from someone with background and qualifications in the legal area, also surfaced frequently in dialogue and discussions as a participant observer. Four respondents (R030; R089; R101; R123) made written comments on this issue in response to Item 22. One respondent explained the situation as follows:

My lack of understanding of legal issues and the non-availability at a system level of accurate immediate advice causes me stress. Issues requiring legal advice usually happen without notice but often need immediate action e.g. custody issues. A phone call to have the legal implications assessed and to have assurance that I am acting within the law would ease some worries (R030).

The available personnel to support principals in the BCEC, at the time of this study, were stationed in the Industrial Unit. This unit was identified as a source of gaining legal understandings in Section 9.2. In reference to this unit, it was pointed out that principals used the personnel positioned there as a point of contact for advice, not only on industrial matters but a whole series of legal issues. One respondent in this study indicated that he believes contacting this unit is not the same thing as consulting with a solicitor and he has made his own alternate arrangements for advice from a solicitor through his own contacts (R101).

In summary, comments made by one of the participants relating to the sources of stress encountered when dealing with legal matters in the school context, provide a good overview of the issues arising from the data gathered under Item 22:

I have been threatened on a few occasions that I would be personally sued over certain incidents. Emotive and conflict matters occur regularly in the school setting...One of the important stressful issues is not being able to receive legal advice quickly, often a legal issue arises and legal advice on the spot is needed, often hard to make the necessary contacts immediately...Ensuring adequate playground duty is often stressful, the balance between ensuring safety for students and teacher supervision overload...I was involved in a high profile sexual abuse case, which was

prolonged through the courts for a period of 2 years with adjournments. This caused great stress for admin, staff, parents; the whole school community. Schools are being increasingly drawn into court via Family Court matters etc, definitely increasing. Personal accountability, I worry about this and the ramifications of legal action against me personally for some reason. Many staff are terrified of being involved or being subpoenaed (R019).

#### **10.6.1 Influence of Variables on the Sources of Stress When Dealing With Legal Matters in Catholic Schools**

A number of variables were examined to see if they had any significant influence on the sources of stress experienced by principals when dealing with legal issues. The variables of school setting, sex of principals, geographical location and school complexity ratings were again looked at in this regard. T-tests were carried out on the data gathered under the first component of Item 22, and the data gathered under Section A of the Survey Questionnaire relating to school settings and sex of principals. Table 10.3 outlines the sources of stress where statistically significant differences ( $p < 0.05$ ) were identified with these variables.

Table 10.3 indicates that there was a statistically significant higher degree of stress in dealing with legal matters for respondents in primary school settings associated with duty of care issues. This finding may be linked to the findings discussed earlier relating to the differences between primary and secondary settings with regard to involvement and understandings of the law in the area of safety and security of students, and the general lack of understanding relating to negligence issues revealed in the percentage of correct responses to the scenarios in Section B of the Survey Questionnaire.

The second difference identified by Table 10.3 related to statistically significant higher stress for female respondents associated with awareness of and concern about legal repercussions when dealing with legal matters. This may be related to female respondents believing that their involvement with legal issues might expose them to financial penalties affecting their livelihood, especially if they are single or the sole income earner in a family. The findings earlier in this study in

Section 9.3 that principals had little understanding of vicarious liability, contributory negligence and the legal responsibilities of others in the school communities, and were inclined to identify themselves as being the person exposed to liability in legal situations, add support to this suggestion.

**Table 10.3**

**Sources of Stress in Dealing with Legal Issues in Catholic Schools and the Influence of School Settings and Sex of Principals**

**T-Test Group Statistics**

Item Source of Stress	School Setting	No: Respondents	Mean	S..D.
Issues Relating to Duty of Care	Primary	78	0.79	0.41
	Secondary	24	0.54	0.51

**Independent Sample Tests**

Item Source of Stress		Levene's Test for Equality of Variance		t-test for Equality of Means		
		F	Sig.	t	Df	Sig. (2-tailed)
Issues Relating to Duty of Care	Equal variance assumed	11.940	0.001 #			
	Equal variance not assumed			2.228	32.535	0.033*

**T-Test Group Statistics**

Item Source of Stress	Sex of Principals	No: Respondents	Mean	S..D.
Awareness/Concern About Legal Repercussions	Female	33	0.85	0.364
	Male	69	0.67	0.475

**Independent Sample Tests**

Item		Levene's Test for Equality of Variance		t-test for Equality of Means		
		F	Sig.	t	Df	Sig. (2-tailed)
Awareness / Concern About Legal Repercussions	Equal variance assumed	20.809	0.000 #			
	Equal variance not assumed			2.130	80.247	0.036*

# Because the Levene F value is < 0.05 the equal variance not assumed row is used to determine the significance.

\*Significant difference  $p < 0.05$

The other two variables examined in relation to their influence on the sources of stress were the geographical location of schools and school complexity ratings. Table 10.4 outlines the details of the one source of stress identified in these analyses which revealed a statistically significant difference, and this was associated with the variable of geographical location. Respondents from schools in the Gold Coast Area showed a statistically significant higher degree of stress associated with the number and extent of statutes and court cases, when compared with their counterparts in schools on the Sunshine Coast, Suburban Provincial Cities and Shires surrounding Brisbane, and Rural Towns.

**Table 10.4**  
**Sources of Stress in Dealing With Legal Issues in Catholic Schools and the Influence of Geographical Location of Schools**

**ANOVA Geographical Locations**

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	1.032	4	0.258	3.487	0.011*
Within Groups	7.174	97	0.074		
Total	8.206	101			

- Significant difference:  $p < 0.05$

**Scheffe Comparisons: Geographical Locations**

	Variable: Geographical Location	No: Respondents	Subset for Alpha = 0.05	
			1	2
Sources of Stress: Number and Extent of Statutes and Cases	Sunshine Coast	5	0.00*	
	Rural Town	15	0.00*	
	Brisbane Provincial City/Shire	25	0.04*	
	Brisbane Suburban	50	0.10	0.10
	Gold Coast	7		0.43*
	Sig.			0.948

- Significant Difference

This was a surprising result as the number and extent of statutes and court cases was rated very low as a source of stress, and ranked last out of ten in terms of importance in creating stress on principals. The analyses carried out earlier in this study in relation to Specific Research Question One did not reveal any statistically significant differences in involvement with legal issues with principals



in these Gold Coast schools, with the exception of a higher involvement with industrial relations matters. It is difficult to see that this one area of increased involvement of principals carrying out their role as principals in schools on the Gold Coast, would contribute to a statistically significant higher degree of stress associated with the general extent to which the law is impacting on their leadership in Catholic school communities.

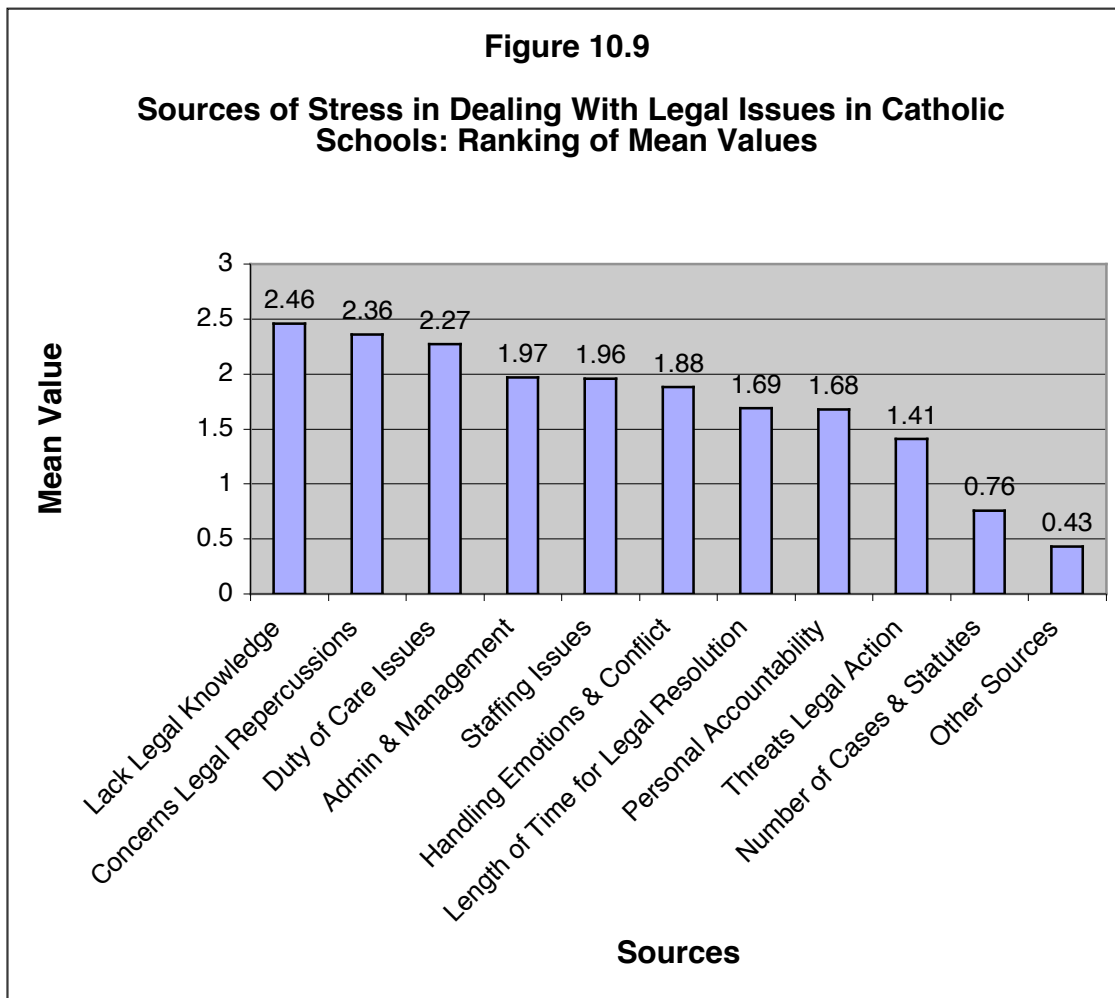
However, it would appear that for some reason or reasons the extent of statute law and common law impacting on principals of Catholic schools on the Gold Coast is creating a statistically significant higher source of stress than for principals in other geographical locations in the Brisbane Catholic Education System outside the Brisbane metropolitan area itself. This finding indicates a need for further investigation to resolve the significance behind this variation.

#### **10.6.2 Ranking Sources of Stress When Dealing With Legal Matters in Catholic Schools**

In relation to the second component of Item 22 on the survey instrument, respondents were asked to rank the sources of stress they identified in order of importance, and again leaving blank those items they considered as having no significance as a source of stress. When it came to ranking the sources of stress in order of importance, some interesting differences arose in these responses when compared with the responses participants gave in identifying sources of stress per se. Figure 10.9 gives an outline of the mean values of the rankings of sources of stress.

Whereas three sources of stress, namely, handling emotive and conflict matters, issues relating to duty of care and awareness of and concern about legal repercussions, were listed by more respondents as sources of stress than lack of legal knowledge, when it came to ranking sources of stress in order of importance, lack of legal knowledge was ranked as the most prominent source of stress. Ranked second as the most prominent source of stress was awareness

of and concern about legal repercussions, then came issues relating to duty of care, followed by involvement in and/or the administration and management of legal problems.



The prominent ranking of duty of care issues as an important source of stress in this study, reflects the high involvement of respondents, particularly in secondary school settings with WH&S legislation, and the involvement of all respondents with common law issues associated with negligence, as discussed earlier in this study. However, while a very high percentage of respondents indicated handling emotive and conflict matters as a major source of stress associated with dealing with legal issues, this item was ranked sixth out of ten items in order of importance as a source of stress. This was an important distinction revealed in these findings. Again, it is worth noting that the number and extent of statutes and court cases was not only listed as a source of stress by few respondents, but

was ranked last out of ten in order of importance as a source of stress for principals in dealing with legal issues.

### **10.6.3 Influence of Variables on the Rankings of Sources of Stress When Dealing With Legal Matters in Catholic Schools**

When it came to ranking the sources of stress in order of importance, some distinct changes occurred in the order of items, than what had been the case when listing the sources as a source of stress per se. In examining these rankings further it was considered that the variables of school settings and school complexity might have a significant influence on the ranking of these sources of stress. Consequently t-test and ANOV were carried out on the data which ranked the sources of stress gathered under Item 22 and the data gathered under Section A of the Survey Questionnaire relating to the variables of school setting and school complexity ratings. These analyses, presented in Volume II indicate that there were no statistically significant differences ( $p < 0.05$ ) identified with any of the sources of stress that could be attributed to either of these variables.

### **10.7 Identifying that a Legal Issue is Developing Within a Catholic School**

From a constructionist base and the theoretical perspective of symbolic interactionism, it is considered that the development of a persons 'generalised other of society' and one's social construction of reality takes place through interactions with others within the social/cultural environment in which a person lives out their life. For principals of Catholic schools, this involves carrying out their role of providing quality learning and teaching in a safe environment within a particular culture and climate as outlined earlier in this study.

One aspect identified as a part of this cultural environment, was the sense of community and the relationships within that community. It was indicated earlier in this study, especially from comments returned from respondents with the survey

instrument, that one of the issues that can impact heavily on the development of community is the involvement of members with legal matters, particularly if the issue involves members of staff. From this perspective, it is conceivable that leaders in Catholic schools, in their interpersonal interactions with others, will gain a sense and expectation from experience that a legal issue is pending. As one respondent in this study remarked, “often many sources are involved and the warning signs quickly become evident” (R019) and another indicated that knowing that a legal issues is apparent is “usually an intuitive thing based on years of experience as a Principal” (R101).

The point here, is that it is not just fully developed legal issues within schools that are having an impact on the administration of Catholic schools, but the likelihood that legal issues associated with a wide range of court decisions and legislation have the potential to develop within a school community. As was expressed earlier, there is a cloud of the legal ethic hanging over principals’ heads. One respondent commented on this aspect of her role in the following terms:

Complaints that often come along with a threat of litigation happen almost on a regular basis. As yet the threat has not developed further than just that. Enormous amounts of time are spent on ‘internal’ investigation in following up incidents, which are sometimes/most times misinformed and inaccurate (R098).

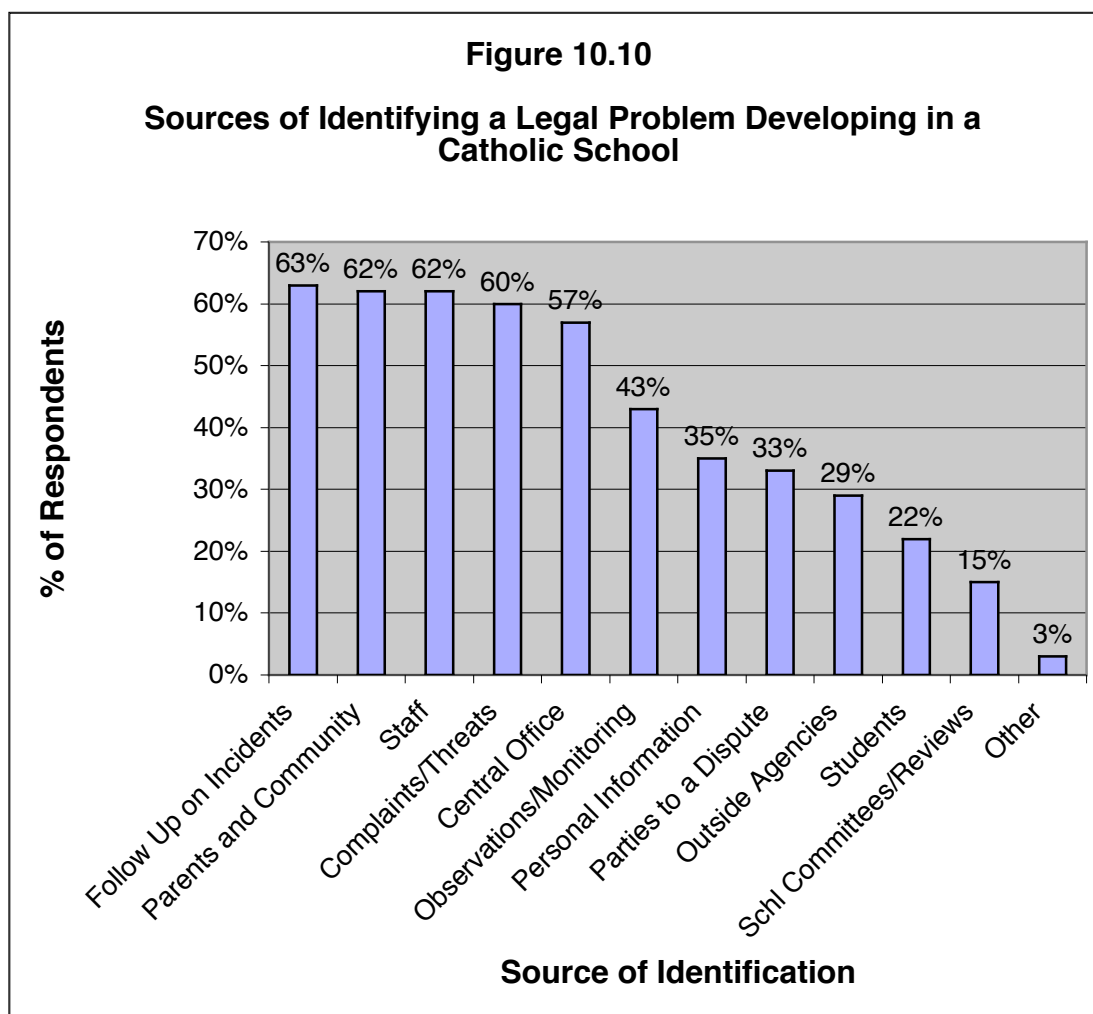
The potential impact of legal issues on the leadership and management of Catholic schools therefore, is not only confined to the issuing of a writ to activate a common law action or legislative redress, but a whole series of events that might precede and follow such an occurrence. In many cases the legal issues facing principals in schools do not end up in court or tribunal hearings but are assessed and settled through other sources such as mediation, or out of court settlements. As another respondent remarked:

People seem to use the threat of legal action more often to get some action. I’ve been threatened with legal action by parents, school neighbours, a Parish Council and a staff member. No action has ever resulted, but people use the threat (R026).

In such a climate therefore, this study set out to examine how principals recognised that legal issues were developing in their schools. Stewart (1996) also examined this issue and identified a number of sources that principals believed were indicators that a legal issue was developing in a school. For this study the sources identified in Stewart's study, were listed on the Survey Questionnaire under Item 18, and participants were asked to indicate if these sources had provided recognition for them that a legal issue was developing in their schools. Figure 10.10 gives an outline of the responses from participants as to the extent that these sources identified that a legal issues was developing in their schools.

From Figure 10.10 it can be seen that all the sources identified in Stewart's study contributed to giving principals a sense that a legal issue was developing in their schools. The highest indicator identified by principals was following up incidents that arouse in their schools. Over 62% of principals identified this as a source of recognition. This is not surprising, as many of the discussions outlined in the participant observer section of this study were instigated after a principal or others associated with schools had commenced an investigation into an incident that had occurred, or an issue that had arisen in their schools, and had contacted the researcher to enter into dialogue relating to the possible legal implications involved.

However, this indicator did not stand out alone, as almost the same proportions of principals associated the following sources as indicating the development of a legal matter in their schools: parents and the community 62%; the staff 62%; complaints and threats 60%; and, information from the central office 57%. Observation and monitoring around the school also featured prominently and almost a third of respondents (35%), identified personal information as a source of identifying that a legal matter was developing in their schools. Parties to a dispute and outside agencies were also identified as sources.



Interestingly, students featured fairly low on this table, while it was more surprising to find that school committees and reviews featured as a minor source of identification. The latter was surprising, when one considers that many principals would have established Workplace Health and Safety Committees as a means of monitoring safety issues along with the *Workplace Health and Safety Act*. Other sources not listed in Item 18 and which respondents specified as sources of identifying that a legal issue was developing in their schools were the media, attending workshops on new legislation such as the *WorkCover Act* and professional reading.

From this analysis, it can be seen that it is not only having to deal with legal issues per se that creates the legalistic climate with which principals in schools are having to deal with, but the extent to which principals have to be aware of

legal issues, to provided documentation and put legal risk management issues in place to meet requirements (R016, R066, R069, R071, R081, R089, R094). As one respondent remarked “a part of most significant decisions, which affect the individual or the whole community now incorporates a legal consideration” (R105), and another commented on the “increase awareness of legal ramifications of decisions that cover all aspects of school life” (R107).

## **10.8 Summary of Chapter 10**

Chapter 10 provided a presentation and analyses of the data relating to Specific Research Question Three gathered via the Survey Questionnaire. The purpose of Specific Research Question Three was to focus an examination of the impact of legal issues on the administration, leadership and management, of Catholic schools. These analyses indicated that the large majority of principals in Catholic schools perceived themselves as spending 10% or less of their time in the working week dealing with legal issues. However, the findings also revealed that when confronted with legal matters the issues could be very time consuming for principals, and occupied a considerable amount of time until the issues were resolved. Further analyses of the data indicated that there were no statistically significant differences found in the time spent on legal issues that could be attributed to the variables of sex of principals, primary and secondary school settings, the geographical location and complexity of schools.

The findings also revealed that during the time the respondents had been principals in Catholic schools, they had perceived a large increase in the way legal matters were impacting on the leadership, policies and practices. A number of principals expressed a sense that legal concerns were a constant element in the mix of issues to be considered when making decisions about their school communities and the people within them. However, the findings also revealed that there were no statistical significance differences ( $p < 0.05$ ) associated with the variables of sex of principals, primary and secondary school settings, the geographical location and complexity of schools on this change in the extent to

which legal matters had influenced leadership policies and practices during the time the respondents had been carrying out their roles as principals in Catholic schools.

In examining the compatibility of the ethos of the Catholic School with the resolutions reached and the processes used in reaching resolutions, the overall perceptions of respondents was that both the resolutions reached and the processes used in reaching those resolutions were very compatible or mostly compatible with the Catholic school ethos. However, the findings also revealed that principals were more confident in seeing a compatibility with the resolutions reached than they were with the processes used. Comments returned with the survey instrument revealed that the interpersonal interactions and relationships in dealing with legal matters were of particular concern, and at times principals felt their needs and rights, and the needs and rights of others were not fully respected and represented in reaching resolutions to legal issues.

In relation to the stress placed on principals when dealing with legal issues, the findings indicated that legal matters were causing stress for 90% of the participants in this study. A slight majority of principals indicated that legal matters were causing more stress than other administrative tasks in the principalship role, but over 70% of principals saw legal matters causing more stress for them now than in the past. When examining the impact of school setting, sex of principals, geographical location of schools, school complexity ratings and the influence of being involved with in-service and more formal learning experiences on the stress placed on principals by legal matters, no statistically significance differences ( $p < 0.05$ ) were found, except in relation to geographical location.

It appears that principals in Rural Towns experienced considerably more stress than their counterparts carry out the principalship role in school communities on the Sunshine Coast and Gold Coast. It was suggested that this may have some relationship to the notion that principals in Rural Towns are more isolated than



their counterparts on the Gold and Sunshine Coasts and have to deal with issues associated with the law while being more remotely located from the support base of the BCEC. It was also suggested this additional stress could be associated with the reality of principals in Rural Towns having to deal with these matters in communities where social interactions take place on a closer interpersonal basis and occur more frequently with the people who are the subjects of the issues under consideration.

The findings from the data gathered from the Survey Questionnaire relating to Specific Research Question Three also revealed that male principals are more likely to see legal matters causing more stress than other administrative tasks. However, no statistically significant differences were revealed in relation to the stress placed on principals when dealing with legal matters when it came to examining the variables of school settings, school complexity and school geographical locations.

In examining the sources of stress associated with dealing with legal matters, all the sources of stress listed on the survey instrument, with the exception of the number of cases and statutes, featured prominently as sources of stress. These included the two sources added to those emanating from Stewart's study (1996) namely, the length of time taken to resolve legal issues, and handling emotive and conflict matters. It was the latter which respondents indicated to be the most common sources of stress. The comments returned with the survey instrument, however, indicated a trend that the sources listed were not isolated as sources per se, but in many instances had a cumulative effect on the stress associated with dealing with legal matters.

In examining the relationship between sources of stress and a number of variables, some statistically significant differences ( $p < 0.05$ ) were revealed in relation to school settings, sex of principals and geographical location of schools. Principals from primary schools saw duty of care issues as higher sources of stress than their counterparts in secondary school settings, while female

principals displayed statistically significantly higher sources of stress related to the repercussions of legal matters. A surprising difference was revealed from the data gathered from principals on the Gold Coast. The principals in this geographical location indicated that the number and extent of statutes and cases was a source of stress for them when compared with their counterparts in schools on the Sunshine Coast, Rural Towns and Provincial Cities and Shires surrounding Brisbane. This was surprising as only a very low percentage of principals (9%), identified this source as a sources of stress per se.

When it came to ranking sources of stress in order of importance, however, the lack of legal knowledge was ranked as the most prominent sources of stress. This was followed by concerns of legal repercussions and duty of care issues. As with the sources of stress per se, the number of statutes and cases was ranked very low in importance as a sources of stress.

It was revealed in the analysis, that many principals saw the threat of legal issues being a constant for them in their roles as leaders in Catholic school communities. In relation to this, one of the issues investigated under Specific research Question Three was how principals identified that a legal matter was developing in their schools. The findings revealed that the major source of identifying the development of a legal issue was following up incidents that occurred within the school. However, dealing with complaints and threats, was also a major source in this regard. Interactions with people associated with their school communities also featured prominently in looking at this question, and parents, staff and central office personnel were important also as sources of identifying that a legal problem was developing. It was surprising that school committees featured low as a source for principals in identifying that a legal problem was developing in their schools, considering the high involvement with WH&S legislation and the need to establish committees in school communities with regard to this act.

In summary, the findings associated with Specific Research Question Three indicated that legal issues are having a heavy impact on Catholic schools and this is creating stress and anxiety for principals occupying leadership roles within their communities. While the majority of principals perceived that they spent 10% or less of their time each week on legal matters, when legal issues do arise they can occupy a considerable amount of time until they are resolved. The likelihood of legal issues arising in schools appears to be a constant variable for principals carrying out their leadership roles in Catholic schools, and they have recourse to a number of sources in identifying that such issues are developing. On the whole principals see compatibility with the resolutions reached in dealing with legal matters and the process used in reaching those resolutions with the ethos of the Catholic School, however principals were more confident in their perceptions of the compatibility with the resolutions reached in this regard than with their perceptions of the compatibility of the processes used in reaching these resolutions.

## **CHAPTER 11**

### **OUTLINE OF QUALITATIVE DATA AND EVIDENCE GATHERED FROM OTHER SOURCES RELATING TO THE THREE SPECIFIC RESEARCH QUESTIONS**

#### **11.1 Introduction**

The design of this study indicated that in answering the Three Specific Research Questions the intention was to gather data from a variety of sources and have a convergence of multiple sources of evidence. This was achieved by gathering data through observations and discussions via the development and distribution of a Survey Questionnaire and through reference to documentation. The purpose of this chapter is to provide comments on the qualitative data gathered and the other sources of data used to respond to the Three Specific Research Questions presented in this study, besides that gathered via the Survey Questionnaire.

#### **11.2 Participant Observations and Discussions**

At the time of this study the researcher was an employee within the Brisbane Catholic Education Centre (BCEC). The researcher was well known to many of the respondents, having worked with a number of them for over ten years as a fellow principal and as an Area Supervisor supporting them in carrying out their roles as leaders in Catholic school communities. At the time of the study, the researcher's role within the BCEC had a particular focus in coordinating the selection, development and appraisal of members of School Leadership Teams, and the personal and professional learning and growth activities for staff in schools.

Having developed these relationships while carrying out these roles, as well as having legal qualifications, the researcher had had frequent interactions with

principals relating to legal issues impacting on their schools. These included conducting a number of in-service and personal and professional learning activities for principals and school staffs on legal issues, identified by principals as affecting their schools, and about which they had asked the researcher to present some input to them and to their school staffs.

The role of the researcher also provided the opportunity to hold discussions and interactions around issues pertaining to this study with senior personnel within the Brisbane Catholic Education Centre. A number of these discussions and consultations were associated with revising the questionnaire used by Stewart (1996) and have already been referred to in Chapter 6, which outlined the revision of that instrument and the development of the Survey Questionnaire used in this study.

Besides the discussions concerning the development of the Survey Questionnaire, significant discussions with principals and others relating to legal issues that were associated with the Three Specific Research Questions presented in this study, were diarised over a period of forty-two months. This period spanned from January 1996 to June 1999. In a number of these discussions principals indicated the degree of conflict and stress these issues were placing on them in their roles as principals, the amount of time it took to have legal issues resolved and how this detracted from their major responsibilities as educators. They also expressed a need for some direct access to legal personnel who could deal with the broad range of legal issues confronting them.

Table 11.1 provides a break down of the discussions diarised. These are presented in semester time bands categorised into the areas of law with which the discussions were related. This table is structured in two sections, one section outlining the areas of common law with which the discussions were related and the other gives an overview of the statute law to which the discussions referred.

**Table 11.1**

**Outline of Diary Entries Per Semester of Discussions with the Researcher  
of Legal Issues Impacting on Catholic Schools**

Areas of Law	1996		1997		1998		1999	Totals
	Sem 1	Sem 2	Sem 1	Sem 2	Sem 1	Sem 2	Sem 1	
<b>COMMON LAW</b>								
Negligence	1	0	15	2	13	10	5	46
Contract	6	0	8	2	2	3	2	23
Natural Justice	1	0	2	1	1	2	0	7
<b>STATUTE LAW</b>								
Family Law Act (Cth)	3	2	4	0	13	11	11	44
Industrial Legislation (Qld)	1	2	3	2	9	17	3	37
Anti-Discrimination (Cth & Qld)	7	0	1	1	2	1	0	12
WorkCover & Rehab (Qld)	1	2	0	7	1	1	0	12
Child Protection (Qld)	0	0	0	2	1	3	1	7
W H & S (Qld)	5	1	0	0	0	0	0	6
Copyright Act (Cth)	2	1	0	0	1	1	0	5
Criminal Code (Qld)	0	0	1	1	0	1	1	4
Education/Tch Reg (Qld)	0	0	0	0	3	0	1	4
Education Act (Qld)	1	1	1	0	0	0	0	3
Other	3	0	2	2	4	2	0	13
<b>Totals</b>	<b>31</b>	<b>9</b>	<b>37</b>	<b>20</b>	<b>50</b>	<b>52</b>	<b>24</b>	<b>223</b>

### **11.2.1 Observations and Discussions Relating to Areas of Common Law Impacting on Catholic Schools**

Table 11.1 reveals that a total of 223 discussions took place over the period of time in question and that the two areas of common law with which people had most contact with the researcher related to negligence and contract law. The discussions relating to negligence mainly centred around providing input to groups of teachers on the elements associated with the concept of negligence and their application to school situations. The discussions covered areas such as general supervision within the school environment, including classrooms, school grounds and pick up and drop off areas for students, excursions outside the normal school environment, and specific curriculum areas such as sport and

practical teaching activities, e.g. woodwork classes. Occasionally, the discussions related to a specific situation with which a principal, or a person holding another leadership position within a school, was being confronted. Some of these discussions in relation to negligence were also linked to dialogue surrounding the Workplace Health and Safety legislation, and at times personnel from the Workplace Health and Safety Unit within the BCEC and the researcher visited schools together to discuss issues with principals and other staff.

In relation to common law, Table 11.1 also reveals that a number of discussions associated with contract law took place. Most of these discussions were associated with contractual arrangements where staff had been appointed to provide additional assistance of an administrative nature, to support curriculum programs such as music and sport, and where contractors were engaged to perform work within the schools such as maintenance on buildings and school plant. However, these discussions also related to the contractual arrangements associated with teachers who were on overseas exchange programs, and the contractual arrangements under which principals were employed within the Brisbane Catholic Education System.

The interactions relating to natural justice were mainly associated with the suspension of students and the application of procedural fairness when dealing with teachers' applications and appeals affiliated with the Advanced Skilled Teacher Program. As this program was associated with monetary rewards and career paths, it was essential the elements of procedural fairness were applied in processing and assessing initial applications of candidates, and when reviews of unsuccessful applications were lodged through an appeals mechanism.

### **11.2.2 Observations and Discussions Relating to Areas of Statute Law Impacting on Catholic Schools**

Table 11.1 indicates the largest number of interactions and discussions between the researcher and principals and others relating to statute law were associated

with the *Family Law Act*. These discussions mainly dealt with disputes over custody orders, parenting plans and parenting agreements and the interpretation and implementation of these plans, agreements and orders. On occasions, the discussions relating to these matters were complicated by concerns associated with additional restraining orders, which were imposed by other courts outside the Family Law Court against one of the parties involved in the disputes. The new *Family Law Act* of 1995, discussed in Section 4.7.1.3, set about addressing the dilemmas confronting principals and others surrounding the latter situations, by asking the Family Law Court, when ratifying parental agreements, to take into account such orders that may have been imposed by courts in state jurisdictions.

The second largest number of discussions held with principals and others associated with statute law concerned industrial matters. These were mainly related to the implementation of the Advanced Skills Teacher Program and the industrial agreement associated with that implementation. This was not surprising as the researcher was responsible for the implementation of this program. As indicated above, the issues surrounding this program called for the application of procedural fairness in assessing the initial application and the appeal process when an appeal had been lodged. It also related to the industrial award under which teachers in Catholic schools within the State of Queensland were employed. Other discussions of an industrial nature related to the unfair dismissal of employees and the processes to be followed when placing a member of staff on a review process associated with performance in carrying out their roles.

Table 11.1 indicates that discussions were also held with principals and others relating to most of the statutes listed on the Survey Questionnaire. These included anti-discrimination legislation both federal and state, *WorkCover Act* (Qld) relating to workers compensation issues, child protection issues, and issues associated with the *Copyright Act* (Cth), the *Criminal Code* (Qld), *Education Act* (Qld), the *Education (Teacher Registration) Act* and the *Workplace Health and Safety Act* (Qld).



The areas listed as 'Other' on Table 11.1 were associated with discussions relating to defamation, subpoenas being served on principals and other staff to appear at hearings, staff being summoned for jury duty, privacy issues surrounding the filming of students, the immunisation of children and the *Health Act (Qld)* and discussions relating to disclosure of confidential information.

### **11.3 Qualitative Data Returned With the Survey Questionnaires**

Besides quantitative data gathered, the Survey Questionnaire provided opportunities for participants to add additional comments relating to the items listed on the instrument, and legal matters in general. A number of these comments have already been referred to in the analyses of data gathered via the survey instrument relating to the Three Specific Research Questions presented in this study. These comments were categorised around the questions and issues itemised on the Survey Questionnaire and when collated contributed seventy A4 pages of comments to complement the responses principals provided to items on the questionnaire. These additional comments are provided in Volume II <sup>(11)</sup>.

### **11.4 Other Documentation**

During this study, in responding to the Three Specific Research Questions, various documentation was used to provide information on issues raised and matters addressed. This documentation in particular, related to the Brisbane Catholic Education System. Reference has already been made to a number of these documents, and these include the classification and categories of schools used in the questionnaire, the selection criteria used by the BCEC for the appointment of principals (provided in Appendices 7 & 8), and the Complexity of School Environment (CSE Index) used in the study.

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11. Volume II was provided to the thesis examiners to allow them to gain a full indication of the work undertaken by the researcher to meet some of the issues of validity and reliability raised in Chapter 6 of the thesis, 'Design of the Study'.

Particular reference was also made to the BCEC Administrative Handbook. This document which is updated from time to time sets out the policies, practices and procedures to be followed by school administrators in relation to a number of issues affecting Catholic schools within the Brisbane Catholic Education System, including a number of legal issues impacting on Catholic schools. In the publication at the time of this study, references to legal matters included the following: copyright; The *Workplace Health and Safety Act* (Qld), duty of care and negligence and the safety of students in classrooms, in the school playground, on excursions, and when participating in sport; the transport of students especially by private car; child abuse issues; matters associated with the interviewing of students by police; family law issues; the application of procedural fairness when dealing with grievances and disputes; and, issues associated with the keeping of student records and access to these records. The brief outlines relating to these areas of the law were aligned with the interpretations of legal issues in the review of the literature in Chapter 4.

The above outline confirms that principals in schools were being confronted on a regular basis with a variety of legal matters, that these matters covered a range of common law and statute law issues, and that the latter were related to both federal legislation and state statutes. The discussions also revealed that being confronted with these issues was causing concern for principals, and that there was a need for them to be better informed about legal matters affecting their leadership in schools. There was also a desire expressed by principals to have access readily available to personnel with whom they could discuss the legal issues confronting them, and who could give them accurate and reliable information about legal issues as they arose.

## CHAPTER 12

### DISCUSSION OF RESULTS

#### 12.1 Introduction

As has been outlined in previous chapters, the focus of this study was an exploration of the interface between the leadership of Catholic schools, and the legal framework of the social and cultural environment of Australian society in which Catholic schools operate.

Specifically, the study set out to investigate the legal issues impacting on Catholic schools, the understandings principals of Catholic schools have of these legal issues, and to examine the influence this aspect of the social and cultural environment of Australian society is having on principals in carrying out their leadership roles within the ethos of Catholic schools.

The study was focused by three Specific Research Questions. These were:

- What areas of the law are having an impact on the administration of Catholic schools? (Specific Research Question One);
- What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings? (Specific Research Question Two); and,
- What impact do legal issues have on the administration of Catholic schools, and in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School? (Specific Research Question Three).

While directing attention to the Three Specific Research Questions, the study also examined the significant differences that might be attributed to variables such as the sex of principals, the secondary or primary school contexts, complexity of schools (which included the size of the schools) and the location of

the schools within various community settings. When focusing on how principals' understandings of key areas of the law impacting on schools are acquired, the study included an examination of the exposure principals have to these legal areas in their preparation for senior leadership positions in Catholic schools through personal and professional learning in formal courses and in-service, and the extent to which exposure to such courses of personal and professional learning have on the development of appropriate understandings of principals with regard to legal matters.

While exploring the impact of the law on the administration, leadership and management of Catholic schools, the study investigated the time principals perceive themselves as dealing with legal matters, the perceived stress associated with dealing with legal issues and the possible conflict, if any, that may result in dilemmas and paradoxes created by competing demands and rights. In relation to the latter, as mentioned in Specific Question Three, the study set out to explore the compatibility of the ethos of the Catholic School with the resolutions reached and processes used in coming to a resolution when dealing with legal issues.

## **12.2 What Areas of the Law are Having an Impact on the Administration of Catholic Schools? (Specific Research Question One)**

The literature review in Chapter 4 indicated that there is a wide range of legal matters related to schools that could have an impact on principals' leadership and management. One of the findings coming out of that literature review and supported by this study, is that the areas of law impacting on schools are in a continual state of renewal and development. The literature review referred to the continued expansion and dominance of statute law and associated subordinate legislation impacting on the social cultural environment within Australia, and highlighted the expanding impact of this on schools. This was evidenced in this study, as substantial updates and modifications were required to Stewart's (1996) questionnaire in developing a survey instrument for this study. Stewart's

questionnaire was constructed only two years prior to this study, and was aimed at gathering data not substantially different to that sought in response to the questions posed in this research.

The evidence, however, did not stop at the redevelopment of the survey instrument. The increasing amount of legislation impacting on schools is also evidenced by the fact that a number of new statutes which have an impact on the leadership and management of schools, including Catholic schools, have been passed by both the Queensland and Federal Parliaments since the development and distribution of the survey instrument in this study. To give some examples identified in the review of the literature in Chapter 4 from a state perspective, Queensland has amended the *Education (General Provisions) Act* (Qld) 1989, by passing the *Education and Other Legislation (Student Protection) Amendment Act* (Qld) 2003 to bring in mandatory reporting by school personnel of child abuse under particular circumstances, a *Child Protection Act* (Qld) 1999, itself has become law, a new *Industrial Relations Act* (Qld) 1999 has replaced the *Workplace Relations Act* (Qld) 1997 and which itself only became law shortly before the survey instrument was developed for this study.

A similar situation has occurred with relation to the *WorkCover Act* (Qld) 1996, which has been replaced with the *Workers Compensation & Rehabilitation Act* (Qld) 2003. A *Civil Liability Act* has been introduced to modify liability issues relating to the common law area of negligence, and particularly pertinent to Catholic schools is the *Education (Accreditation of Non-State Schools) Act* (Qld) 2001, dealing with the registration and accreditation of Non-Government schools. The latter has brought Queensland into line with most other states in this regard (Ramsay & Shorten, 1996). Besides this, new subordinate legislation, in the form of regulations and other requirements, has been introduced or updated in a number of areas. For example, in the workplace health and safety area, new Safety Regulations were published in 1997, new Advisory Standards in 1998 and Industry Codes of Practice in 1999.

This renewal and update of the law impacting on schools was not confined to laws from a Queensland state jurisdiction. The Federal Parliament has enacted legislation to bring the private sector, including Non-Government schools, under privacy provisions (*Privacy Amendment (Private Sector) Act* (Cth) 2000), and more recently disability standards have been incorporated into legislation, effectively codifying into law the findings in recent cases dealing with anti-discrimination law.

Besides this, recent decisions in the courts, especially the High Court of Australia, have had an impact on the interpretations of common law, and in clarifying the interpretations of sections within statutes. Examples of these are, the decision handed down in *Purvis v. New South Wales (Department of Education and Training, 2003*, which examined discrimination under the federal *Disabilities Discrimination Act* (Cth) 1992 and direct discrimination associated with the relationship between behaviour and disabilities, and the decision in *New South Wales v. Lepore, Samin v. Queensland and Rich v. Queensland, 2003*, which helped clarify some issues surrounding criminal acts by employees and the non-delegable duty owed to others by educational system authorities, such as to students in schools with boarding facilities. In dealing with legal issues, therefore, school leaders are being faced with a continually changing environment.

At the time of developing the Survey Questionnaire, those areas of the law which appeared to have a prominent influence on schools were incorporated into the instrument from which participants' responses could be gathered. These included the areas of law revealed in the review of the literature, those identified in Stewart's (1996) study with which principals had involvement, and areas of law highlighted in discussions the researcher had with principals and others who supervise and support principals in carrying out their role as leaders of Catholic school communities. These areas of law emanated from a range of statutes passed by the Queensland and Federal Parliaments, and were associated with common law issues dealt with in state and federal courts.

As identified in Table 6.1, the three items that focused on Specific Research Question One on the survey instrument were Items 13, 14 and 15. These items divided the legal matters into areas of common law and statute law, with the added dimension of listing criminal matters separately. The latter was done because, as indicated in the review of the literature, issues of a criminal nature in Queensland are mainly dealt with under legislation in the form of the *Criminal Code*. Participants were asked to indicate their involvement with these areas of the law; what was meant by involvement was clearly stated on the survey instrument.

The responses to Items 13, 14 and 15 on the survey instrument provided both quantitative and qualitative data. Statistical analyses were conducted on the data gathered via these items and that gathered by Section A of the Survey Questionnaire, to examine possible relationships between involvement with legal matters and the variables of school classification, location, complexity, and the sex of leaders carrying out the role of principal in Catholic schools. Respondents were also given the opportunity to add other legal issues not covered by the items listed under Items 13, 14 and 15. The data gathered via the survey instrument was supplemented and corroborated by data gathered through other sources.

The results of the analyses carried out confirmed that suggested by the literature review, that leaders in Catholic schools, like their counterparts in Government schools (Stewart, 1996), were being confronted with a wide range of legal issues, and these were impacting on Catholic schools. Respondents reported some involvement with all the areas of the law listed in Items 13, 14 and 15 on the Survey Questionnaire.

### **12.2.1 Issues Relating to Statute Law Impacting on Catholic Schools**

Figure 8.1 outlined the involvement of principals to legislation listed on the Survey Questionnaire and indicated a large involvement with the *Workplace Health and Safety (WH&S) Act (Qld) 1995*, with 80% of principals indicating some contact

with this legislation. This corresponded with Stewart's study (1996) where 89% of principals in Government schools indicated involvement with this legislation. This high percentage, resulting from the analysis carried out on the data collected via the survey instrument, is corroborated by the attendance of principals at WH&S personal and professional learning activities which are identified in Table 7.2, where WH&S courses feature prominently. The latter experiences were most likely related to the decision by the leadership of BCEC to appoint principals in schools with more than thirty people, as WH&S Officers in accordance with s. 93 of the act. Carrying out such a role necessitated some training in WH&S, including some understanding of the act.

The analysis of entries in the researcher's diaries also featured WH&S issues, although not as prominent as the entries relating to some other areas of statute law. This reflected the fact that a separate department within BCEC was set up to take responsibility for WH&S matters, and issues of that nature would therefore most likely be directed to the personnel within that section itself. It should be noted, however, that comments in Section 11.2.1, indicate, that where the researcher was asked to visit schools and conduct personal and professional learning experiences and in-service type activities on legal issues relating to negligence and school safety, persons from the WH&S section within BCEC often accompanied the researcher.

This linking of the WH&S with the area of negligence is an issue which surfaces through the findings in the previous chapters, and a number of respondents saw a close relationship between the WH&S legislation and the area of negligence. This also corresponds with the explanation in Section 4.7.2.3, which indicates a close relationship between WH&S legislation and the principles outlined by the Australian High Court in the negligence case *Wyong Shire Council v. Shirt*, 1980. It is suggested that this relationship could account for the statistically significant difference identified between secondary and primary respondents to understandings in the negligence area, examined under Specific Research Question Two Question (see Section 9.5.1). This is suggested because in the



findings in relation to the variables examined under Specific Question One, principals in secondary school settings indicated a significant higher involvement with the WH&S (see Table 8.1), and it is feasible to infer that the understandings gained in dealing with issues associated with WH&S would transfer to the examination of issues associated with the common law area of negligence.

There is no doubt from the results of this study, coupled with the outcomes of Stewart's study (1996), that school leaders in both Government and Catholic schools have a large involvement with WH&S legislation.

One of the other most prominent areas of involvement for leaders in Catholic schools identified by this study relates to family law matters. In this study, the findings from the data gathered via the Survey Questionnaire indicated 74% of respondents had some involvement with this legislation. This was a higher percentage than in Stewart's study (1996), where 58% of principals who took part in his study from Government schools revealed some involvement with this act.

This high involvement with this area of the law in Catholic schools is corroborated by the data gathered from the researcher's diary records, where this area of the law listed the highest number of entries of any legislation, and showed a noticeable increase in the years 1998 and 1999. These results may be indicating that involvement of schools with this area of the law is on the increase, and this may account for the differences in percentages in the involvement between Stewart's study and this study. The high involvement with this area of the law is also supported by the data relating to the personal and professional learning and in-service experiences attended by participants in this study, as family law featured in Table 7.2 outlining such involvement.

The areas associated with this act identified in the researcher's diary notes (see Section 11.2.1) correspond with the comments returned with the Survey Questionnaire, and highlights the emotion and stress associated with the implementation of custody orders, residency issues, parenting plans and

parenting agreements, and this supports comments made by a number of commentators in the literature review. There is no doubt this is an area of the law impacting on leaders in Catholic schools and placing strains on the interpersonal relationships within schools, creating dilemmas for principals operating out of the characteristics and ethos of the Catholic School, which place a focus on the dignity of all individuals.

It appears the mix of parents rights and responsibilities, the needs of children and implementation of court orders, places the leaders of Catholic schools in conflict situations and dilemmas. This is not only highlighted in the review of the literature of legal issues impacting on schools, but highlighted also by Duignan (2002) from a leadership perspective, where leaders have highlighted dilemmas, on being faced with conflict situations, where persons seemingly have equitable yet competing rights.

The other aspect of this involvement with family law revealed in the diary notes of the researcher and in the comments returned with the survey instrument, is the dilemmas faced by principals where there has been conflicting legal documentation relating to restraining orders from state courts and the Family Law Court. As referred to in the review of the literature in Section 4.7.1.3, this aspect of family law legislation was addressed in the *Family Law Reform Act* (Cth) 1995 and confirms the changes brought about by that legislative. There is no doubt from the findings in this study that family law issues are having a major impact on the leadership of Catholic schools.

The *WorkCover Act* (Qld) 1996 and legislation associated with rehabilitation of injured workers, was one of the additional areas of law impacting on Government schools identified in Stewart's (1996) study. Because of this, information being gathered from discussions and from diary entries of the researcher, this statute was added to the list of legislation on the Survey Questionnaire under Item 13. The results from the analysis of the data gathered under this item indicated that 68% of respondents had had involvement with this area of the law. Table 11.1

which outlines an analysis of the legal issues emanating from the entries in the researcher's diaries, also places this as a prominent area of the law impacting on leaders in Catholic schools.

The involvement with this legislation raises some interesting issues. Firstly, this area of the law was a prominent legal issue about the time this study was conducted. The *WorkCover Act* (Qld) 1996 and associated rehabilitation legislations were passed by the Queensland Parliament shortly before the survey instrument was distributed. This new act replaced the previous worker's compensation legislation, and as indicated above, has again been replaced by subsequent legislation. Because of the introduction of the new legislation at the time of this study, the Queensland Government was conducting information sessions on the new legislation and this was widely publicised in the media at the time. Coupled with this, was an emerging change in attitudes in society away from compensating injured workers, to a more prominent perspective towards rehabilitation and returning injured workers to the workforce. This latter perspective was emphasised in the legislation. These changes and associated publicity could account for this being an emerging issue in Stewart's study and for a more prominent involvement amongst school leaders in the present study.

The current prominence of particular legal matters could therefore, have an influence on the involvement of principals with legal issues, for they could well relate to, or have an impact on schools. It is a reasonable assumption, therefore, that as areas of concern begin to emerge within the social cultural environment of Australian society, debate within the community surrounding the issues could lead to the enactment of legislation by parliaments, and as a consequence, schools could be directly or indirectly affected. The child protection laws enacted by state jurisdictions (*Child Protection Act* (Qld) 1999; *Children and Young Persons (Care and Protection) Act* (NSW) 1998), are examples of this. So too is the recent federal laws on privacy, and more recently this is being witnessed by moves by the Federal Parliament to bring in legislation on industrial matters. In relation to the latter, school leaders' understandings of contract law could become

more apparent as well as an increasing need. This was identified in the review of the literature.

In this study, respondents themselves have identified other areas of the law which are starting to have an impact on the leadership and management of schools. Environmental legislation featured in this identification, which reflects a mood in Australian society to be more ecologically minded and environmentally conscious, and the mention of the *Trade Practices Act (Cth) 1974*, also confirms the statements emerging from the review of the literature that this is an emerging area of involvement for principals with regards to legal matters.

Almost one third of the principals who took part in this study had had involvement with legal matters associated with anti-discrimination. This involvement covered both the federal legislation (26%) and the state legislation (27%). In contrast Stewart (1996) reported 60% of principals from Government schools as having some involvement with the *Anti-Discrimination Act (Qld) 1991*. As was suggested in the literature (Lindsay & Keefe-Martin, 2002; Tronc 2004a, Varnham, 2002), much of the involvement of principals with anti-discrimination legislation is related to the enrolment, and maintaining the enrolment of children with special needs in regular classes and in mainstream schools. This was confirmed by participant observations of the researcher in this study and the comments from participants in this study (R007; R032; R059; R103). As indicated in Chapter 11, discussions with BCEC personnel involved in the enrolment procedures for children with special education needs, seemed to indicate, that in more recent times, persons who were feeling their rights may have been infringed in this process, were more likely to take action under the commonwealth legislation rather than the state law, and it seemed advocacy groups were supporting such avenues.

This may have something to do with the more lenient interpretation of the unjustifiable hardship provision in the state legislation as expounded in *L v. Minister for Education for the State of Queensland*, 1995. As Tronc (2003) suggests, decisions such as *L v. Minister for Education for the State of*

*Queensland*, 1995 may have swung the pendulum against inclusiveness. However, to substantiate unjustifiable hardship may be a more rigorous process under the federal legislation. Cases such as *Finney & Another v. The Hills Grammar School*, 2000, *Pervis v. New South Wales (Department of Education and Training)*, 2003 and *Clarke v. Catholic Education Office & Anor*, 2003 would seem to indicate this. In any case, the data gathered under item 13 and that of Stewart (1996) indicates this area of the law is having an impact on schools and as suggested (Lindsay & Keefe-Martin, 2002), schools and school systems need to have a structured approach to the enrolment of students with disabilities to meet their needs in an inclusive environment, and to minimise the legal risks associated with this legislation.

The results of this study, however, indicate involvement with anti-discrimination legislation was not confined to enrolment, as other comments returned with the survey instrument indicated principals had had involvement with allegations of discrimination on racial grounds and a teacher claimed his/her termination was based on the grounds of political affiliation. There is little doubt from the above discussion that this area of the law is having a large impact on Catholic schools.

The contrasting responses to involvement with the *Freedom of Information Act* (Qld) 1992 between this study and Stewart's (1996) study, highlight the direct and indirect impact of legislation on schools, depending on the purpose of the statutes passed by parliaments. In Stewart's study, 64% of principals indicated involvement with this act. This was not surprising seeing the principals in that study were from Government schools and the main purpose of the act was to allow people access to information held by the government. In this study 14% of respondents indicated involvement with this legislation. From discussions the researcher had with principals in Catholic schools, this involvement seemed to correspond with the notion mentioned in the review of the literature, that this legislation could become an issue if documents, originating from issues arising in Catholic schools found their way on to files held by government departments.

A similar situation of involvement in relation to the purpose of legislation emerged with responses to the *Education (General Provisions) Act* (Qld) 1989. Although parts of this act impact on Catholic schools, such as the sections of the act associated with enrolment age and truancy, the act is basically concerned with the provision of Public Education for children in the State of Queensland. Thus, it was not surprising to see 68% of respondents in Stewart's (1996) study indicating involvement with this act but only 29% of respondents in this study. A similar situation would probably occur if the samples in both these studies were asked to indicate their involvement with the new *Education (Accreditation of Non-State Schools) Act*, (Qld) 2001, only in that instance one could predict a reversal in the degree of involvement, for this act is aimed at the Non-Government school sector.

Other contrasts in the involvement with legislation in a number of areas emerge when comparing the results of Stewart's (1996) study with this study. For example, copyright issues featured in the list of in-service and personal and professional learning experiences undertaken by respondents, and in discussions with the researcher. As a result, this area of legislation was included in both Section A of the survey instrument and in the scenarios in Section C. The results from the analysis relating to this area of the law, indicated 47% of respondents had had involvement with this legislation, and this was fourth on the list as regards the degree of involvement with legislation. In contrast, Stewart's (1996) study listed this area of the law as having limited impact.

In this research, when examining the relationship between the involvement with legislation and the variables of primary and secondary school settings, sex of principals, geographical location of schools and school complexity, very few statistically significant differences ( $p < 0.05$ ) emerged. However, in the secondary school setting, the results indicated that there was a statistically significant difference of involvement of principals from the secondary school setting with matters of a criminal nature. These significant differences emerged in the involvement with the *Criminal Code Act* (Qld) 1899 and the *Drugs Misuse*

*Act (Qld) 1986*. This was not surprising, for one could predict that as students get older and experience more freedom, their exposure to and possible involvement in matters of a criminal nature, especially contact with issues relating to drugs, would be expected to become more evident. It is feasible to expect this exposure to filter over into the school settings.

This increased involvement with matters of a criminal nature was further emphasised by the analysis carried out on the data gathered under Item 15 which is discussed below. These findings indicated participants from the secondary school setting revealed a statistically significant higher involvement with the issues involving assault by students, theft and use of illegal substances. The latter correlates with the results pertaining to the *Drugs Misuse Act (Qld) 1986* referred to above.

Why respondents from the schools located on the Sunshine Coast revealed statistically significant less involvement with the *Criminal Code* than their counterparts in Rural Town schools and schools within the Brisbane Metropolitan areas is difficult to explain. This may have something to do with the size of towns and the socio-economics of the Sunshine Coast area. The schools in this geographical region are situated in a fairly affluent area and the towns along this coastal line are of a reasonable size compared with the urban sprawl of Brisbane. It is also difficult to explain why schools on the Gold Coast would have statistically more significant involvement with the industrial issues relating to the *Workplace Relations Act (Qld) 1997* when compared with their counterparts in Rural Towns. These differences may need further investigation.

### **12.2.2 Issues Relating to Criminal Law Impacting on Catholic Schools**

As explained above in Chapter 6, outlining the development of the Survey Questionnaire, the process used to gather data in relation to criminal matters in this study was an expansion on those used by Stewart (1996). In Stewart's study one question was asked in relation to this issue, and that was aimed at having

principals indicate if they had had dealings with matters of a criminal nature as a whole. In that study 19.3 % of respondents indicated involvement in such matters and 21.1% revealed an involvement with the *Criminal Code*. However, the results of that study revealed that principals in Government schools had been involved in dealing with a number criminal matters. These matters were incorporated into six separate items on the survey instrument used in this study, and were listed under Item 15. The findings from analyses of the data gathered from this item deserve some comments.

By far, the most prominent involvement of school leaders in Catholic schools with matters of a criminal nature relate to breaking and entering, and vandalism of school premises and equipment. Surprisingly, 89% of respondents indicated involvement in this area of the law, and the responses to the open ended question on these matters revealed that this issue is taking up a large amount of time for principals in Catholic schools. The various personnel that have to be dealt with regard to these matters, including police, trades persons and insurance agents, and the preparation of documentation for filing and court proceedings, appears to be very time consuming, and the processes involved in replacing and repairing equipment and plant is another arduous task.

Principals also had involvement with other areas of a criminal nature. The results of the study revealed that approximately half the respondents (48%) were involved with issues of theft, and some of these matters appear to be related to the breaking and entering issues. The extent of harassment, bullying and child abuse in Catholic schools is evident from the percentage of principals who indicated involvement with the items: physical abuse: assault by teachers (22%); physical abuse: assault by students (31%); and, physical abuse: indecent dealings (28%). The dilemmas expressed by some principals in relation to reporting these issues are now somewhat resolved in Queensland in relation to sexual abuse, with the mandatory reporting measures brought about by the new legislation *Education and Other Legislation (Student Protection) Amendment Act* (Qld) 2003.



However, the findings of this study revealed an uneasiness amongst principals about the reporting and investigation processes surrounding child abuse issues, especially where sexual abuse is concerned, despite guidelines being published by the Catholic Bishops in this regard. This study indicates that the processes used, and the place and the way principals are treated in these processes, need careful consideration. The issues surrounding the interviewing of students, highlighted in the review of the literature, were other concerns commented on by a number of respondents in this study surrounding these criminal matters. It appears there is a need for clear guidelines for principals to follow in this regard, as is suggested in the literature.

In examining the relationship between the involvement with issues of a criminal nature and the variables of primary and secondary school settings, sex of principals, geographical location of schools and school complexity, some pertinent results emerged. It was of interest that the geographical location of schools showed no statistically significant difference ( $p < 0.05$ ) in relation to any of the criminal issues examined. However, secondary school settings revealed a more statistically significant involvement in matters associated with physical abuse assault by students, theft and use of illegal substances. Again the explanation of this could be that as students mature toward adulthood and gain more freedom, they are exposed more to matters of a criminal nature, such as drugs, but it also appears that they may be more inclined to settle disputes through physical means.

The other revealing issue in these analyses is that there is a clear indication that the more complex a school becomes, the more likely it is that leaders in those Catholic schools will have to deal with matters of physical abuse: indecent dealings. This has implications for the personal and professional preparation and learning for principals appointed to schools with a high complexity, as they need to be well versed in the policies and procedures that accompany dealing with these issues, such as the processes surrounding investigations, and the

protocols associated with the access particular people such as police, have to those involved in such matters, to carry out interviews and to gather information.

Why the findings in this study revealed that male principals had a statistically significant higher involvement with criminal matters associated with, physical abuse: assault by teachers, is difficult to explain. This may be that stakeholders, parents for example, are more inclined to bring such matters to the attention of male principals. This could be an interesting avenue for further research.

There is no doubt these areas of a criminal nature are absorbing considerable amount of time on the part of principals and creating dilemmas and stress in their leadership roles. The latter is corroborated by the findings in relation to Specific Research Question Three which examined the impact of legal issues on the leadership and management of Catholic schools.

### **12.2.3 Issues Relating to Common Law Impacting on Catholic Schools**

The common law areas examined in this study, related to those areas explored in Stewart's (1996) study, namely; negligence involving the physical welfare of students, professional negligence affecting the intellectual welfare of students and defamation, and in this study the area of contract law was added. The reason the latter was included, as explained in Chapter 6, was that discussions between the researcher and principals, and various other personnel involved in supporting and supervising principals in Catholic schools, indicated that this was an area of increasing concern for principals.

The decision to include contract law in the survey instrument was confirmed with 25% of participants indicating that they had had some involvement with this area of the law. However, as revealed in the findings relating to Specific Research Question two, only 51% of principals had an accurate understanding of the issues involved, although a further 33% indicated that they would seek advice on the matters raised. As canvassed in the review of the literature, this could become

an increasing area of involvement for principals, especially in Non-Government schools, with the advent of new industrial laws coming into effect from the Federal Parliament, which advocate an emphasis on negotiating individual contracts of employment for employees. Discussion in the review of the literature indicates that Non-Government schools, who are incorporated under the federal corporations legislation, could well come under the umbrella of this new legislation which would support the prediction of an increased involvement with this area of the law.

The involvement of participants with the other three areas of common law, mirrors the pattern of involvement of those who took part in Stewart's (1996) study, although the encounters with these areas by principals in this study showed a higher involvement in all of the areas listed. In Stewart's study 24.2% of participants indicated an involvement in negligence involving the physical welfare of students, while in this study 35% of respondents indicated such involvement. In relation to defamation, the comparisons were 6.2% in Stewart's study compared to 8% in this study, and with regard to the professional negligence area, 4% of participants in this study indicated some involvement, while only 1.9% revealed any such involvement in Stewart's study.

This high percentage (35%) of participants indicating some involvement with matters relating to negligence, reflects the large number and extent of cases which have come before the courts in this area, and which were discussed in the review of the literature (see Section 4.6.1). This involvement is also reflected in the diary entries of the researcher in Table 11.1, where the largest number of entries relate to negligence, and this area of the law is also featured in Table 7.2 which outlines the nature of in-service and professional learning experiences attended by participants.

The comments provided with the return of the Survey Questionnaire, indicated that the issues faced by principals in this area of the law cut across the spectrum of scenarios canvassed in the review of the literature, including issues arising

from incidents in classrooms, supervising playgrounds, involvement in sporting activities and excursions, and even venturing into the area of student welfare. The duty of care to provide a safe and secure environment for staff and students in relation to the latter was explored in discussions on bullying and harassment in Section 4.7.2.7. Comments from participants reveal that failure to provide such an environment can raise questions of negligence.

While the discussions in the review of the literature relating to professional negligence indicates that at this point in time no successful action has been pursued through the courts in this area of the law, the fact that 4% of participants in this study, and some participants in Stewart's (1996) study revealed involvement with this aspect of negligence, the question posed by Hopkins (1996); "Are the storm clouds gathering?" seems to have some support, and the arguments based on public policy may be under threat from a changing social cultural environment. From this perspective, it would appear prudent for school leaders to take heed of the warning signs emanating from the British cases (*E (a minor) v. Dorset County Council, Christmas v. Hampshire County Council and Keating v. Bromley London Borough*, 1993 referred to in Section 4.6.1, and pay particular attention to the way they assess, report and cater for the needs of students with particular learning needs.

A similar warning for school leaders could well apply to defamation issues which was also referred to in the review of the literature. The suggestions there, were for school leaders to take particular care with what is said about those involved in school communities, in what is written in compiling information and in preparing documentation. The range of situations contributing to defamation actions outlined in the comments from the 8% of principals who indicated in this study that they had had involvement with this area of the law, reveals school leaders could well expose themselves to actions of defamation involving various stakeholders in the Catholic School educational setting including, parish priests, parents, and colleagues. With the increased propensity to resolve issues through legal means, an observation made by a number of commentators in the literature

reviewed, and supported by a number of comments from participants in this study, heeding these warnings as part of legal risk management strategies would be a wise course of action.

From this discussion, as was the case with the discussions surrounding legislation and criminal laws matters, there is ample evidence to indicate common law areas listed in the Survey Questionnaire are having an impact on the leadership and management of Catholic schools.

### **12.3 What Understandings do Principals of Catholic Schools Have of the Areas of Law Impacting on Schools, and What Sources do They Use in Developing These Understandings? (Specific Research Question Two)**

The above discussion indicates that school leaders in Catholic schools are confronted with a number of legal issues with which they have to deal. In facing these issues it is reasonable to suspect that principals would have to have some understanding of the legal issues involved and some means of acquiring such understandings. It was these matters that Specific Research Question Two set out to explore. To support this, a number of scenarios were constructed and provided in Sections B and C of the Survey Questionnaire. A series of response options were provided with the scenarios, of which one response provided the most appropriate response in light of the development of the law at the time the instrument was distributed. The development of these scenarios is outlined in Chapter 6 and key legal issues impacting on Catholic schools were featured in their construction. An examination of the areas of law identified in these scenarios reveal a high correlation with the areas of law impacting on schools discussed above in relation to Specific Research Question One.

Responses from the participants to the scenarios were analysed and also examined in light of variables considered for other Specific Research Questions, namely, the sex of participants, the primary and secondary school settings, the

geographical location of schools and school complexity. However, in addition to these variables, the influence of studies in Leadership in Catholic schools, involvement in-service and formal learning experiences related to legal matters, experience in administrative positions outside education, and years of service within Catholic Education, particularly as a principal in Catholic schools, were also investigated in relation to Specific Research Question Two.

To examine the second component of Specific Research Question Two, respondents were asked to indicate whether the sources listed in the survey instrument were sources for them in acquiring legal understandings, and then they were asked to rank these responses in order of priority. The sources listed were those identified in Stewart's 1996 study and some others were added from the discussions and interactions the researcher had with principals and others involved in supporting and supervising principals in their roles.

### **12.3.1 Issues Relating to Principals' Understandings of Common Law**

Nine of the 10 items outlined in Section B of the Survey Questionnaire dealt with negligence issues and the application of that area of the law to various school activities, where a proximate relationship had been established, and therefore a duty of care existed. The scenarios were based on prominent cases examined in the review of the literature and some of the cases were actually stated in the scenarios, for example, *Geyer v. Downs*, 1976, and *Commonwealth v. Introvigne*, 1982 (Item 26), while Item 28 was closely aligned to the cases *Reynolds v. Haines*, 1993 and *Trustees for the Roman Catholic Church for the Diocese of Bathurst v. Koffman & Anor*, 1996. The decision in the latter case was a talking point in educational circles for some months leading up to the distribution of the survey instrument. The scenarios addressed the elements of negligence outlined in Section 4.6.1 and that of vicarious liability discussed in Section 4.6.1.1, and were closely aligned to the scenarios outlined in Stewart's (1996) questionnaire. In a number of instances the scenarios in Stewart's study were adjusted only slightly to accommodate the circumstances of more recent cases decided in the

courts. It was anticipated that participants would have been familiar with most of the cases and the understandings contained in these scenarios.

The responses of participants in this study mirrored the results of Stewart's study. A large number of respondents perceived the need to uphold a duty of care for students before and after school, and in the vicinity of the school premises as was examined in Items 26 and 28. In this study, 91% of respondents indicated the most appropriate response to supervision before school (Item 26 on the Survey Questionnaire) compared with 87% on the corresponding item in Stewart's study, and 86% provided the most appropriate response to supervision within the school vicinity (Item 28 on the Survey Questionnaire) with the corresponding item in Stewart's study receiving a 74% correct response.

In relation to the other items, the comparisons showed the respondents in this study had a similar percentage of correct responses to those in Stewart's study, (Item 25, 48 % Stewart's study, 47% this study; Item 30, 28% Stewart's study, 33% this study; Item 24, 21% Stewart's study 17% this study) or higher correct responses (Item 27, 46% Stewart's study 63% this study; Item 29, 24% Stewart's study 40% this study; Item 23, 12% Stewart's study, 44% this study). However, Item 31 which also touched on the notion of vicarious liability was poorly answered by the respondents in this study compared with the responses in Stewart's study, (Stewart's study 46%, this study 9%). Comparisons also indicated that 6 out of the 9 items in this study had a correct response rate below 48%, while in Stewart's study 8 out of the 10 items indicated a correct response below 49%.

The relative consistency of these results across the two studies is quite remarkable and indicates a consistent lack of knowledge in both Government and Catholic school principals with regard to particular legal issues surrounding the common law area of negligence. A marked deficiency was recorded in this study regarding the understanding of vicarious liability and the issue that others can be partly responsible themselves for damage suffered through contributory

negligence. This was not well understood by principals in both sectors. From this discussion one could well predict that the concept of a non-delegable duty of care explored in the literature review would also not be well understood.

This lack of understanding supports the findings raised in the presentation of the data in relation to these items in Chapter 9, that principals see themselves as the prime person responsible in relation to a number of these matters. This could also be contributing to the stress factor in relation to dealing with legal issues which has emerged from the analysis of data gathered in relation to Specific Research Question Three.

From this discussion, it is clear that steps need to be taken to build the understandings of principals with regard to these matters. This is particularly important, as the review of the literature indicates that this is a constant area of the law impacting on schools, evidenced by the most recent case being handed down by the High Court in June 2005 (*Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn (As St Anthony's Primary School) v. Farrah Hadba by her Next Friend and Father Nouhad Hadba*, 2005). This increased awareness, however, may be somewhat offset by the prominence and personal and professional learning experiences being made available for school leaders with regard to workplace health and safety legislation, and the correlation of the principles underlying this legislation and common law negligence. This link has been commented on in the review of the literature (Section 4.7.2.3), remarked upon earlier in the analysis provided in this chapter, and has been referred to by a number of principals in this study (R029; R087; R098; R104).

### **12.3.2 Issues Relating to Principals' Understandings of Statute Law**

The scenarios in this study relating to legislation were also closely aligned to the scenarios in Stewarts (1996) study, and again the findings revealed a close pattern of responses in both studies. In one of the items dealing with *Workplace Health and Safety Act (Qld) 1995*, a 56% correct response rate was recorded for



both studies. A number of other scenarios recorded similar percentages: family law (Stewart's study 60% and this study 67%), anti-discrimination legislation items (Item 39 Stewart's study 82% and this study 78%, and Item 40 Stewart's study 65% and this study 62%).

Much higher correct responses were recorded for participants in this study in relation to one of the scenarios related to the *Workplace Health and Safety Act* (Qld) 1995 (Stewart's study 64% and this study 89%), and both the scenarios associated with the *Criminal Code Act* (Qld) 1899 (Stewart's study 60% and 8% and this study 79% and 61% respectively). A much higher response rate was recorded for understandings relating to the *Education (General Provisions) Act* (Qld) 1989 by participants in Stewart's study (Stewart's study 59% and this study 4%). This latter result reflected the point mentioned above in relation to Specific Research Question One, in that involvement with particular sections of the law can be related to the purpose, impact and how a system deals with the impact of the legislation. When discussing the findings relating to Specific Research Question One, it was pointed out that most participants in this study would most likely see the *Education (General Provisions) Act* (Qld) 1989 focusing on the provision of Public Education, and therefore would be somewhat neglected by participants in this study. This is born out by the findings relating to both Specific Research Questions One and Two.

These results in this research indicate that principals in both Government and Catholic schools have a more accurate understanding of issues associated with legislation than they do of common law matters. However, the overall understanding of areas of the law impacting on schools was not of a high standard. In Stewart's study 3 scenarios had correct percentage responses below 50%, where as in this study only 2 scenarios had correct response ratings below 50%, and 7 of the 10 scenarios had over 60% correct responses, of which 3 had correct response ratings with 78% or more.

In the review of the literature, the increasing amount of legislation impacting on Australian society and its more dominant position over common law in defining person's rights was commented on. This dominance may be reflected in the perceptions that principals have of the law. They may see legislation as mainly defining legal issues in the school context, take heed of what legislation is being passed by federal and state parliaments, which in turn would be supported by media coverage, and in so doing be somewhat neglectful of the position common law and the courts play in this regard. They may, therefore be more knowledgeable of matters associated with legislation than they are with common law issues.

The findings in this study indicate that principals in Catholic schools appear to be more involved with statute law issues than common law issues. The more correct responses to the scenarios in Sections B and C of the Survey Questionnaire and the findings relating to Specific Question One may tend to suggest that more involvement with particular legal areas could provide more correct responses. However, a closer examination of the findings seems to indicate that there is not necessarily a close relationship between these variables. For example, the findings revealed that principals in secondary school settings showed statistically more significant involvement with issues associated with the WH&S Act and matters associated with criminal law. In contrast, the only statistically significant difference revealed in relation to this variable in principals' understandings, indicated that principals in primary school settings displayed more statistically significant correct responses to the scenarios associated with the anti-discrimination legislation.

Another example that could be sighted to dispel this notion of a close relationship between involvement with legal matters and the development of more correct understanding of legal issues, relates to the school complexity variable. This variable showed that principals in schools with a higher complexity rating were more like to be involved with issues associated with assault involving indecent dealings, and that this involvement was statistically significant for those carrying

out their role as principals in schools with a complexity rating of five. However, the analyses relating to Specific Research Question Two displayed statistically more significant correct responses from principals in more complex school settings to issues associated with the anti-discrimination legislation. One might conclude from this evaluation that the degree of involvement of principals with legal issues does not necessarily mean a greater understanding of the area of the law with which the involvement takes place.

It seems that the notion of using involvement with legal issues as opportunities for learning and growth as well as focusing on having the situation resolved, would be a sound process. Such a course of action follows the lines suggested by Wheatley (2004, 1999a) and others (Richetti & Tregoe, 2001; Rogers, 2003), in terms of developing leadership, namely, focusing on what happened, what was done and what was learnt from the experience, with an emphasis on the latter. Following such a process may develop principals' understandings and show a closer relationship between involvement and the development of principals' understanding in relation to areas of the law impacting on Catholic schools.

### **12.3.3 Issues Relating to Sources Principals Use to Acquire Legal Understandings**

The findings which emerged from the data gathered under Item 12, indicated that principals used a wide range of sources to develop legal understandings. All the sources listed on the survey instrument were used by respondents to gain legal understandings with the Brisbane Catholic Education Centre (BCEC) Administrative Handbook being used as the most prominent source. This correlates with the findings in Stewart's (1996) study which revealed that the Queensland Department of Education Manual was the most important source of gaining legal knowledge for principal in Government schools. In fact, the rankings of the sources of acquiring legal understandings in this study mirrored the priority listing of sources of acquiring legal understandings in Stewart's (1996) study.

Other printed materials contributed as sources of gaining legal understandings, with professional journals featuring prominently as such a resource. It is suggested, therefore, that professional bodies may lift their prominence as a source of developing understandings in this area by providing issues of a legal nature in their publications, and in the material they supply to their members. It was noted that this is happening with some professional bodies such as The Australian Council of Educational Leaders.

Besides the Administrative Handbook and other printed materials, discussions and interactions with a wide range of personnel within the education system, in which principals carried out their role as school leaders, featured prominently as a source of gaining legal understandings. Featuring in this list of personnel were the Area Supervisors who supported and supervised principals in carrying out their roles, and the personnel in the Industrial Unit within BCEC, mentioned earlier, which was set up and staffed with industrial officers to support principals with regard to industrial matters, but became a clearing house and source of information for a wide range of legal matters.

However, when it came to ranking the most important sources of acquiring legal understandings, fellow principals were key figures in this regard, being ranked as the most important source. Printed material and publications, especially from professional journals apart from the system Administrative Handbook, were also ranked highly as major sources of acquiring legal understandings. However, formal university courses and professional associations featured less prominently than other sources listed under Item 12. From the findings which emerge from the analysis of this data it seems therefore, that when confronted with legal issues principals were more likely to turn to one of their fellow principals for advice, and/or seek assistances from the Administrative Handbook and/or contact the BCEC Industrial Unit.

These findings have a number of implications. The accuracy and currency of information contained in the Administrative Handbook in relation to legal matters is

an important issue. This is pertinent, for the development and printing of such documents takes time and in many respects are out of date by the time they are printed and distributed. As we saw in the discussions at the beginning of this chapter, the law is in a state of flux with continual development and renewal taking place, so to keep such publications up to date is a difficult task. The Queensland Department of Education uses its Government Gazette to do this, and as indicated in the presentation of findings, this publication is also used by principals in Catholic schools as a source of acquiring legal understandings. This may be one of the reasons why principals in Catholic schools have indicated they use this as a means of acquiring legal understandings, especially in the secondary school setting.

The personal and professional learning and growth associated with legal issues impacting on Catholic schools for those personnel occupying roles such as Area Supervisors and holding staffing positions in units within Catholic Education Systems, such as the Industrial Unit of BCEC, is another issue. There appears a need for these people to be able to respond to a gamut of legal matters, as the findings relating to Specific Research Question One indicate a wide scope of areas of the law are having an impact on Catholic schools. The continued personal and professional learning and growth of principals in relation to legal issues also appears to be an important concern, seeing principals rely on each other considerably as a source of acquiring legal understandings. The question here is, how accurate and current are the understandings principals have of the areas of law impacting on Catholic schools? The discussion in relation to the first component of Research Question Two outlined above, indicates that these understandings are well wide of the mark of what is required, particularly in relation to common law issues.

The conclusion reached by Stewart (1998) from the work he has carried out in relation to education law is pertinent here. He believes that what principals require is not a law degree, but sufficient understandings to realise the implications of legal matters, and to put in place legal risk management strategies. This research indicates that this an important need for principals of Catholic schools. While this is important, a number of comments reported in this study from participants also

indicate there is a need for Catholic Education Systems to have a person or persons available for immediate advice when it comes to dealing with legal issues. The preference expressed by principals in this study, so that they can be confident of the advice received, is that these personnel should be current practising legal practitioners <sup>(12)</sup>

#### **12.3.4 Issues Relating to the Influence of Certain Variables on Principals' Understandings of Legal Matters**

Tables 9.11 and 9.12 in Section 9.6 give an outline of the variables in this study which revealed a statistically significant difference ( $p < 0.05$ ) of the legal understandings of principals in relation to the scenarios in Section B and C in the Survey Questionnaire. As indicated above in Section 12.3 the variables examined in relation to Specific Research Question Two were expanded to investigate the possible influences of additional variables, which included years of experience in various roles and attendance at in-service and more formal courses on legal matters, might have on understandings principals' develop about legal issues.

Tables 9.11 and 9.12 indicate that no particular variable had an overall influence on principals understandings. One or two differences were identified in relation to some of the scenarios and the variables under examination, but no one variable indicated an overall influence.

The study of Leadership in a Catholic school, or involvement in in-service and formal and less formal personal and professional learning experiences associated with legal matters, did not indicate a significant overall difference in developing legal understandings. However, a trend was detected in that the longer a person was involved in Catholic Education, the more likely that person was to have a more accurate understanding of legal issues.

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(12) Since the commencement of this study the BCEC has appointed legal practitioners to their support personnel to advise principals on legal matters.

This length of involvement in the cultural social environment tending to provide a more accurate understanding of the legal issues impacting on Catholic schools, was also supported by the findings that involvement in administration outside Catholic schools showed statistically significant less understandings on three of the scenarios. As noted in the commentary on Tables 9.11 and 9.12 in Section 9.6, the surprising result was that this involvement in the social cultural environment of the Catholic School did not transfer to the years spent as a principal in Catholic schools. In fact, this latter variable was the only variable which revealed a neutral finding across all the scenarios.

These results are not dissimilar to the findings in Stewart's (1996) study. The results of that study indicated that involvement in in-service and formal and less formal personal and professional learning experiences did not have an overall influence on developing more accurate understandings of the scenarios presented, nor was there any statistically significant difference identified in the understandings of principals who had carried out their role for up to two years, when compared with those principals who had carried out the role for over two years. The only notable statistical difference identified in Stewart's study was that primary school principals had an overall more accurate understanding of legislation than their counterparts in the secondary school setting. The findings in this study and those of Stewart's study (1996), have implications in terms of developing leadership, specially from a constructionists epistemology and the conceptual framework of symbolic interactionism underpinning this study. This aspect of the results will be discussed later in this chapter.

#### **12.4 What Impact Do Legal Issues Have on the Administration of Catholic Schools, and in Particular, on Principals' Perceptions of Their Leadership Roles Within the Ethos of the Catholic School? (Specific Research Question Three)**

A number of items on the Survey Questionnaire were designed to gather data to examine the impact of legal matters on the leadership and management of

Catholic schools. As pointed out in Section 10.1, Item 16 was designed to gather data on the perceived time principals spent on dealing with legal issues, Item 17 on the perceptions of whether the impact of legal issues on schools was increasing or decreasing, Items 19 and 20 were aimed at examining the compatibility of the ethos of the Catholic School with the resolutions reached and the process used in coming to the resolutions of legal issues, Items 21 and 22 investigated the stress that legal issues were placing on leaders of Catholic schools and Item 18 gathered data on the warning signs principals used to detect that a legal issue was developing in their schools. As with other specific research questions in this study, the influence of variables such as school location, school complexity and geographical location were examined to identify any particular significant differences in the data gathered, that might be attributed to their influence.

#### **12.4.1 Issues Relating to the Perceived Time Spent by Principals in Dealing With Legal Matters**

The findings from the analyses of data collected in relating to Specific Research Question Three in Chapter 10, indicated that the majority of principals (83%) perceived themselves as spending approximately 10% of their working week dealing with legal issues, per se. The analysis carried out on the variables did not reveal any statistically significant influence ( $p < 0.05$ ) on these perceptions that might be related to the sex of principals, primary or secondary school setting, complexity of schools or geographical location of schools. The comments returned with the survey instrument, however, indicated that the amount of time spent on legal matters can increase considerably when particular issues have to be dealt with, and at such times the impact can become all consuming. The other pertinent element in regard to this impact of legal matters emerged from the finding in relation to Specific Research Question Three, is that, in the school setting, while principals may not be presently dealing with a particular legal issue, there is the constant concern for them to be aware of the legal implications of all that is happening within their school community.



With the constant threat of legal matters hanging over the head of school leaders, the gamut of legal issues that have the potential to impact on schools, as revealed in the literature review, and the extent of involvement with legal issues revealed in the result of this study in relation to Specific Research Question One, one could gain a perception that dealing with legal issues is an all consuming phenomena facing leaders in Catholic schools. The results of the analysis of the data gathered in relation to Item 16 in this study brings some realistic understandings to these perceptions. However, the focused impact in times of particular need, reinforces the findings relating to Specific Research Question Two discussed above, that school leaders are calling for support to be available through professional practitioners in the legal field, when the need arises.

The realistic understandings as to the impact of legal issues on school leaders in Catholic schools, should not allow the administrators of Catholic Education Systems to become complacent about the impact of this area on the leadership and management of Catholic schools. It is clear from the results of the analyses carried out on the data gathered in relation to Item 17, that the impact of legal issues on the leadership, policies and practices of Catholic schools is increasing. This places a responsibility on leaders of Catholic School Systems to support school leaders in this regard. The results of this study and Stewart's (1996) study indicate this increasing impact is a reality. To ignore this phenomena, (particularly with the stress on principals related to dealing with legal issues as discussed below), could expose systems themselves to actions under legislation and common law, which place a responsibility on system authorities to provide for the welfare of staff and students in educational settings, and a safe working environment for their employees. The comments by Endicott (1997, 1995) foreshadow the possibility of such actions if heed is not taken of the warning signs.

Many principals in this study revealed that the impact of legal issues on their leadership and management of Catholic schools had been influenced by the increase of legislation and the responsibilities associated with the implementation

of legislative changes, such as the necessity to attend courses and training. In relation to this, the *Workplace Health and Safety Act (Qld) 1995*, and *WorkCover Act (Qld) 1996* and the legislation dealing with the rehabilitation of employees with work related injuries in the workplace, including stress related claims, featured prominently in this study (R006; R007; R008; R010; R014; R026; R029; R031; R032; R047; R052; R055; R061; R063; R065; R074; R075; R076; R078; R079; R080; R082; R087; R088; R090; R091; R093; R095; R096; R102; R103; R108; R111; R117; R118; R125).

This impact is exacerbated by one of the key issues emerging from this study and discussed in this chapter, the continual state of flux, development, expansion and renewal of the law, and that statute law and subordinate legislation plays a large part in this transformation. This is highlighted here by the fact that the two pieces of legislation mentioned above have themselves undergone a transformation since the commencement of this study, as was noted in the review of the literature, and commented on in this chapter. The *WorkCover Act (Qld) 1996*, has been replaced with the *Workers Compensation & Rehabilitation Act (Qld) 2003*, and under subordinate legislation in workplace health and safety area, the Queensland Parliament has brought in new Safety Regulations in 1997, new Advisory Standards in 1998 and Industry Codes of Practice in 1999.

With the results in this study and Stewart's (1996) study indicating the major area causing stress on principals in dealing with legal matters is lack of legal understanding, Catholic School Systems have an important responsibility to address the continual personal and professional learning and growth of school leaders in this regard. This personal and professional learning and growth, however, is not confined to areas of legislation, as the results relating to Specific Research Question One indicate that there is an even greater need with regard to understandings of common law issues impacting on Catholic schools. The need for personal and professional learning in relation to legal matters reaches right across the board, as the results of this study do not reveal any particular influence in relation to these matters that might be attributed to the variables

examined in this study, apart from the influence of being involved in the Catholic School environment. This emphasises that the majority legal understandings are acquired by 'learning on the job'.

This study indicates a perception amongst some principals that this increase in legalism and the time school leaders have to devote to resolving such issues is detracting them from the main purpose of their role, which is the responsibility to deliver quality learning and teaching within a Catholic ethos and culture (R019; R025; R078; R113). However, the literature on school effectiveness (Australian Government, Department of Education, Science and Training, 2004, Hargreaves, 1995) does not confine school effectiveness to academic achievement, for "the development of effective and harmonious relationships, the provision of a well managed safe and secure learning environment for students and the development of communities, where the rights of those in the school community are respected and upheld" (McCann; 2004, 404) are also important attributes of an effective school. For leaders in Catholic schools, dealing with the clarification of the rights of others and ensuring that these rights are upheld in the school environment, align with the ethos of the Catholic School with the focus on justice and respect for the dignity of the human person.

#### **12.4.2 Issues Relating to the Compatibility of the Ethos of the Catholic School With the Resolutions Reached and the Processes Used in Reaching Resolutions When Dealing With Legal Matters**

The compatibility of the ethos of the Catholic School with the resolutions reached and the processes used in reaching those resolutions when dealing with legal matters, highlights the engagement and interconnectedness between the Catholic School, its culture and climate, and the pluralistic and secular nature of the social/cultural world, in particular, the legal framework in which Catholic schools exist and operate within Australian society. This is highlighted by the comments made by one of the principals in this study on dealing with legal issues:

Invariably these issues involve two or more parties, each of whom have their own perception, responsibility and justice aspects of a conflict. You

also have small incompatibilities that can occur between 'moral' and 'civil' aspects and between 'letter of the law' and 'pastoral care' aspects of any given situation. The principal often has to balance between the roles of the official/authority figure and the supportive community member (R045).

This compatibility issue is also related to the dilemmas referred to by Duignan (2002), when he discusses the paradoxes and dilemmas which leaders, including principals, in leading their organizations, face when having to resolve conflict situations where the parties involved appear to have legitimate but competing equitable rights. The same is reflected in Covey's (1989) perspective to engage empathically with others and work for a win/win situation, but at times where matters of principle are concerned to have to settle for a win/no deal outcome.

Items 19 and 20 on the Survey Questionnaire were constructed to gather information relating to this aspect of the study. These findings from the analyses carried out on the data gathered via these two items, indicated that when principals in Catholic schools are confronted with legal issues, the resolutions reached in dealing with these issues, and the processes used in reaching the resolutions are on the whole highly compatible with the ethos of the Catholic School. Assuming the outcomes of issues dealt with by principals are in line with current legal principles, one could conclude that persons' rights as expounded in legislation and common law decisions, are closely aligned to what would be expected within the ethos of a Catholic school, particularly as these relate to justice and the dignity of the human person. On the whole, this assessment seems reasonable, but as outlined at the beginning of this study a perfect alignment with all aspects of the law is not always present and the situations where dilemmas are going to occur, and degree of conflict with the law as it stands from time to time, will continue to be present for principals.

This high degree of compatibility should not be confused with a perception that all that happens in Catholic schools or in Catholic Education is in line with the characteristics of the Catholic School, or with the legal principles defining the bounds of individuals' freedoms and rights and which govern persons' behaviours. Such is not the case, as indicated in the review of literature in this

study. The area of child abuse, is one such area revealed in this review (Australian Catholic Bishops Conference 1996, Australian Catholic Bishops Conference and the Australian Conference of Leaders of Religious Institutions, 1997). Other areas of the law are also referred to (Duncan & Riley, 2005; Independent Teacher, 1986), and a number of the cases in which decisions of the courts have clarified the common law and the interpretation of legislation, have involved issues arising within Catholic schools; for example, *Trustees for the Roman Catholic Church for the Diocese of Bathurst v. Koffman & Anor*, 1996, relating to negligence, *Clarke v. Catholic Education Office & Anor*, 2003 relating to disability discrimination, and *Inspector Guillarte v. Trustees of De La Salle Brothers*, 2004 relating to occupation health and safety legislation.

The results of the analyses of the data relating to the aspects of compatibility examined in this study, revealed that principals were less confident in expressing compatibility with the ethos of the Catholic School when it came to the processes used in coming to resolutions when dealing with legal matters. This degree of incompatibility seemed to be related to the way people had been treated during the processes used to resolve legal matters and the interpersonal considerations surrounding the processes used. This highlights one of the important aspects of the law referred to often in this study; the application of procedural fairness/natural justice when dealing with persons' rights. This has implications across many situations as seen in the review of the literature, such as exclusion and suspension of students, dealing with work performance, investigating allegations made against others and reviewing any decision that could affect the standing of others in the community, their future careers and livelihood. Natural justice is one of the aspects of common law examined in this study and the lack of adherence to procedural fairness may reflect the general lack of legal understandings in the common law area reflected in this research.

#### **12.4.3 Issues Relating to Stress on Principals When Dealing With Legal Matters**

Items 21 and 22 on the Survey Questionnaire were structured to gather data on the stress on principals created by legal issues impacting on the leadership and management of Catholic schools. The results from the analyses on the data gathered relating to these two items reveals that, while many of the issues which principals deal with in carrying out their roles possess a degree of stress, the legal matters impacting on the role of principal in Catholic schools have a high component of stress associated with them, and that this impact of the law on school principals seems to be increasing. These findings correlate with the results of Stewart's (1996) study. While 90% of principals in this study indicated there was stress associated with dealing with legal issues, in Stewart's study 78% of principals from Government schools in Queensland indicated handling legal matters caused them stress. In this study, 46% of principals saw legal matters as causing more stress than other administrative tasks, while 31% gave a similar response in Stewart's (1996) study. However, when it came to the question of whether legal matters were causing more stress now than in the past, the responses showed much less variation, with 77% indicating a yes response in Stewart's study and 72% in this study.

One of the factors which could account for the differences in responses here is that within the Queensland State Department of Education there is a fairly well developed legal branch within their administrative structure to support principals and teachers with legal issues. This highlights once again the request expressed by participants in this study to have access readily available to professional practitioners in the area of law to support principals in Catholic schools in time of need.

Some other aspects of the findings outlined in Chapter 10, call for some comment. Surprisingly, the complexity of schools did not indicate a statistically significant difference ( $p < 0.05$ ) in the stress levels on principals when dealing with legal issues. One might have thought the more complex the school the more stressful might be the involvement with legal matters, especially, as earlier the

findings relating to Specific Research Question One indicated that the more complex the school the more likely principals would have to deal with issues of physical assault: indecent dealings, and the comments from principals in this study indicated such situations were stressful.

It appears, however, that the issues principals have to deal with do not create the stress per se, nor does the extent of legal issues impacting on schools contribute greatly to stress on principals when dealing with legal matters, as the number of cases and statutes were ranked well down as important sources of stress. It appears that other factors listed on the survey instrument as sources of stress are more important, and in particular the lack of legal knowledge is a key issue in contributing to stress. It also appears that the sources of stress listed on the survey instrument have an accumulative effect on stress levels created when dealing with legal matters.

One of the variables that did disclose a statistically significant difference in relation to the stress levels experienced by principals when dealing with legal matters, was the geographical location of schools, with schools in Rural Towns revealing a statistically significant difference when compared with their counterparts in schools on the Gold Coast and Sunshine Coast. The interpersonal relationship issues raised above in the discussion on compatibility may need to be examined more closely in such communities, and who deals with the legal issues in such situations could be an element worth considering. This is particularly the case when one reflects on the comments by one of the participants in relation to this issue in the presentation of findings associated with Specific Research Question Three in Chapter 10:

Stress is increased in a small country town setting such as the one I'm now in. Here the people with whom problems are being contested are unavoidable in daily life e.g. on a recent Thursday I was in the Small Claims Tribunal pursuing a fee defaulter. On the next Saturday the check-out person serving me at Woolies was the woman from Thursday's hearing (R113).

Earlier discussions indicated that involvement in in-service and more formal personal and professional learning experiences did not have a statistically

significant effect on developing principals' understandings of the law. This was the same outcome with regards to stress associated with handling legal matters. However, the sex of principals did indicate a statistically significant finding, in that male principals were more likely to see legal issues as being more stressful than other administrative tasks. It is difficult to ascertain what created this difference, but it might have some relationship to the findings revealed earlier in this study where male principals had displayed statistically significantly higher involvement with issues of assault by teachers and the negligence issues associated with the physical welfare of students. Being more heavily involved with these areas of physical welfare of students, might therefore account for the statistically significant difference revealed here in this aspect of the study.

Principals in this study acknowledged all the sources of stress outlined in Stewart's (1996) study as sources of stress, *per se*, in dealing with legal matters. As well, the findings confirmed that the additional items added by the researcher to the list in the Survey Questionnaire, as a result of discussions and interactions with principals regarding legal matters, were sources of high levels of stress for principals. These were handling emotive and conflict matters, and the length of time it took for legal matters to be resolved. In fact, the former received the highest percentage as a source of stress in dealing with legal matters, *per se*. However, when it came to ranking the sources of stress in order of importance, lack of legal knowledge was ranked first, concerns about legal repercussions was ranked second, and duty of care issues was ranked third. Out of the 11 items listed, handling of emotions and conflict was ranked sixth and length of time it took to resolve legal issues was ranked seventh.

The revelation that lack of legal knowledge was ranked as the most important source of stress equates with the result in Stewart's (1996) study. This highlights again the need to update the personal and professional learning of principals with regard to legal matters impacting on schools, and the availability of professional practitioners in the legal field to support principals when the need arises.



The fact that the second most prominent source of stress identified was related to duty of care, and that in the analysis a statistically significant higher rate of stress was revealed in the primary school setting in this regard, could be accounted for by the earlier discussions that principals' understandings of negligence issues is poor. As reported in Chapter 10, this was seen as "a very complex area, requiring much more in-service and updating for principals" (R019) and "the 'shifting sand' of education" (R052). The difference in the primary and secondary school settings could in turn be attributed to the earlier discussion which revealed that principals in the secondary school setting showed a high involvement with the WH&S legislation. As the principles underlying that legislation are similar to the elements associated with negligence, it is feasible that these principles could be transferred conceptually to deal with duty of care issues.

#### **12.4.4 Issues Relating to Principals Identifying That a Legal Issue is Developing in Their School**

Stewart's (1996) study indicated that principals in Government schools in Queensland dealt with legal issues from the task oriented perspective of leadership and applied reactive type procedures to dealing with legal issues to have the issues resolved, and he, along with others (Sungaila, 1988; Rossow, 1990) called for more proactive legal risk management processes to deal with the impact the law was having on the leadership and management of schools. This proactive approach was also being called for in recent legislation such as the WH&S legislation, and in the decision in the common law negligence case in the High Court of Australia in *Wyong City Council v. Shirt*, 1980, which highlighted the importance of recognising potential dangers in activities and events, assessing what might be the anticipated actions of those involved and what likely precautions might be applied to the situation, including what professional or statutory standards are asked for in the circumstances of similar activities and events.

The climate created by such legal emphases and accompanied by a more litigious society, contributes to what a number of principals in this study refer to as the constant threat of legalism impacting on the leadership and management of Catholic schools. One principal expressed this as being in the shadow of “the constant dominant legal ethic” (R119). Thus, one of the components examined in Research Question Three was how principals identified that a legal issue was developing in their schools. To examine this component, principals were asked to respond to the sources identified in Stewart’s (1996) study that principals used to indicate that a legal problem was developing in their schools.

Principals in this study identified all the areas listed as sources which supported them in identifying that legal issues were developing in their schools. Interactions with others in the community featured prominently as these identifying sources. One of the comments put forward regarding this atmosphere of legalism and the processes of interactions involved in dealing with this phenomena is pertinent with regards to the focus of this study. This comment was, that when operating within this climate of legalism, and faced with a developing legal issue and the stress associated with it, principals should be conscious to continue to operate from the perspectives relevant to the characteristics and ethos of the Catholic School, and the human and Christian perspectives underpinning the symbolic and cultural aspects of the Catholic School, rather than the concerns of possible legal reprisals (R059).

## **12.5 Discussion of Results and the Theoretical Perspectives Underpinning This Study**

The theoretical framework underpinning this study was based on a constructionist epistemology and the theoretical perspective of symbolic interactionism. This theoretical framework placed an emphasis on the construction of reality, generated by interaction with the physical and social world from a social, cultural and situational perspective, and generated specifically through interaction with others in the world in which one lives and develops. These interactions have a

set of symbols, particularly language based, from which meaning is constructed. The individual is therefore engaged in this development as an active participant in constructing meaning.

Symbolic interactionism is a prominent exponent of a constructionist epistemology. For the symbolic interactionist, through interaction with the world, and particularly through interaction with other persons, one develops an understanding of the world, or what Mead the father of symbolic interactionism calls a 'generalised other' of society. This journey of a social construction of reality has a historical component and a biographical component. The historical component relates to the historical development of society into which one is born with its historical social and cultural development of traditions and norms, and the biographical component relates to the segmented portion of the world in which one lives out one's life. Sometime this biological journey can be limited and for others quite expansive.

In this encounter with the physical and social cultural world one develops not only a generalised other but how one fits into this generalised other; the development of a concept of me and self and how one plays out the roles one encounters in life. As portrayed on the Conceptual Framework for Symbolic Interactionism in Figure 5.2 (Section 5.3.1) one can see that this development is associated with encounters with particular social entities on one's journey, such as the extended family, school, media and in the current world, probably the internet. The social construction of reality within this journey is very much influenced by interactions with significant and orientational others. These social entities and the persons within them are themselves influenced by society as a whole as is the individual person within that society. This theoretical framework is supported by many of the findings emerging from this study.

The discussion in Chapter 5 indicated that the legal framework is an important component in the development of one's generalised other of society. The discussions in the review of the literature, indicate that the legal framework in

which principals operate in their current roles is a product of the historical and traditional development from the Westminster System of governance, transported to the colony of New South Wales and which from there underwent development and adaptation to meet Australian conditions. These discussions also indicated that this system has a cultural heritage based on a Christian perspective, although the continual situational development, renewal and expansion of that system has placed a more pluralistic and secular context to its present construction and meaning. It is this latter construction and meaning in which the present principals of Catholic schools have to lead and manage their campuses. As was discussed in this study, this can create conflict within the meaning of self as part of this journey in developing one's social constructing of reality. As pointed out in this study, sometimes the generalised other and other perspectives within society are not congruent, and this can create conflict situations and dilemmas.

The court system and the parliaments, however, still remain important entities in defining the bounds of freedom and person's rights, thus influencing the social cultural world of principals in Catholic schools. The Church too is one of the important entities encountered on the segmented journey of the principals of Catholic schools, and as indicated in this study most principals have this perspective enhanced by the study of leadership in the Catholic School context.

The other concept from the theoretical framework outlined above, is that the social construction of reality is not a static phenomena but is in a continual state of assimilating and accommodating new experiences, developing and renewing. This correlates with the legal issues impacting on Catholic schools, for one of the key results of this study is the realisation that the law and its impact on schools, including Catholic schools, is also in a continual state of flux, renewal and development. One's generalised other of society, therefore, is continually changing and developing.

From a symbolic interactionist perspective, it is the interaction with others in the social cultural world which contributes to the development of one's social construction of reality and the 'generalised other'. This study identified such interactions as being the major resources in which principals acquire their understandings of the legal issues impacting on their leadership and management of Catholic schools. The results of this study indicated that there was very little formal training in this area, and although some more formal personal and professional development was strategically focused, the majority of such courses attended by principals were of a general nature. The findings revealed that attendance at such courses did not contribute greatly to a more accurate understanding of the legal issues impacting on schools.

The highest ranked sources in developing understandings of legal issues were fellow principals, and others who supported and supervise them were also ranked highly. Hence, the significant and orientational others which contribute to the development of this aspect of their social cultural construction of reality. The fact that the understandings developed through this process are of a poor standard in terms of current understanding, from this theoretical perspective is immaterial. It is the sources they are using that is of interest here.

This development of these understandings in the interactions within the social cultural world is also supported in this study by the trend exposed in the examination of variables, where a statistically significant trend ( $p < 0.05$ ) of more accurate understandings were revealed with the longer principals had worked within the social cultural world of the Catholic School, while administrative experiences outside this social cultural environment did not contribute to a more accurate understanding, and in fact revealed statistically less accurate understandings, when compared with those who had not had such experiences.

This development of understandings through interaction is also supported by the findings that almost all the participants in this study attained a principalship within ten years of taking on an Assistant Principal or Religious Education Co-ordinator

type role. It is feasible to conclude, that as the development of more accurate understandings were demonstrated not to be associated with the length of principalship per se, that the development of these understandings are occurring within these School Leadership Teams through personal interactions. It is suggested, therefore, that the understandings of legal issues develop over a period of time through interaction within the melee of the social/cultural world in which one lives and works, and it is also suggested that in relation to the latter, the period of time spent carrying out other roles as a member of the School Leadership Team could be an important factor in this development.

The influences of society as a whole in this social cultural development is supported by the emerging areas of law identified by principals in this study as starting to impact on schools. Examples of this are the *Trade Practices Act* and the mention made of environmental legislation starting to influence the leadership and management of schools. As society's understanding develops in other directions, one can expect to see a number of statutes enacted that will impact on the leadership and management of schools. The changes in the law discussed at the beginning of this chapter attest to this. Vatican II perceived this realisation, and as part of its thrust place before leaders in the Church, including principals in Catholic schools, the challenge to engage with the world of which they are part (McNamara, 1988).

## **12.6 Discussion of Results and the Leadership of Catholic Schools and Catholic Education**

As understandings of leadership have developed and become refined, and persons in leadership positions have adapted to assimilate and accommodate changes in society, particularly in the latter half of the 20<sup>th</sup> Century, perceptions of leadership have undergone change and have received particular emphases, some of which have been outlined in Chapter 3. Three characteristics were identified as relating to a number of these perceptions of leadership. These were that, leadership is somehow related to the purpose of an organisation, that

leadership is to do with people, and that leadership involves processes in decision making. Chapter 3 also provided a leadership conceptual framework from which leadership could be examined, and it was indicated that this conceptual framework could be used to examine leadership from a Catholic school perspective. This framework highlighted the importance of the cultural and symbolic aspect of leadership as underpinning all that happens in an organisation, and that leadership involves collaborative and consultative processes. A number of these perceptions of leadership, the underlying characteristics and the elements outlined on the conceptual framework are reflected in a number of the issues explored in this study.

The first issue emerging from the results of this study is that in carrying out leadership roles within Catholic schools and in Catholic School Systems, there is little doubt that one will be confronted with a number of legal matters. In the present climate, where the outlays on education are a major portion of governments' budgets, and this is accompanied with an increasing emphasis on accountabilities (Phillips, 1997), with a greater prominence being placed on identifying and upholding person's rights, and this being coupled with an increasing litigious society, there is little doubt that this involvement with legal issues will continue to increase. The results of this study confirm such a projection into the future.

The great person theory of leadership identified in Chapter 3, correlates with the notion of Christ being the central element of the characteristics of the Catholic School, outlined in Chapter 2. However, the leadership portrayed by the person of Christ is not a dictatorial, machiavellian perspective of leadership, but has a servant leadership perspective; leadership as a service to others which is grounded in what is just and equitable, and the dignity of the human person. Justice is the basis of the law, and in many of the discussions in this study, the importance of applying the principles of natural justice and procedural fairness, and providing a safe and secure environment which upholds respect for others and the dignity of the human person, have been emphasised.

The discussions in relation to Specific Research Question Three, exploring the compatibility of the resolutions reached and the processes used in reaching resolutions when dealing with legal matters, highlights this point. Principals who took part in the study saw a closer link to the justice perspective than the procedural fairness perspective when resolving legal matters. This has implications for leaders in Catholic schools and in Catholic School Systems striving to be ethical and authentic leaders, particularly with regard to processes when exercising leadership roles in dealing with legal issues. The processes used and how persons are treated in coming to resolutions with regard to legal situations have been highlighted by this study, especially where dilemmas confront leaders and where persons seemingly have legitimate but competing rights, as was described by Duignan (2002). Leaders in Catholic schools need to be very conscious of these aspects of leadership when dealing with such issues.

From the theoretical perspectives underlying this study, an emphasis is placed on developing understandings through interactions with persons in a cultural social environment. This highlights the interpersonal aspect of leadership on the task/human orientated leadership style continuum discussed in Section 3.2.2 of Chapter 3. The discussions in this study have placed the development of law within Australian society as having the liberty to define the rights of persons and their bounds of freedom based on the Westminster System of governance. As explained, this heritage has also had roots stemming from a Christian perspective. The charter given to the various parliaments from this historical background was to make laws for the peace, order and good government of the people within their jurisdictions. The development of laws from this heritage and historical background as they have emerged within the cultural situation of Australian society, and the responsibilities placed on leaders within designated roles to applying these laws and upholding persons rights within Australia, places a focus on the human relationships and interpersonal aspects of leadership.



Moreover, as legislation takes a more prominent place over common law, as has been discussed in this study, this charter to make laws for the peace, order and good government and the interpersonal aspects of leadership accompanying it have added significance. This does not, however, detract from the importance of common law and the respect for human rights pronounced through the courts in dealing with common law issues and clarifying the interpretations of statutes. This interpersonal aspect of the law and leadership also has a prominent position within Catholic schools not only from the perspective of the ethos of the Catholic School, which places prominence on justice and the dignity of the human person, but also from the aspect of constructing meaning and one's generalised other from this perspective within a symbolic interactionist's view of the world.

This emphasis on the interpersonal aspects of leadership does not rule out the task component of leadership, and leaders having the responsibilities of getting tasks completed and moving towards set goals and visions. The position taken in this study, as outlined in Chapter 3, was that administration of schools had the dual components of leadership, the visionary aspects, and the management component of getting the job done (Covey, 1989; Sultmann & McLaughlin, 2002). It was pointed out in those discussions that the management component of leadership had a high accountability factor of which legal matters form an important aspect. This is supported by this study in that a number of principals saw it important to have legal matters resolved, and that dealing with them could be all consuming until such resolutions were reached. It was discussed above that such an approach works against reflective practices and using the involvement with legal matters as an opportunity to develop better understandings of legal issues. This approach may also provide some explanation for the degree of incompatibility with the ethos of the Catholic School and the processes used in coming to a resolution when dealing with legal matters.

The process suggested by Wheatley (2004, 1999a) to help develop leadership and leadership density, may help to mitigate the stress associated with dealing with legal issues from the prominence of a task orientated approach, and help to

develop better understandings of legal issues for leaders in Catholic schools. The development of reflective processes in examining what occurred in situations, what was done and what one learnt from them, with an emphasis on the latter, may contribute to more correct understandings of legal matters by school leaders. Such an approach also is aligned with De Pree's (1989) analysis of leadership as an art, which was canvassed in Section 3.2.3.

This study has indicated that principals' understandings of legal issues impacting on schools are poor, very little exposure to legal matters occurs in teacher training or in courses of study aimed at preparing people for leadership of Catholic schools, especially from a Catholic perspective. Approximately 50% of principals attended any form of in-service courses or seminars focused on legal matters, and very little formal personal and professional learning and growth experiences attended by principals have a legal component. This study also indicated that the law is in a state of continual development and renewal, and that involvement per se does not necessarily mean acquiring a better understanding of the legal matters with which one is confronted in leading a Catholic school. Further more, this study indicates, as did Stewart's (1996) study, that attendance at personal and professional learning activities does not of itself indicate a more accurate interpretation of the law.

It is therefore, suggested that by applying reflective practices to the involvement with legal matters and their resolution as they occur, may provide a means of gaining better understandings of legal matters impacting on Catholic schools. As indicated above, such an approach is supported by a constructionist approach to developing understandings, De Pree and Wheatley's interpretation for developing leadership, and is also aligned with Scott's, (2003) approach to developing leadership through working to develop leaders' capacities to deal with the issues they encounter as leaders, rather than looking at leadership from a more objectivists perspective of leadership competencies. The suggestion here, is that such an approach will help update principals' legal understandings, and bring a

practical and meaningful perspective to developing principals' capabilities to deal with legal issues.

This updating of legal understandings is not confined to principals in schools. One of the pertinent points emerging from this study, and an important aspect to be considered for leaders of Catholic Systems of Education within Australia, is the updating of legal understandings of those who are placed in positions to support school leaders, such as those identified in this study as the Area Supervisors and personnel in units within their system structures which have a legal aspect to their charter. This is an important consideration if these people are to support principals with reflective practices on legal matters. The other aspect associated with this, which emerges from this study, is the need for Catholic Education Systems to have readily available qualified legal practitioners to support principals when they are faced with, or see legal issues developing in their schools. This perspective also highlights the collaborative and consultative nature of leadership portrayed on the conceptual leadership framework.

A number of issues relating to purpose, the second underlying characteristic of leadership identified in Chapter 3, also surface in this study. It was outlined that the purpose of leadership of a Catholic school was to provide quality learning and teaching within the culture and ethos of the Catholic School. Many of the comments presented by principals who took part in this study, indicated that dealing with legal matters was detracting from this; what they see as the main purpose of their role. However, such a perspective on legal issues focuses on a narrow view of learning and teaching, from the perspective of academic results. The literature on school effectiveness places a wider view of education before school leaders.

The wider view is that leaders in schools also have an important role in providing a caring and supportive environment, where the rights of all those within the school community are respected and upheld, and which provides a safe and secure environment conducive to learning (Australian Government, Department

of Education, Science and Training, 2004). This wider view is supported by the recent literature on quality learning and teaching (NSW Department of Education and Training, 2003a, 2003b; Smith & Lovat, 2003), and also by the effects of child abuse, bullying and sexual harassment in schools and in the work place on the physical and psychological well being of students and staff and on students' learning (Rigby, 2005; Rigby & Slee 1998, 1993; Stewart & Knott, 2002b). Ignoring the latter, as seen from the discussions in this study, could not only mitigate against developing an effective school, but also exposing school leaders to stakeholders taking legal redress through a number of legal avenues from both a legislative and common law perspective. From the perspectives of leadership within a Catholic school, the symbolic and cultural aspects of leadership, call for leaders to support actions against discrimination and abuse (Ramden, 1996), and provide ethical, transformational and authentic aspects of leadership as discussed in Chapter 3.

In the discussions surrounding the conceptual framework, reference was made to distributive leadership through School Leadership Teams. This study highlights that working in such an environment is the training ground for future principals, as almost all participants in this study had attained a principalship within ten years of becoming a members of such a team. The study suggests that it is working in such teams where principals acquire the majority of their legal understandings. In applying the above reflective practices in these teams when resolving legal matters, would not only enhance the overall current understandings of all school leaders with regard to legal issues, but prepare future principals for the challenges in this area. This is an important aspect, as this study has highlighted that the law is a phenomenon which is in a state of continual flux, renewal and development.

While this study has highlighted a number of aspects of leadership within Catholic schools and Catholic School Systems that require attention, there are a number of positive aspects which have emerged in dealing with legal issues from the perspective of the Catholic school principal. In dealing with legal issues within a

Catholic school environment, many of the aspects of what it means to be an authentic Catholic school leader come to the fore. Many persons' rights clarified by the law not only have a historical Christian perspective, but relate well to the ethos and characteristics of the Catholic School, and dovetail with the symbolic and cultural aspects of transformational and authentic leadership geared to ones purpose and values. The positive findings in this study regarding the compatibility of the resolutions reached in dealing with legal issues, support an appraisal that the vision and reality in this aspect of the principals role, with the principals who took part in this study, are relatively congruent.

## **12.7 Summary of Chapter 12**

Chapter 12 provided an overview of the results emanating from this study. These can be summarised as follows:

- There is a wide range of legal issues which are having an impact on the leadership and management of Catholic schools;
- These legal issues are statute and common law based, include criminal issues, and have their origin in both federal and state legislation and in decisions handed down in common law courts. However, there is an increasing impact and dominance of legal matters impacting on the leadership and management of Catholic schools emanating from legislation;
- Areas of the law have a direct and indirect impact on the leadership and management of Catholic schools. This impact and involvement at any particular place and time, especially as it relates to legislation, can be associated with the area of law under consideration, the purpose of the legislation and the issues confronting society in general, at the time one carries out an examination of this phenomenon;
- The areas of law impacting on school in general, and Catholic schools in particular, are in a continual process of development and renewal, and this has implications for the continued personal and professional learning and

growth of persons occupying leadership roles in Catholic schools and Catholic School Systems;

- At the time of this study, Queensland's Workplace Health and Safety, and WorkCover legislation were having a marked impact, as was the federal family law legislation, and the anti-discrimination legislation from both federal and state jurisdictions;
- In the criminal law area, breaking entering, stealing and vandalism of school property is occupying a considerable amount of time of principals, and these areas along with child abuse matters are raising a number of concerns relating to procedural issues associated with investigations and access to students by various personnel, such as police;
- In common law areas exposure to issues relating to negligence is high;
- A number of areas of the law have been identified as emerging concerns for principals. These include issues associated with the *Trade Practices Act*, professional negligence and issues of an ecological and environmental nature;
- Principals' understandings of current interpretations of legal issues impacting on schools is not of a high standard. Although, understandings of matters associated with legislation are more accurate than understandings of common law issues;
- Very little formal personal and professional learning opportunities are being provided for principals relating to developing legal understandings, and principals are using a variety of sources to acquire this knowledge. Of these sources, interpersonal interactions feature prominently, and in this respect their fellow principals are ranked as the most important resource. Other personnel who support principals in their roles also feature prominently. This has implications for the continued personal and professional learning and growth of school principals, and others who support principals in their roles;
- Publications and literature also play an important part in developing principals' legal understandings, and in this regard the System Administrative Handbook features prominently. The accuracy of the

information in such publications then becomes an issue, particularly taking into account the continued development and renewal of legal issues impacting on schools;

- The need to have access readily available to legal practitioners to support principals when dealing with legal matters is an issue which emerges frequently from the findings of this study;
- Involvement per se, does not necessarily equate to developing more accurate legal understandings. However, it is suggested that applying the processes of reflective practices associated with involvement in legal issues, could help to develop leadership in this area and enhance the development of legal understandings of Catholic school leaders. This is particularly the case as the years of involvement within the Catholic School environment, especially in School Leadership Teams, is a major training ground for school leaders;
- The need for continued personal and professional learning and growth to deal with legal issues is a continuing theme emerging from the results of this study, and this is irrespective of the variables examined;
- The compatibility of the ethos of the Catholic School with the resolutions reached and the processes used in reaching those resolutions when dealing with legal issues is high. However, participants in the study were more confident in equating the compatibility with the resolutions than the processes used. The latter reflects a need for more emphasis to be applied to using the processes of natural justice/procedural fairness when dealing with legal issues. This reflects the lack of knowledge relating to common law issues impacting on Catholic schools of which natural justice is a component;
- There is a feeling amongst principals that legal implications are associated with many issues in which they are involved as leaders and managers of Catholic schools. Principals use a variety of indicators to help them identify that a legal issue is developing in their schools, and of particular importance is their interaction with the various stakeholders within the

school community. This reflects the increased awareness of person's rights and a more litigious Australian society;

- Despite this, most principals spend approximately 10% of their time during the week dealing with legal issues. This result brings a realistic perception to the impact of legal issues, for the material in the literature indicates many legal issues have the propensity to impact on schools, and one could gain a perception that legal matters have an all consuming influence on the leadership and management of Catholic schools;
- However, the impact of legal issues on the leadership and management of Catholic schools is increasing, and this is contributing to the stress on principals in the workplace. Catholic School System authorities could well take note of this issue or they themselves could be subjected to legal proceedings associated with their duty of care to provide a safe and secure working environment;
- A number of factors are contributing to the stress levels on principals in dealing with legal matters associated with their leadership and management of Catholic schools. The extent of legal issues and having to deal with legal issues per se, do not appear to be the major contributors to this stress, as the factors involved appear to have a more cumulative effect. However, the lack of legal knowledge is ranked highest as the contributing factor creating stress when dealing with legal issues;
- The whole concept of the historical and biographical development of the law defining the rights of persons within the social cultural environment of Australian society, and principals development of understandings of these legal issues and how they deal with them in carrying out their roles as principals, fit neatly into the theoretical framework underpinning this study. The concept of the continued development of a generalised other and the social construction of reality from the perception of symbolic interactionism provides a mind set from which the impact of the law on Catholic schools can be viewed; and,
- The perceptions of leadership and the conceptual framework of leadership portrayed in this study have provided a means to examine a number of



leadership issues relating to the involvement of principals with legal matters as they carry out their roles within the context of the Catholic School.

The comments from principals provided in Volume II <sup>(13)</sup> of this study attest to many of the results emanating from this research. It seems pertinent, therefore, to conclude with some statements made by some of the participants.

Before considering any policy development etc or school activity I always take into account the legal issues involved before final decision making takes place. Teachers are much more aware of legal issues than they were in the past. However sometimes they are unsure and uninformed of their responsibilities and rights etc in many areas. They are also often frightened (unduly) as to the consequences etc of a particular activity, which they may be planning to undertake. While the focus on legal issues is important, I believe that we need also to make sure that they do not consume all that we do. For example, some schools/teachers are reluctant to take part in some very worthwhile activities (school camps excursions) due to the perceived problem of legal matters/issues. We need to take a realistic approach, assess all situations/activities and still ensure that these activities remain for the enjoyment of our students. If we become too obsessed with the worry of litigation etc, schools will soon become places in which the 'fun' and excitement is replaced by rules and regulations (R019).

The 1990's scene in law/litigation/regulations/litigation is growing almost out of control. This growth and knowledge/some of which is 'learned' by the public from unreliable T.V. shows has enabled people/parents/children to speak out of an ill-informed background, added to the anger that exists in society generally, creates a very volatile situation for the school Principal. In my case, I might come into contact with one, or two, or more situations weekly, that have an accusation or complaint that is potentially threatening. Some want to take it further, but in most cases I am the 'sounding board' for someone to 'get it all off their chest'. This is emotionally taxing and detracts from the 'real' issues of education. A greater knowledge would no doubt help me and others to deal with individual 'cases' in a more adequate way. This may alleviate *some* of the anxiety attached to this aspect of our work. To have the strength to deal with all of the 'legal' issues and remain sane one needs to be very skilled in all areas of leadership especially those relevant to this subject; collaboration, shared vision, trust, care, integrity, team work, mental endurance and conflict resolution (R098).

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13 Volume II was provided to the thesis examiners to allow them to gain a full indication of the work undertaken by the researcher to meet some of the issues of validity and reliability raised in Chapter 6 of the thesis, 'Design of the Study'.

My extremely limited study in Educational Law was of great significance and importance to me in my professional development. However, not because of my ability to judge the outcomes of litigation but rather to very clearly, show me the depth and degree of my responsibilities. I learnt that my decisions have to be extremely carefully considered and developed. Actions have to be just, which often means that they take far more time. The *rights* of all must be acknowledged in what action I implement....Are the processes just from a legal (and a religious) perspective? For me Education Law has reinforced my commitment to justice in action, thereby making me a better principal of a Catholic (religious) school and broken my nexus with the outdated 'authoritarian' leadership model which I had grown up under (R105).

The impact of the law is an increasing challenge for principals with continuous changes to the law e.g. Family Law Act, WorkCover etc. It is important for constant updating through in-servicing, but it is necessary as a system to provide expert help when needed. Principals cannot be expected to be defacto solicitors especially with family breakdowns and increasing legislation (R111).

A concern for me is lack of knowledge. There are so many aspects of school life where the law may intrude that it is impossible to be conversant. The school Principal and the staff can be distracted from their more traditional roles as educators, by the pressing nature of legal concerns. Activities taken for granted for so long in schools are now viewed with apprehension at the least because of legal ramifications. Students' activities have to be curtailed....We'll never escape legal problems. A concern for me is in the support provided by the system's central office. ...Legal concerns are only one of many aspects of a principal's role. My fear is that they take precedence over many more worth while roles the principal should be playing (R113).

From the results of this study, there is no doubt that having to deal with legal issues is impacting on the leadership and management of Catholic schools. Many areas of the law have the potential to influence school life directly or indirectly, and some are causing considerable involvement for principals. Principals understandings of these legal issues is not of a high standard and this factor and other factors associated with this area of leadership are creating considerable stress on principals in carrying out their roles. Steps need to be taken by Catholic Education System authorities to meet principals' needs in this area, or they could find themselves exposed to legal implications.

## **CHAPTER 13**

### **REVIEW AND SYNTHESIS**

#### **13.1 Purpose of the Study**

The focus of this study was an exploration of the interface between the leadership of Catholic schools, and the legal framework of the social and cultural environment of Australian society in which Catholic schools operate.

Specifically, the study set out to investigate the legal issues impacting on Catholic schools, the understandings principals of Catholic schools have of these legal issues, and to examine the influence this aspect of the social and cultural environment of Australian society is having on principals in carrying out their leadership roles within the ethos of Catholic schools.

#### **13.2 The Research Questions**

The introduction to this study indicated there was anecdotal evidence to suggest that a range of legal matters were having an impact on the leaders, and leadership and management of Catholic schools, that principals in Catholic schools had limited understandings of these legal issues and involvement with these legal matters was causing concern for school leaders. To add to this situation, there were few opportunities available for school leaders in Catholic schools for personal and professional learning in this area.

The review of the literature indicated that a wide range of legal issues are impacting on schools. This review revealed that these matters stem from legislation passed by both State and Federal Parliaments and decisions handed down by State and Federal Courts. Decisions of courts within this legal framework, help to clarify common law issues and sections of legislation which have a direct or indirect influence on schools. At times, these decisions are the

prerogative of commissions and tribunals associated with various legislation. In relation to this study, the appropriate decisions are those handed down by courts and quasi-courts within the State of Queensland, decisions of federal judicial bodies which oversee federal legislation impacting on schools, such as federal discrimination legislation, and decisions of the High Court of Australia, which through the principle of precedent are binding on all Australian Courts. However, decisions in other courts, who have their foundations linked to the Westminster System, have persuasive authority, and in some cases are very pertinent, particularly for school leaders developing legal risk management procedures and practices.

The study by Stewart (1996) which explored the impact of these issues on principals carrying out their roles in Government schools in Queensland, confirmed that a wide range of legal matters were impacting on the management of those schools, that principals had little understanding of prominent legal issues impacting on schools, that involvement with legal issues as part of the management of schools was causing stress on principals, and that this impact was increasing and likely to continue to increase. One of the outcomes from Stewart's (1996) study was a call for similar research to be conducted in other education systems and in other jurisdictions besides Queensland. For the leaders of Catholic schools, who by the new millennium had become mainly lay persons, this engagement with the legal framework of the Australian social and cultural environment had the added dimension of having to resolve legal matters within the ethos of the Catholic School.

Taking into account the purpose of the study and the outline of the situation present above, this study was focused by Three Specific Research Questions. These were:

- What areas of the law are having an impact on the administration of Catholic schools? (Specific Research Question One);

- What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings? (Specific Research Question Two); and,
- What impact do legal issues have on the administration of Catholic schools, and in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School? (Specific Research Question Three).

### **13.3 The Theoretical Framework**

The theoretical framework of a research study relates to the philosophical basis on which the research takes place, and forms the link between the theoretical aspects and practical components of the investigation undertaken. Therefore, it has implications for all decisions involved in the study (Mertens,1998). While the choice of methodologies and methods may be a starting point in planning a research project (Crotty, 1998), the justification of their choice goes beyond answering the questions in the proposed research, and identifies the underlying assumptions about reality and understandings of human knowledge that the researcher brings to the study.

Developments in the latter half of the 20<sup>th</sup> Century saw the emergence of new paradigms for research to complement the predominant objectivists approach applied in the biological and physical sciences (Jacob 1988; Torbert, 1981 Wiersma, 1991). While a research study is rarely a pure example of one paradigm, a dominant perspective can usually be identified that is appropriate for the purpose of the research and relevant to the questions posed in the study (Candy, 1989).

Taking into account the purpose of this study and the research questions posed, it was considered this study fitted comfortably within the epistemology of constructionism and the theoretical perspective of symbolic interactionism. An epistemology of constructionism can be applied to the social cultural world,

because for the constructionist, reality is socially constructed (Berger & Luckman, 1970; Mertens, 1998) and develops out of involvement and engagement with the physical and social cultural world in which one lives out one's life. Persons, from this perspective are actively engaged in the construction of their reality (Blumer, 1962; Charon, 2001; Denzin & Lincoln, 1994 ). Thus, their view of the world is not a static phenomena, but one of a process in which a continual degree of change, redevelopment and renewal takes place.

It is believed, that there is a historical and biographical component to this development (Berger, 1963; Berger and Luckman, 1970). The historical aspect relates to being born at a particular time in history into a physical, social and cultural world, which already has developed a world of meaning and an inherent system of symbols and conventions which are transmitted within a social cultural context (Crotty 1998). The biographical aspect relates to individuals' social/cultural journeys within the subcultures of the segmented portion of the overall social world in which they live out their lives.

Symbolic interactionism is a theoretical perspective that fits neatly into constructionism. Mead, who is considered the father of symbolic interactionism, contends that through one's social cultural journey and interactions with others, one develops a defined view of the world; one's social construction of reality, which he terms one's generalised other of society. This is a dynamic construct which is also in a continual state of fluidity and development (Meltzer,1972). Within this journey, one encounters particular social entities such as the extended family, school, college and the like. The significant and orientational others (Denzin, 1966) with which one interacts within these entities are important figures in developing one's generalised other of society. Although, it must be remembered that the entities themselves and the persons within them are subject to the developments of society as a whole.

For the symbolic interactionist, this development of reality is related to symbols through which reality is structured and transmitted, and of particular importance is

the impact of language. Through language, individuals can name, distinguish and categorise symbols, identify roles, interact with others and internally develop perspectives of the world and guide their perceptions, interpret and define situations and events within their environments, create and resolve issues and problems, and record and pass on aspects of their culture and cultural heritage. Through this process individuals develop a sense of self in the social cultural world in which they live out their segmented journey through life, develop an understanding of the various roles played out during life, and define social situations and interpersonal interactions with which they are involved (Congalton & Daniel, 1976; Cooley, 1972; Goffman, 1959; Kinch, 1963).

This study is accommodated comfortably within this theoretical framework. The focus of the study was to explore and interpret the lived reality of the social cultural world of the participants as they carried out their role of principal within their particular situational, social and cultural environment. The study set out to gain some insights into the participants' understandings of the legal framework which is an important factor in the construction of one's generalised other of society.

The historical context and structure of the Westminster System of governance, which is the foundation of the legal framework which has developed to accommodate the Australian social, cultural and environmental context, provides an historical perspective to the present context in which principals find themselves operating. As well, carrying out the role of principal within a Catholic school provides a biological context to the development of this generalised other. This context also has the added dimensions of the entity of the church and the ethos of the Catholic School as influences impacting on the development of principals' generalised other. Significant and orientational others are also evident in the social cultural world of the participants, with the central figure of Christ in defining the characteristics underpinning the ethos of the Catholic School, and others providing support to principals in carrying out their roles. Principals

therefore, are faced with having to define the situation from multiple perspectives when dealing with legal matters in their interactions with others.

#### **13.4 The Design of the Study**

Taking into account the theoretical framework, the criticisms of approaching a study from such a framework (mainly stemming from an objectivists view of the world), the purpose of the study and the research questions posed, the research design aimed at gathering as much information as possible and practicable relating to the research questions from a variety of sources and via a number of methods. To this end, the study design was structured to provide a convergence of multiple sources of evidence relating to the Three Specific Research Questions posed for the study (Yin, 1994). In this way the research design applied the notion of triangulation, and gathered data from a number of participants in different settings, from a variety of sources and via various means (Mertens, 1998; Tam, 1993; Wiersma, 1991; Wilson, 1977).

A Survey Questionnaire constructed along the lines developed by Stewart (1996) was distributed to all principals of Catholic schools within the Archdiocese of Brisbane. Modifications, adjustments and additional items were added to the instrument used by Stewart to align it with the Catholic School System, to update the items in line with recent court cases and new legislation, and to gather data specifically related to the Three Specific Research Questions posed in this study. This instrument was distributed by post, and steps were taken to alleviate the concerns in distributing a survey in this manner. The survey allowed the gathering of a large amount of material from a number of participants at the same time, in a variety of natural settings within the overall context of the study. The instrument provided both quantitative and qualitative data.

Other data related to the Three Specific Research Questions was gathered through observations and discussions, and reference to documentation, including diary entries of the researcher gathered over a forty two month period. The



accumulation of all these methods addressed the reliability and validity issues associated with conducting a study from this theoretical framework (Meretens, 1998). As well as this, appropriate clearances from authorities to undertake the study were obtained.

Statistical analyses were carried out on the quantitative data gathered, and when examining the possible influence of variables investigated during the study, the statistical significance was set at the 0.05 level ( $p < 0.05$ ). Qualitative data gathered was reduced, tabulated and used to corroborate the findings from the quantitative data. This included providing direct quotes from comments made by respondents to the open ended questions on the Survey Questionnaire. The statistical analyses and comments from respondents to the open ended questions on the survey instrument are contained in Volume II <sup>(14)</sup> of this study.

### **13.5 Research Questions Answered**

The methods used to gather data in this study provided considerable information and material from which to respond to the Three Specific Research Questions which were used to guide the research undertaken.

#### **Specific Research Question One: What areas of the law are having an impact on the administration of Catholic schools?**

The study found that a wide range of legal issues are having an impact on Catholic schools. Respondents indicated some involvement with all of the areas of law itemised on the Survey Questionnaire, with a marked involvement with statute law and associated subordinate legislation. Respondents also indicated that new areas of law could be emerging as having an impact on the leadership and management of Catholic schools. These areas were associated with matters of an ecological and environmental nature.

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14. Volume II was provided to the thesis examiners to allow them to gain a full indication of the work undertaken by the researcher to meet some of the issues of validity and reliability raised in Chapter 6 of the thesis, 'Design of the Study'.

The study revealed that the areas of law impacting on schools are in a state of continual flux, development and renewal. This was evidenced by the need to redevelop the survey instrument which was based on the questionnaire used by Stewart in his study some two years prior to this research. It was also evidenced by an updating of the literature review, Chapter 4, which indicated some areas of the law have been revised since the survey instrument was prepared for this study.

In relation to legislation, the impact on Catholic schools emanated from both state and federal jurisdictions. From the State of Queensland the *Workplace Health and Safety Act* 1995, was having a marked impact, so too was the legislation associated with workers' compensation and rehabilitation of injured workers. From the federal perspective, a large impact was being felt from matters associated with the *Family Law Reform Act* 1995, and the legal issues surrounding the break down of families and associated conflicts of access, residency and other issues relevant to the development of parenting plans. Copyright legislation was also having considerable impact on Catholic schools, while anti-discrimination legislation from both state and federal spheres showed a high degree of involvement for principals.

Some of the legislation having a major impact was related to statutes recently passed or updated and this was particularly the case with the workplace health and safety, and WorkCover legislation. New legislation is generally enacted to meet a perceived need in the community at the time it is passed or updated. Therefore, the currency of legislation and the response of education systems to legislation that is new or renewed could have an effect on the impact and the extent to which it influences schools. For example, under the workplace health and safety legislation the BCEC took the stance that principals would be trained a Workplace Health and Safety Officers in accordance with s.93 of that act. Such decisions could heighten the involvement and concern principals have with regard to legal issues. The comments from respondents to the open ended questions on the survey instrument attest to this evaluation.

In relation to criminal law issues, which in the State of Queensland have a statute base, responses to the Survey Questionnaire indicated participants had a very high involvement handling breaking entering and vandalism of school property. A staggering 89% of principals indicated that they had involvement in dealing with these criminal activities. These issues, in many cases, were also related to theft, and a high proportion of principals revealed that they had had dealings with this area of the criminal law. Comments from principals showed that issues surrounding these criminal matters were consuming a considerable amount of their time. The secondary school setting revealed a significantly higher involvement with some criminal matters; physical abuse: assault by students, theft and use of illegal substances. This was somewhat understandable, for as students mature one could expect they would have more exposure to such matters. Analyses of the variables examined, also revealed that the more complex a school became, the more likely it was that its school leaders would have to deal with issues of physical abuse: indecent dealings.

When it came to involvement with common law issues, again principals indicated considerable involvement with matters associated with contract law and negligence, including threats of professional malpractice. Data gathered via other means supported the involvement shown with these areas of the law. This overall involvement reflected their impact, as outlined in the literature. In terms of implementing legal risk management strategies, principals would therefore, be well advised to take note of the warnings in the literature, that the storm clouds could be gathering around the issue of professional negligence, particularly in certain circumstances, and that care needs to be taken when constructing documents to avoid defamation actions.

**Specific Research Question Two: What understandings do principals of Catholic schools have of the areas of law impacting on schools, and what sources do they use in developing these understandings?**

The findings in relation to this question indicated that the understandings principals in Catholic schools had of prominent legal issues impacting on schools were not of a high standard. More accurate understandings were held by principals concerning legislative requirements than common law issues. Understandings of the latter were very poor and some of the basic understandings in relation to negligence require personal and professional learning for principals. In a number of the scenarios in Section B of the Survey Questionnaire, which touched on the elements of negligence, principals saw themselves as the person solely responsible. This perception could be contributing to the stress levels associated with dealing with legal matters in the leadership and management of Catholic schools, revealed in the findings relating to Specific Research Question Three.

The study also revealed that principals were using a range of resources to acquire legal understandings. Of these, their fellow principals were ranked as the most important resource. Others who supported principals in their roles, such as the Area Supervisors, also featured prominently. Literature was an important source used to acquire legal understandings, and the Brisbane Archdiocese Administrative Handbook for Catholic schools featured prominently in this printed material. Formal tertiary courses and semi formal in-service personal and professional learning experience were ranked very low in priority as a source of acquiring legal understandings. The study revealed a call from principals to have readily available to them qualified legal practitioners in times of need to guide their understandings.

An examination of a number of variables and the accuracy of principals understandings of legal issues revealed that no one variable had an overall influence on principals' understandings. For example, the involvement in formal and less formal personal and professional learning experiences associated with legal matters did not account for more accurate understandings. However, a trend was revealed, in that the longer a person was employed within the Catholic

System the more accurate were principals' responses. Nevertheless, this did not equate with the length of time spent as a principal in a Catholic school.

**Specific Research Question Three: What impact do legal issues have on the administration of Catholic schools, and in particular, on principals' perceptions of their leadership roles within the ethos of the Catholic School?**

The study revealed that the impact of legal issues on the leadership and management of Catholic schools is increasing and is likely to continue to do so. At the time of this study, most principals saw themselves as spending 10% or less of their time dealing with legal issues, which brings some realistic understanding to what could appear to be an overwhelming influence of the law on the leadership and management of Catholic schools. Principals, however, indicated that there was a constant threat of legal repercussions overshadowing many of the leadership issues and management tasks facing principals. The results of the study relating to the indicators principals used to identify that a legal issue was developing in their school community, confirmed this environment of legalism. When legal issues confronted principals, however, comments returned with the survey instrument indicated that such matters became all-consuming until resolved.

An important result from the study was that principals perceived that the resolutions reached when dealing with legal issues were mostly compatible with the ethos of the Catholic School. However, principals were more confident in this compatibility in relation to the resolutions reached than they were with the processes used in reaching those resolutions. In the latter, it appeared more emphasis is required to ensure the principles of natural justice/procedural fairness were applied in resolving such issues. This reflects the poor understandings revealed in this study of common law areas impacting on schools.

The study revealed that stress levels were high when dealing with legal issues, as 90% of principals reported that stress was associated to dealing with legal issues, and 72% saw these stress levels on the increase. A significant difference in the stress levels was revealed for principals carrying out their roles in rural communities, when compared with their counterparts in other geographical locations. It is suggested that the close interpersonal relationships in such communities could make dealing with legal matters more stressful. Educational system authorities might need to examine who deals with some legal matters in such circumstances.

Various factors contributed to stress associated with dealing with legal matters. Of these, the emotion and conflict, and the time it takes to resolve such matters were prominent sources. However, respondents saw the sources of stress creating a cumulative effect. Nevertheless, when it came to ranking the most prominent source of stress, the lack of legal knowledge was ranked highest. The fact that duty of care issues were also ranked highly, reflects the findings surrounding the poor understandings of the elements of negligence.

### **13.6 Conclusions from the Study**

The focus of this research study was to explore the interface between the leadership of Catholic schools and the legal framework of the social and cultural environment of Australian society in which Catholic schools operate. In doing so, the study set out to investigate the legal issues impacting on Catholic schools, to gain some idea of principals' understandings of these issues and how they acquired these understandings, and to examine the influence this aspect of the social and cultural environment of Australian society was having on principals in carrying out their leadership roles within the ethos of Catholic schools. This study examined these issues within the restraints of the research setting, which involved participants occupying principalships within Catholic schools administered by the Archdiocese of Brisbane in Queensland.

The results of this study confirm that there is a wide range of legal issues impacting on the leadership and management of Catholic schools, and that these issues are associated with legislation passed by both State and Federal Parliaments and decisions emanating from various courts and quasi courts within the legal framework of Australian society.

Principals' understandings of the legal issues with which they are confronted are not of a high standard, and in relation to common law areas require considerable personal and professional learning. Very little opportunities are available for leaders of Catholic schools for the continued personal and professional learning in relation to legal matters, and as a result they revert to other sources to acquire such understandings. Highest amongst these sources are their fellow principals, who themselves have limited understandings, and other personnel who support them in carrying out their roles.

There are implications here relating to the accuracy of legal understandings of these personnel whom principals consult, and the printed matter available to principals to develop their understandings in these areas such as the System Administration Handbook, which featured prominently as a source of acquiring legal understandings. These implications extend to issues associated with the continued personal and professional learning and growth of principals themselves and others who support them in their roles. The availability of trained practising legal practitioners for leaders in Catholic schools to access in time of need, is a major outcome arising from this study. The provision of such support it seems would do much to ease the stress associated with dealing with legal matters, as the lack of understanding of legal issues was the highest ranked factor contribution to the stress levels associated with this aspect of leadership and management of Catholic schools. This study also suggests that the use of reflective practices when dealing with legal issues, could help develop more accurate understandings of legal issues for principals and support the development of legal risk management strategies.

There is a constant legalistic perspective hovering over principals' leadership and management of Catholic schools, and this study indicates that principals tap into a variety of sources to identify that legal issues are developing in their communities. Highest amongst these sources are interactions with the various stakeholders within Catholic schools. While at the time of this study, principals perceived that they spent approximately 10% or less of their week dealing with legal matters (which brings some rationalisation to the perception of the influence of this issue on schools), this study indicates that the impact of legal matters is increasing and that this increase is set to continue. An important aspect of this impact is the stress levels associated with dealing with these issues. Research such as this study and that conducted by Stewart (1996) highlight this fact, and system authorities need to address this issue or they could find themselves exposed to legal redress via a number of legal avenues, for example, through negligence claims, claims under occupational and workplace health and safety legislation, and claims under workers compensation.

### **13.7 Propositions Resulting from This Study**

This study, approached from the theoretical framework of a constructionist epistemology and the theoretical perspective of symbolic interaction, examined the interface of the leadership of Catholic schools and the legal framework of the Australian social cultural environment in which Catholic schools operate. It set out to explore the legal issues impacting on the leadership and management of Catholic schools, principals' constructed understandings of these issues and the sources they used in constructing these understandings. It also explored the impact of working within this legal framework on the leadership and management of Catholic schools. By designing this study to investigate these issues within the natural social cultural context, and by applying appropriate methods to gain as much information as possible from a variety of sources and settings, and via a number of methods, this study fitted neatly into the theoretical framework underpinning this research. The results of this study have a number of



implications for the leadership and management of Catholic schools and the following propositions are provided in relation to these implications.

1. Catholic School System authorities need to be aware of the extent and nature of the legal issues impacting on the leadership and management of Catholic schools, and when new legislation, which directly or indirectly impacts on schools is introduced, policies and procedures need to be put in place that minimise the impact on principals in schools.

This study has highlighted the fact that already a considerable number of legal issues are impacting on the leadership and management of Catholic schools. The extent of these legal issues is set to increase, especially in relation to legislation. Therefore, principals are likely to have a continuing array of legal issues impinging on their time and workload. The review of the literature in this study attest to this reality. In this environment, decisions taken by system authorities on how schools will comply with such legislation can have an effect on principals' roles as leaders in their communities. The most convenient procedures to bring about compliance with such legislative measures, may not be the most appropriate in the long run. Some system thinking (Senge et. al., 2000, 1994) needs to be applied to these implementation procedures. This was evidenced in this study by the impact of the workplace healthy and safety legislation in Queensland, but other examples can be given, such as the copyright legislation and anti-discrimination legislation.

2. Principals' understandings of legal issues need developing and then updating, and this could well apply to others who support them in their roles. A number of measures are suggested to support this development of personal and professional learning and growth.

This study revealed that principals' understandings of legal issues impacting on their leadership and management of Catholic schools is not of a high standard, especially when it comes to common law matters. The lack of legal knowledge is

the major contributor to the stress associated with dealing with legal matters. Opportunities for personal and professional learning and growth in this area need to be provided and regularly available as one-off opportunities are not sufficient, as this study indicates the law is in a continual state of flux, renewal and development. The development of legal understandings cannot be left to the general interactions with society as a whole, as some legal matters are directly relevant to the school context. It is suggested that a more formal and multi-faceted and structured approach needs to be applied to this issue and such approaches could include the following:

- Provision of formal units of study in teacher preparation courses relating to the legal issues impacting on schools;
- Such units of study to be compulsory in courses associated with leadership development;
- That these courses be part of Catholic Tertiary Educational institutions in order to provide a Catholic ethos perspective to these issues for leaders of Catholic schools;
- When dealing with legal issues, leaders, and those who support them, adopt reflective practices procedures along the lines suggested by Wheatley (2004), by looking at what happened, what was done and what was learnt, with an emphasis on the latter aspect of the process;
- These reflective processes be used to build understandings for future leaders within School Leadership Teams, for these are the training grounds for new principals. This study indicates that persons taking on leadership positions as Assistant Principal and Religious Education Co-ordinator type positions, attain a principalship within ten years, and the longer one works within the Catholic System the more accurate understandings of legal issues become. However, as the study also indicated this is not necessarily related to the amount of time spent as a principal;
- Constant updating of published material such as the System Handbooks be undertaken to keep principals up to date with current interpretations of the law impacting on their schools; and,

- Access to qualified legal practitioners be made available for principals to obtain updated information relating to legal matters when the need arises.

3. Principals should develop legal risk management strategies.

This study reveals that the threat of legal implications overshadow much of the leadership issues and management tasks associated with principals' roles in Catholic schools. This study also indicates that principals are very aware of many of the sources from which legal matters develop. By increasing the personal and professional learning and growth with regard to legal issues, and keeping this up to date with the changing nature of the law, principals should become more aware of the implications of the issues involved, and be able to adopt legal risk management strategies. This is also consistent with the findings in Stewart's (1996) study.

4. Catholic School System Authorities need to address the issue of stress levels being experienced by principals in dealing with legal matters.

This study indicates stress in dealing with legal issues is experienced by most principals, that principals perceive that stress associated with legal matters is increasing and this study predicts this increase to continue. If the propositions suggested in this section are adopted, a number of steps will already have been taken to address this issue. Such measures as improving the personal and professional learning of principals with regard to legal matters and being more discerning when implementing compliance procedures to accommodate new legislative requirements should improve this situation.

An examination of the influence of particular variables in this study also indicates that System Authorities would do well to look closely at how legal issues are handled in schools in more remote communities. Respondents to the survey instrument from these geographical settings indicated more significant stress

when dealing with legal issues when compared with their counterparts in other settings. These analyses of variables also exposed a need to dispel some of the fears amongst females principals of the implications of dealing with legal matters. Also, it would appear that principals leading more complex school communities could benefit from additional support in dealing with the criminal area, physical assault: indecent dealings. Comments returned with the survey instrument would suggest that this support should cover being fully aware of the procedures and protocols associated with investigating such matters, including the policies and procedures associated with access by certain personnel, such a police, to persons involved in incidents of this kind.

5. The application of the principles of procedural fairness to all aspects of school life be a particular focus for the personal and professional learning of leaders in Catholic schools and Catholic Systems.

Throughout this study, the need to apply the principles of procedural fairness (natural justice) to issues has arisen regularly, and this reflects the general lack of understanding of common law impacting on schools as referred to above. Procedural fairness is part of the general common law applicable to many issues not only addressed within the school context but in the social cultural environment of Australia as a whole. This issue arose in discussions with the researcher relating to contractual matters, industrial and employment matters, issues surrounding the suspension of students, investigation of criminal and other civil matters, and it came to the fore when examining the compatibility issues associated with the ethos of the Catholic School. The principals involved in this research were less convinced with the compatibility of the processes used in resolving legal matters.

### **13.8 Limitations of This Study**

One of the limitations of this study stems from the theoretical framework underpinning the study. While it was noted in Chapter 5 that no one research

study fits exactly under a specific theoretical framework, a dominant perspective is usually adopted to meet the purpose of the study and the specific research questions posed. This study was approached from a dominant constructionist epistemology and from the theoretical perspective of symbolic interactionism. In doing so, no conscious attempts were made to accommodate other epistemologies such as objectivism and subjectivism, or to incorporate into the design of the study methods to gather information through such views of the world or the dispositions of other perspectives such as feminism and critical inquiry (Candy, 1998; Crotty, 1998; Mertens, 1998).

Consequently, no attempt was made to control variables as with experimental and quasi-experimental designs, and the issues were explored in the natural settings in which the participants carried out their roles. This gives a somewhat narrow world view from which the issues were examined and explored. However, as indicated in Section 5.4, in light of the nature and purpose of this study and the specific research questions posed, this research fitted neatly under the framework adopted.

Other limitations emanating from approaching the study from the theoretical framework adopted and the methods used, relate to the reliability and validity issues as canvassed in Section 6.4. Issues here, relate to the extent to which the findings of this study can be generalised to other populations similar to the sample who took part in the investigation, and that the findings are not just the bias and figment of the researcher's imagination (Guba & Lincoln, 1989; Mertens, 1998).

The first of these limitations in some respects is applicable in this instance, as the participants in this study were limited in scope, being employees of the BCEC as part of the Brisbane Archdiocese Catholic Education System. While the BCEC administration covers a substantial geographical area, and there is a variety of school settings within the geographical distribution of Catholic schools within that Archdiocese, there are five dioceses within Queensland, and each would have

characteristics pertinent to their own administrative structure and support of principals. Generalising the findings of this study to all Catholic schools and Catholic school principals in Queensland then, needs to be done with some caution.

Generalising the outcomes of this study to all Catholic school principals throughout Australia also needs to be applied with vigilance. This is particularly the case, because the various states within Australia carry responsibility for education within their jurisdictions, as was agreed to in the distribution of powers and responsibilities when Australia became a federation. Therefore, as indicated in the review of the literature, different state laws can apply to Catholic schools and the personnel within them, depending on which state jurisdiction a particular Catholic school operates. However, the findings relating to federal legislation and common law issues emanating from decisions in the High Court of Australia in this study could be more generally applied across all Catholic schools, for these laws have significance across the whole of the Australian social cultural environment.

Having outlined these limitations relating to generalisation of the results of this study to other populations, it should be noted that there were a number of similarities and parity of many of the findings in this study with that of Stewart's (1996) study. The participants in the latter study came from a sample population which included all principals from Government schools across the whole of Queensland. Therefore, while the findings of this study may be somewhat confined to the sample that took part, there is evidence to suggest a degree of generalisation of the results that can be applied to Catholic school principals in general, and across Queensland in particular.

Being a participant observer, and gathering data in a research study from participants with whom one has a close relationship, brings to the fore the possible bias of the researcher. Attempts to address the limitations of this factor were made in the research design through the application of triangulation, and

the gathering of data through a variety of means and processes and the application of qualitative and quantitative methods. Also, the report of the study has included Volume II which outlines the statistical analyses carried out on the quantitative data gathered and the comments from principals to the open ended questions in that instrument.

The extensive use of data gathered by a one-off survey questionnaire is another limitation associated with the methods used in this study. One-off surveys provide information relevant to a research study that is associated with a particular place and time. The use of mailed out surveys also places a reliance on the validity on self reports of participants. These limitations have some relevance in relation to this study.

The study itself indicates that the law is in a continual state of flux, development and renewal and the current nature of the legal issues impacting on schools could have a time and situational bias. This is evidenced by issues such as, having to redevelop the survey instrument from that used by Stewart (1996) in his study which was developed only two years prior to the distribution of the Survey Questionnaire in this research, and the comments from participants relating to the impact decisions from BCEC authorities on how compliance with particular legislation is implemented. Attempts to address these issue were undertaken by providing open ended questions in the survey instrument and by gathering data through other means, including analysing diary entries of the researcher across a forty two month period.

One of the other limitations of this study relates to its exploratory nature. This research study explored a wide range of issues relating to the general nature of the area under investigation within the general context of the study. No attempt was made to try and investigate the specific impact of particular pieces of legislation or areas a common law, as other researchers have attempted (Duncan & Riley, 2005, 2004; Keeffe, 2004), although the comments to the open ended questions on the Survey Questionnaire provide some data relevant to specific

issues, as do the analyses associated with particular variables examined during the investigation. The study, therefore, as an exploratory study can be viewed as providing a launch pad for further investigations and more specific research studies to build a more comprehensive picture of the areas investigated.

### **13.9 Recommendations for Further Research**

This study is the first comprehensive research of its kind conducted within Catholic schools and the Catholic School System within Australia. As such there is much more research to be undertaken in this area to gain a more definite picture of the issues explored in it. Being an exploratory study it provides a launch pad for further research studies. It is suggested that such studies might include the following:

1. Similar exploratory studies in other settings

Additional replications of this study in other Catholic Dioceses throughout Queensland would provide comparisons and assist in generalising the results of this study Queensland wide. Similarly replications of this study in other jurisdictions such as New South Wales and Victoria and across other Catholic systems and schools in the Government sectors would provide a more complete picture with regard to the issues explored here and add to the findings of this research and that conducted by Stewart (1996).

2. Similar exploratory studies involving other methods

Studies here might involve an ethnographic methodological approach, action research or case study methodologies, and could be conducted across the various settings and combinations of settings as indicated above.

3. Studies with the same context that examine more specifically the impact of particular pieces of legislation and areas of common law



Without limiting such studies, fertile areas for research stemming from the findings in this study could include, issues surrounding family law, copyright law, workplace health and safety law, negligence law, the relationship between occupational health and safety law and negligence, and the common law area of procedural fairness

4. Research studies on the same population used in this study to follow up some of the significant differences identified in the variables investigated during this study.

Again without limiting such studies areas for consideration might include: the impact of dealing with legal issues in more remote and rural school communities; complexity of schools and criminal issues; criminal issues surrounding drug misuse in secondary schools; and, some of the issues pertinent to geographical areas identified in this study such as the impact of the number of case and legislation on schools on the Gold Coast. Such studies would lend themselves to case study type research.

5. Exploratory studies similar to this research, and more specific studies relating to particular legal issues, involving different subjects.

Such studies could gain subject samples from school leaders occupying middle management leadership positions in schools such as, Assistant Principals, coordinators and support staff, such as bursars. These studies could be conducted on samples drawn from populations within school systems or across different systems and legal jurisdictions. Such research would give an indication of the impact of legal issues in schools, not just on principals but others within the school context. Again, such studies lend themselves to various methods including case study research.

### **13.10 Conclusion**

The review and synthesis of this research study indicates that the epistemology of constructionism and the theoretical perspective of symbolic interactionism, formed an appropriate theoretical framework on which to underpin this study. The study confirmed that a wide range of legal issues develop within the legal framework operating in the Australian social cultural environment, and impact on the leadership and management of Catholic schools. While this study indicates that there is a sense of legalism overshadowing leadership and management issues in Catholic schools, and some might consider the impact of legal issues overwhelming, this study brings some realistic understanding of this phenomena.

Catholic system authorities, however, need to pay much more attention to this issue as the impact of legal matters on the leadership and management of Catholic schools is creating considerable stress. This impact is increasing and predicted to increase, especially with regard to legislation. Principals in this study have even highlighted some possible emerging areas for such developments.

One of the major contributors to these stress levels associated with the matters explored in this study, is the lack of legal knowledge, and this study has indicated principals' understandings of legal issues is not of a high standard, particularly when it comes to common law matters. The need for ongoing personal and professional learning of school leaders in this regard is an important finding in this research, especially as this study indicates the law is in a continual state of flux, renewal and development and principals ranked their fellow principals as the most important resource in acquiring legal understandings.

This development of legal understandings cannot be left to general interactions with society as whole, as many legal issues affect schools, directly or indirectly. A more formal and structured approach is required, as this study indicates involvement with legal issues, and participation in formal and less formal personal and professional learning activities presently available do not necessarily

contribute to more accurate understandings of such matters. The development of more accurate understandings should help principals put in place appropriate legal risk management strategies and help reduce stress level associated with this aspect of school leadership. In the mean time this study has revealed a plea from principals to have available to them current legal practitioners to assist in times of need. This study, an exploratory study, along with Stewart's (1996) research, provides a launch pad for much more research needed in this area.

**APPENDIX 1**  
**SURVEY QUESTIONNAIRE**

**CONFIDENTIAL**

**PROJECT TITLE**  
**PRINCIPALS' UNDERSTANDINGS OF ASPECTS OF THE LAW**  
**IMPACTING ON THE ADMINISTRATION OF CATHOLIC SCHOOLS :**  
**SOME IMPLICATIONS FOR LEADERSHIP**

**RESEARCHER**      **PAUL McCANN**

I have read and understood the information provided in the Letter to Principals regarding this project, and any questions I have asked have been answered to my satisfaction. I agree to participate in this activity, realising that I can withdraw at any time. I agree that research data collected for the study may be published or provided to other researchers in a form that does not identify me in any way.

***Return of this questionnaire will be taken as voluntary consent  
to participate in this research project.***

No :

**PRINCIPALS' QUESTIONNAIRE**

(This questionnaire is very closely based on the questionnaire developed by Dr Douglas Stewart. (1996). *School principals and the law : A study of the legal knowledge needed and held by principals in government schools in Queensland*. Unpublished doctoral thesis, School of Professional Studies, Queensland University of Technology, Brisbane).

**Please return the completed questionnaire in the envelope provided to :**

Mr Paul McCann  
5 Auld Court  
M / S 531  
MT CROSBY QLD 4306

# PRINCIPALS' QUESTIONNAIRE

## SECTION A : GENERAL INFORMATION

Please place a tick ✓ in the appropriate box  for each of the following questions. To some questions you may be asked to give some further information.

***Note: Please ignore the small numbers next to each box as these are for computer analysis purposes only.***

1. In which category is your school classified?

### Primary

- 1A 801 -1200  1
- 1B 451 - 800  2
- 2A 301 - 450  3
- 2B 201 - 300  4
- 3A 101 - 200  5
- 3B 25 - 100  6
- 4 LESS THAN 25  7

### Secondary

- 1A 651 - 1200  8
- 1B 351 - 650  9
- 2A LESS THAN 350  10

2. How would you describe the geographical location of your school ?

- Brisbane Suburban  1
- Suburb of Provincial City / Shire Surrounding  
Brisbane e.g. Redlands / Ipswich  2
- Gold Coast Suburban  3
- Sunshine Coast Suburban  4
- Rural Town  5
- Isolated  6
- Other \_\_\_\_\_  7

(please indicate)

3. School complexity rating (This will be added by the researcher himself.) \_\_\_\_\_

4. How long have you been employed in Catholic Education ?

- UP TO 2 YEARS  1
- 2 TO 5 YEARS  2
- 5 TO 10 YEARS  3
- MORE THAN 10 YEARS  4

5. During your period of employment with Catholic Education how many years have you spent as a classroom teacher ?

- UP TO 2 YEARS  1
- 2 TO 5 YEARS  2
- 5 TO 10 YEARS  3
- MORE THAN 10 YEARS  4

6. During your period of employment with Catholic Education how many years have you spent as:

(i) An Assistant to the Principal Religious Education ( APRE )  
or Religious Education Co-ordinator

- NIL  1
- UP TO 2 YEARS  2
- 2 TO 5 YEARS  3
- 5 TO 10 YEARS  4
- MORE THAN 10 YEARS  5

(ii) A Deputy Principal (DP) and / or Assistant to the Principal  
Administration ( APA )

- NIL  1
- UP TO 2 YEARS  2
- 2 TO 5 YEARS  3
- 5 TO 10 YEARS  4
- MORE THAN 10 YEARS  5

(iii) A Principal

- UP TO 2 YEARS  1
- 2 TO 5 YEARS  2
- 5 TO 10 YEARS  3
- MORE THAN 10 YEARS  4

7. Have you had administrative appointments in fields other than Education?

YES  1

NO  2

If your response is 'yes' please provide particulars.

Occupation / Role	Number of Years
_____	_____
_____	_____

8. Sex FEMALE  1

MALE  2

9. In gaining your academic and teaching qualifications have you studied any subjects relating to **Leadership in a Catholic School?**

YES  1

NO  2

If your response was 'yes' please indicate whether these studies were undertaken in:

- YOUR PRE-SERVICE TRAINING  3
- YOUR POST GRADUATE STUDIES  4

Please indicate whether these studies were undertaken :

- AT A CATHOLIC UNIVERSITY / CAE  5
- AT A 'SECULAR' UNIVERSITY / CAE  6
- AT A CATHOLIC EDUCATION PROFESSIONAL DEVELOPMENT LEADERSHIP COURSE.  7



10. In gaining your **academic and teaching qualifications** have you studied any **law-related** subjects?

YES  1

NO  2

If your response was 'yes' please indicate whether these studies were undertaken in:

• YOUR PRE-SERVICE TRAINING  3

• YOUR POST GRADUATE STUDIES  4

Please indicate whether these studies were undertaken:

• AT A CATHOLIC UNIVERSITY / COLLEGE OF ADVANCED EDUCATION  5

• AT A 'SECULAR' UNIVERSITY / COLLEGE OF ADVANCED EDUCATION  6

Please provide particulars of the subjects studied.

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11. Have you been involved in any in-service / professional development courses specifically designed to cover **legal issues** ?

YES  1

NO  2

If your response was 'yes' please provide the following particulars:

FOCUS OF THE COURSE

LENGTH OF THE COURSE

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12. Listed below are some **sources of acquiring legal understandings**.

In **COLUMN A**, please indicate by placing a tick in the appropriate box  if these items have been a **source** of acquiring legal understandings for you. Leave blank those items that have been of no significance for you in acquiring legal understandings. There is also an opportunity for you to add additional sources of legal understandings if you so desire.

In **COLUMN B**, please **rate** the items you have **ticked** by : **placing a 1 against the most important source of acquiring legal understandings, a 2 against the next most important source and so on, again, leaving blank those sources that have been of no significance for you.**

	<b>COLUMN A</b> ( source of understanding )	<b>COLUMN B</b> (rating)
• CATHOLIC EDUCATION ADMINISTRATIVE HANDBOOK	<input type="checkbox"/> 1	<input type="checkbox"/> 1
• AREA SUPERVISOR / REGIONAL / DISTRICT ED OFFICERS	<input type="checkbox"/> 2	<input type="checkbox"/> 2
• CEO INDUSTRIAL RELATIONS UNIT	<input type="checkbox"/> 3	<input type="checkbox"/> 3
• FRIENDS AND ASSOCIATES IN THE COMMUNITY e.g. SOLICITOR, FRIEND IN THE LEGAL PROFESSION	<input type="checkbox"/> 4	<input type="checkbox"/> 4
• IN-SERVICE COURSES	<input type="checkbox"/> 5	<input type="checkbox"/> 5
• MASS MEDIA	<input type="checkbox"/> 6	<input type="checkbox"/> 6
• OTHER PRINCIPALS	<input type="checkbox"/> 7	<input type="checkbox"/> 7
• PRINCIPALS' ASSOCIATION	<input type="checkbox"/> 8	<input type="checkbox"/> 8
• PROFESSIONAL ASSOCIATIONS e.g. ANZELA	<input type="checkbox"/> 9	<input type="checkbox"/> 9
• PROFESSIONAL JOURNALS	<input type="checkbox"/> 10	<input type="checkbox"/> 10
• QUEENSLAND GOVERNMENT GAZETTE / REGULATIONS	<input type="checkbox"/> 11	<input type="checkbox"/> 11
• UNIVERSITY / CAE COURSES	<input type="checkbox"/> 12	<input type="checkbox"/> 12
OTHER _____	<input type="checkbox"/> 13	<input type="checkbox"/> 13
(please specify) _____		

13. Please place a tick in each of the boxes  where the school(s) of which you have been Principal has/have had some involvement with the following

**legislation:**

*( Involvement being defined as: where you as Principal, or a member of your school staff has had to access, be trained in aspects of or utilise the statute, or part of the statute, or a court decision on the statute, or respond to a writ, summons and/or request to provide information, or a statement on a matter covered by the statute. )*

- ANTI-DISCRIMINATION ACT (QLD)  1
- COPYRIGHT ACT (COMMONWEALTH : CTH)  2
- CRIMINAL CODE (QLD)  3
- DISABILITY DISCRIMINATION ACT (CTH)  4
- DRUGS MISUSE ACT (QLD)  5
- EDUCATION ACT (QLD)  6
- EDUCATION ( TEACHER REGISTRATION )  
ACT (QLD)  7
- FAMILY LAW ACT (CTH)  8
- FREEDOM OF INFORMATION ACT (QLD)  9
- JUVENILE JUSTICES ACT (QLD)  10
- WORK COVER (INCLUDING REHABILITATION OR  
FORMER WORKERS' COMPENSATION ) ACT (QLD)  11
- WORKPLACE HEALTH & SAFETY ACT (QLD)  12
- WORKPLACE RELATIONS ( OR FORMER  
INDUSTRIAL RELATIONS ) ACT (QLD)  13
- OTHER LEGISLATION: \_\_\_\_\_  14

(please specify) \_\_\_\_\_

14. Please place a tick in each of the boxes  where the school(s) of which you have been Principal has/have had some involvement with legal action concerning the following:

( ***Involvement*** being defined as: where you as ***Principal***, or a member of your school staff has had to respond to a writ, or a summons and/or a request to provide information, or a statement on a matter relating to any of the following: )

- NEGLIGENCE INVOLVING THE PHYSICAL WELFARE OF A STUDENT  1
- PROFESSIONAL NEGLIGENCE AFFECTING THE INTELLECTUAL WELFARE OF A STUDENT  2
- CONTRACT (INCLUDING EMPLOYMENT RELATED CONTRACTS)  3
- DEFAMATION  4

15.

Dr Stewart's research pinpointed a number of matters of a CRIMINAL NATURE with which schools had been involved. Please indicate by placing a tick in the appropriate box  if the school(s) of which you have been Principal has/have had some involvement with the following:

- BREAKING, ENTERING AND VANDALISM OF SCHOOL PREMISES AND EQUIPMENT  1
- PHYSICAL ABUSE: ASSAULT BY STUDENT(S)  2
- PHYSICAL ABUSE: ASSAULT BY TEACHER(S)  3

**Continued next page**

- PHYSICAL ABUSE: INDECENT DEALINGS  4
- THEFT  5
- USE OF ILLEGAL SUBSTANCES  6

Please indicate if there are any other areas which have involved you, as a Principal, in legal action:

( please specify ) \_\_\_\_\_

\_\_\_\_\_

It would be helpful if you could provide details of the incident(s) which brought about the involvement in legal action mentioned under this section, Questions 13-15 (inclusive).

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16. What percentage of your working week do you spend on legally-related matters?

- LESS THAN 10%  1
- 10% TO 20%  2
- 20% TO 30%  3
- 30% TO 50%  4
- MORE THAN 50%  5

17. During your period as a school Principal have you noticed any change in the extent of the law influencing school administration, policies and practices ?

- LARGE DECREASE  1
- SMALL DECREASE  2
- NO CHANGE  3
- SMALL INCREASE  4
- LARGE INCREASE  5

If your response indicated some form of increase, please provide particulars.

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18.

Dr Stewart's research also indicated a number of sources from which Principals recognised that a legal problem might be developing in their schools. Please indicate by placing a tick in the appropriate box  if these sources have **provided recognition for you that a legal problem might be developing in your school.**

- CENTRAL OFFICE  1
- COMPLAINTS / THREATS  2
- FOLLOW UP TO SCHOOL INCIDENTS  3
- OBSERVATION AND MONITORING  4
- PARTIES TO A DISPUTE  5
- OUTSIDE AGENCIES  6
- PARENTS AND COMMUNITY  7
- PERSONAL INFORMATION  8
- SCHOOL COMMITTEES AND REVIEWS  9
- STAFF  10
- STUDENTS  11
- OTHER \_\_\_\_\_  12

(please specify) \_\_\_\_\_

Please add any further comments on how you recognise that a legal problem might be developing in your school.

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19. In resolving legal issues which have impacted on the Catholic school(s) of which you are, or have been Principal, how would you rate the **compatibility** of the **RESOLUTIONS** reached on these issues with the ethos of a Catholic school ?

- VERY COMPATIBLE  1
- MOSTLY COMPATIBLE BUT SOME INCOMPATIBLE  2
- MOSTLY INCOMPATIBLE BUT SOME COMPATIBLE  3
- VERY INCOMPATIBLE  4

20. In resolving legal issues which have impacted on the Catholic school(s) of which you are, or have been Principal, how would you rate the **compatibility** of the **PROCESSES** used to reach a resolution on these issues with the ethos of a Catholic school ?

- VERY COMPATIBLE  1
- MOSTLY COMPATIBLE BUT SOME INCOMPATIBLE  2
- MOSTLY INCOMPATIBLE BUT SOME COMPATIBLE  3
- VERY INCOMPATIBLE  4

Could you please elaborate on, or provide some details in support of your responses to the above two questions:

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21. The comment is often heard that school staffs are facing increased levels of stress. Do you consider that **legal matters** associated with school administration:

- CAUSE YOU STRESS;

YES  1

NO  2

- CAUSE YOU MORE STRESS THAN OTHER ADMINISTRATIVE MATTERS;

YES  3

NO  4

- ARE MORE STRESSFUL THAN IN PREVIOUS YEARS.

YES  5

NO  6

22.

Dr Stewart's research indicated a number of sources of stress for Principals, and a number of these related to dealings with legal issues. ***On the following page*** are some of the **sources of stress** derived from Dr Stewart's research.

In **COLUMN A**, please indicate by placing a tick in the appropriate box  if these items have been a source of stress for you in handling legal issues. Leave blank those items that have been of no significance to you. There is also an opportunity for you to add additional sources of stress associated with legal issues if you so desire.

In **COLUMN B**, please rate the items you have ticked by : ***placing a 1 against the most important source of stress, a 2 against the next most important source stress and so on, again, leaving blank those sources that have been of no significance to you.***

**Columns are on the next page**

**COLUMN A    COLUMN B**

	(source of stress for you )	(rating)
• AWARENESS OF AND CONCERN ABOUT LEGAL REPERCUSSIONS	<input type="checkbox"/> 1	<input type="checkbox"/> 1
• HANDLING EMOTIVE AND CONFLICT MATTERS	<input type="checkbox"/> 2	<input type="checkbox"/> 2
• INVOLVEMENT IN, AND / OR THE ADMINISTRATION AND MANAGEMENT OF LEGAL PROBLEMS	<input type="checkbox"/> 3	<input type="checkbox"/> 3
• ISSUES RELATING TO DUTY OF CARE	<input type="checkbox"/> 4	<input type="checkbox"/> 4
• LACK OF LEGAL KNOWLEDGE	<input type="checkbox"/> 5	<input type="checkbox"/> 5
• LENGTH OF TIME FOR LEGAL MATTERS TO BE RESOLVED	<input type="checkbox"/> 6	<input type="checkbox"/> 6
• NUMBER / EXTENT OF STATUTES / COURT CASES	<input type="checkbox"/> 7	<input type="checkbox"/> 7
• PERSONAL ACCOUNTABILITY	<input type="checkbox"/> 8	<input type="checkbox"/> 8
• STAFFING ISSUES	<input type="checkbox"/> 9	<input type="checkbox"/> 9
• THREATS OF LEGAL ACTION FROM PARENTS AND COMMUNITY	<input type="checkbox"/> 10	<input type="checkbox"/> 10
• OTHER SOURCES OF STRESS (please specify) _____	<input type="checkbox"/> 11	<input type="checkbox"/> 11

It would be helpful if you would elaborate on any of your responses to Item 22 on stress and legal issues. (additional space on the next page if required)

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# **PRINCIPALS' QUESTIONNAIRE**

## **SECTION B : COMMON LAW**

The following scenarios are based on cases which have been heard in Australian Courts.

You are asked to tick ✓ the box  of the response you consider to be ***most appropriate*** in each scenario.

**Please Note** : only tick **one box** in each scenario.

***Please ignore the small numbers next to each box as these are for computer analysis purposes only.***

## **CLASSROOMS AND LABORATORIES ( DUTY OF CARE )**

23.

In *Richards v. State of Victoria*, the Victorian Supreme Court had to determine whether there was negligence when a fifteen year old student was paralysed during a Chemistry lesson in a classroom fight, which the teacher did nothing to stop. The Principal of the secondary school had previously instructed the teacher to undertake in-service courses in an attempt to improve his weak discipline and management skills. The teacher had been a classroom practitioner for a number of years and did not benefit from the in-service sessions.

***In your view who would the Court hold to be liable for the student's injuries:***

*( remember only tick one box; the most appropriate response )*

- The School Principal;  1
- The teacher;  2
- The students who were fighting;  3
- All of the above;  4
- None of the above.  5

**PLAYGROUND SUPERVISION ( DUTY OF CARE )**

24. The Principal of a secondary school asks to see the roster for supervision of the grounds and buildings that has been drawn up by the Deputy Principal to cover the mid-morning and lunch breaks. Over 1600 students attend the school and the buildings are scattered over a large area which is also quite densely covered by trees. There is, as well, a number of potentially hazardous areas on the school grounds which have not been placed out of bounds to students. Three teachers are rostered on duty at any one time. During his eleven years as Principal of the school no student has been seriously injured in any incident in the school grounds.

***Should the Principal : ( remember only tick one box; the most appropriate response )***

- Have the Deputy Principal draw up a map of the school grounds and determine whether additional supervising staff is needed;  1
- Require the Deputy Principal to roster additional teachers for supervision;  2
- Indicate to teachers who are rostered for supervision that they should take particular care when supervising the hazardous areas;  3
- Take no action, as there has never been an accident on the school grounds in the past.  4

25.

***If a student is injured while at school in an area of the grounds that has not been supervised, who might be held to be liable should the student bring a legal action : ( remember only tick one box; the most appropriate response )***

- The teacher(s) who are rostered for duty;  1
- The Deputy Principal who drew up the roster;  2
- The Principal;  3
- The Trustees of the Catholic Education authority ;  4
- All of the above;  5
- None of the above.  6

## **SUPERVISION BEFORE AND AFTER SCHOOL ( DUTY OF CARE )**

26.

In *Geyer v. Downs*, a case that reached the High Court of Australia nearly twenty years ago, an eight year old girl was severely injured when struck on the head by a baseball bat while moving towards her classroom at 8.50 a.m. No organised supervision was offered before school, although the Principal required all children who arrived early to remain in an area adjacent to his office, and he checked on their behaviour by looking out of the window from time to time. Evidence given during the trial indicated that a number of children were on school grounds each morning before 8.30 a.m. In his defence, the Principal declared that he did not owe the girl a duty of care until classes started at 9.00 a.m.

***What do you think the decision of the High Court would be :***

***( remember only tick one box; the most appropriate response )***

- No duty of care is owed to students on school grounds prior to classes commencing at 9.00 a.m. ;  1
- A duty of care is owed to any student on the school grounds before and after school;  2
- A duty of care is only owed to students when supervising staff are patrolling the grounds.  3

27.

In *Commonwealth v. Introvigne*, another case which reached the High Court of Australia , a fourteen year old student was injured when the top of the school flagpole, which had rotted, fell and hit him on the head after he had been swinging on the halyards attached to the pole. In this case it was shown that students at the school had been in the occasional practice, although forbidden, of using the halyards of the flagpole on which to swing around the pole. On the day in question the accident occurred at about 8.50 a.m. while all staff other than one, who was left to supervise the school grounds, were at a staff meeting.

***What do you think the decision of the High Court would be:***

***( remember only tick one box; the most appropriate response )***

- No duty of care is owed to a student who is injured when engaging in an activity which has been forbidden by the school, particularly when the incident occurs before class;  1
- A duty of care is owed to students at all times regardless of students' behaviour;  2
- It is the responsibility of the Principal, as agent of the Catholic Education Office, to be aware of the condition of all buildings and structures at the school.  3

## **SUPERVISION IN THE VICINITY OF THE SCHOOL ( DUTY OF CARE )**

28.

In a case before the NSW Supreme Court in 1988, a grade eight student, on his way to school at about 8.40 a.m., received an injury to the eye when a senior student threw fruit at him. The incident occurred some seventy metres away from, and outside the school gate. It was 'muck-up' day at the school and evidence given in the case revealed that it was a reasonably common practice for senior students to pelt juniors with fruit on this day. In a more recent case before the NSW Court of Appeal, a twelve year old primary student from a Catholic school was struck in the left eye with a stick while he was waiting to catch a bus home from school. The bus stop was situated outside a nearby State High School about 300-400 metres away from the primary school. A teacher from the primary school also caught this same bus in the afternoon. One of the arguments put forward by the school authority in this second case was that once the student passed out of the school grounds no duty of care was owed.

***What do you think the decisions of the Courts indicated :***

*( remember only tick one box; the most appropriate response )*

- No duty of care is owed for the physical well-being of students prior to classes commencing, or after classes cease ;  1
- No duty of care is owed for the physical well-being of students outside the school gates, particularly when some 70-400 metres away;  2
- A duty of care is owed to students for their physical well-being, regardless of time of day or proximity to the school, whenever circumstances exist which are known by the school and which have the potential to place students at risk.  3

**SPORT ( DUTY OF CARE )**

29.

A teaching Principal in a small rural school is supervising a game of continuous cricket during a physical education class. As the game proceeds the students become more and more excited and edge closer and closer to the person batting. The Principal has given repeated warnings not to move too close to the person batting, and has even drawn a line on the ground beyond which the students are not to move. Several of the students move forward over the line.

***Should the Principal:***

*( remember only tick one box; the most appropriate response )*

- Allow the game to continue;  1
- Stop the game completely;  2
- Exclude from the activity any student who moves forward over the line drawn on the ground;  3
- Redraw the line further away from the playing area.  4

30.

***If a student ignores the warning of the Principal and is injured, who might be held to be liable in any subsequent legal action brought by the student:***

*( remember only tick one box; the most appropriate response )*

- The Principal;  1
- The Trustees of the Catholic Education authority  2
- The student;  3
- None of the above;  4
- All of the above.  5



## **EXCURSIONS ( DUTY OF CARE )**

31.

A weekend camp is organised as part of a Grade 12 school-based subject; Bushcraft and Camping. The Principal of the school gives her approval to the variation of the school routine. Part of the weekend's activities includes a trek across rugged hill country in the area around Binna Burra. The route to be taken is clearly defined and one of the least difficult in the area. Three teachers accompany the twenty one students. Parents are given a brief outline of the excursion and the activities to be undertaken.

The weather during the weekend of the excursion is bitterly cold and wet, but it is decided to proceed with the activities regardless. It is also decided to take a higher and more difficult track than that originally planned. Two students are injured while taking the higher route and one later dies.

***In your view who would the Court hold to be liable in a subsequent legal action:***

*( remember only tick one box; the most appropriate response )*

- The School Principal;  1
- The supervising teachers;  2
- The parents;  3
- The Trustees of the Catholic Education authority ;  4
- All of the above;  5
- None of the above.  6

## **COMMON LAW ( EMPLOYMENT CONTRACTS )**

32.

### ***Background***

Mary, a teacher, had been working in a number of Independent Schools where the Principal had the authority to hire and fire. In 1996-7 she was employed at a local Catholic secondary school for various fixed periods, full-time. Her longest period of employment at any one time had been for two terms. On each of these occasions the Principal approached Mary to see if she was interested in the teaching positions, and the necessary paper work was prepared and signed after Mary had taken up duties. At the end of the 1997 School Year, as one of the school's permanent teachers was taking twelve month's leave, the Principal approached Mary and offered her a full-time position for 1998, leaving the necessary paper work to be dealt with during the holidays. Over the vacation, and on the basis of this discussion, Mary turned down other employment offers and purchased a new car.

### ***Present Situation***

Due to a number of reasons, student numbers fell over the vacation period and the school had to lose a teacher. Within this system, the Principal's actual authority extends to employing staff up to three terms; and any periods beyond that have to be approved by the Central Office. Considering the school's enrolments, the Central Office refuses to accept the recommendation to employ Mary. The Principal intends to ring Mary and indicate to her that she will not be employed for the 1998 school year.

***In your view do you believe there would be:***

***( remember only tick one box; the most appropriate response )***

- No grounds for a contract of employment because no papers were signed regarding the agreement;  1
- No grounds for a contract of employment because the Principal had acted outside her actual authority;  2
- Grounds for Mary to take action for breach of an employment contract;  3
- A need for the Principal to seek some advice on Mary's position before phoning her.  4

I would welcome your comments on any concerns you might have regarding court decisions involving schools. For example, you might describe and comment on any association you have had, as a school Principal, with matters associated with the law that have not been mentioned in this questionnaire, or elaborate on issues already raised.

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## **PRINCIPALS' QUESTIONNAIRE**

### **SECTION C : LEGISLATION**

The following scenarios are based on Commonwealth and State Legislation passed in recent years.

You are asked to tick ✓ the box  of the response you consider to be ***most appropriate*** in each scenario.

**Please Note** : only tick **one box** in each scenario.

***Please ignore the small numbers next to each box as these are for computer analysis purposes only.***

## **THE EDUCATION ACT AND REGULATIONS**

33.

On 1st October Mrs. D. arrives at a local Catholic primary school with three children. She indicates to the Principal that her husband is connected with the Defence Forces, and having to move frequently her children have had an interrupted education. However, they have now returned from Malaysia and have settled into a house two blocks from the school. Mrs. D. indicates :

- That the eldest boy Ron who had just turned nine, does not like school and often plays truant, but she would like to enrol him in Year 4;
- That her sister who is a trained school teacher is going to teach Jane, who is seven, at home. Mrs. D. asks the Principal if that would be okay;
- That Elizabeth, who will turn 5 on 11th January next, is a very bright child, has attended the International School in Malaysia for the past 18 months and is achieving at work equivalent to Year 1 level in Queensland. She too is going to be taught at home by Mrs. D's sister, but Mrs. D wants to enrol Elizabeth in Year 1 for next year.

By 5th November Ron, who had been enrolled on October 1, has attended school for only nine days and no valid reason for his absence has been given, although teachers and students have reported seeing him often in the local shopping centre.

***Which of the following advice given, or action taken by the Principal do you consider to be correct :( remember only tick one box; the most appropriate response )***

- The Principal advised Mrs. D. that as her sister was a trained teacher, she did not have to apply to the Minister for approval for home schooling;  1
- The Principal advised Mrs. D. that under no circumstance could he enrol Elizabeth in Year 1 the following year;  2
- The Principal advised the local police station of Ron's absence;  3
- The Principal seeks advice from the Catholic Education Office regarding the enrolment of Elizabeth, and what to do about Ron's absence.  4

## **WORKPLACE HEALTH AND SAFETY**

34.

A contractor is engaged by you to lay large drainage pipes across part of the school grounds normally accessed by students, staff and other persons. The contractor leaves a deep trench unfilled and exposed. The Principal, as the Workplace Health and Safety Officer in accordance with the agreement between the Government and the Catholic Education Office, has undertaken the appropriate training as required by the Act.

***The Principal should : ( remember only tick one box; the most appropriate response )***

- Demand that the contractor fence off the trench;  1
- Require the school's Workplace Health and Safety Representative (if the school has one), to take appropriate action including the giving of warnings to students to keep away from the area;  2
- Refer the matter to the appropriate section of the Catholic Education Office;  3
- Do nothing.  4

35.

A staff member advises the Principal that a danger exists from contractors leaving live electrical wiring exposed after a number of new power points are added to the school's computer room. The Principal contacts the contractors, who are unable to return to finish the work for several days. In the meantime the Principal is forced to continue to use the computer room, but apart from ordering students not to touch the wiring, nothing is done by the school to remove the hazard. While waiting for a class to begin, and in the absence of the teacher, who has been delayed due to a discussion with the Deputy Principal, a grade nine student is electrocuted when playing with the wires, and is severely burned.

***Who might be held to be legally liable:***

***( remember only tick one box; the most appropriate response )***

- The contractor;  1
- The Principal;  2
- The classroom teacher;  3
- All of the above.  4

## **FAMILY LAW**

36.

David's parents have been divorced for five years. His parents draw up a Parenting Plan and give a copy to the Principal of David's school. The plan includes the following:

### **Residence**

David is to reside each week with his mother from Monday morning to Thursday evening.

From Thursday evenings to Monday mornings, starting from the first week in January 1997, David is to reside on a rotational basis, firstly with his father, then with his maternal grandmother, and then with his mother.

### **Specific Issues**

David is to be brought up within the Catholic religion and to be educated at St Mary's Catholic Primary School Ipswich until the end of Year 7, and then to attend St Edmund's Secondary College at Ipswich.

Reports on the progress of David are to be provided by the schools to both parents.

The Parenting Plan, however, has not been registered in the Court.

The relationship between David's parents has now deteriorated, and the mother has demanded that the Principal refuse to give David's father any information about David's progress at school, or allow David to have contact with his father through the school. While in the past David's father has not shown very much interest in David's progress, he is now keen, and has asked to know how well David is going, particularly as he is due to enter secondary school in the coming year.

### ***Should the Principal :***

*( remember only tick one box; the most appropriate response )*

- Provide reports to both parents;  1
- Provide a report to the mother only;  2
- Seek the advice of the Registrar of the Family Court;  3
- Seek the advice of the Catholic Education Office.  4

## **CRIMINAL CODE**

37.

Tom is a grade nine student in Mr S's History class. Normally he is a quiet, hard-working student, but lately he has become rude and aggressive to staff and other students. During the first period of History on Monday last, Mr S. had to speak to and reprimand Tom on several occasions. Without warning, Tom jumped from his chair and rushed at Mr S., knocking him over and then kicking him several times before being restrained by two students. Mr S. suffered a broken nose and sore ribs from the incident.

When the Principal investigated the matter, she discovered that Tom's unemployed father has left the family and that the mother is unable to cope.

***The Principal would be correct in :***

***( remember only tick one box; the most appropriate response )***

- Advising Mr S. that a criminal action is possible against Tom;  1
- Advising Mr S. that he could take out a private action against Tom;  2
- Ensuring that The Catholic Education Office is advised;  3
- Recommending that Mr. S. seek medical and legal advice;  4
- Recommending Mr. S. submit a Workers' Compensation Claim;  5
- All of the above.  6

38.

In recent years, considerable publicity has been given to complaints alleging assault of a sexual nature made by students against school staff. Many of the allegations centre on some form of touching, which has taken place deliberately, with the intention of conveying direction or to give some form of encouragement to a student.

***In giving advice to your staff concerning the touching of students do you indicate that : ( remember only tick one box; the most appropriate response )***

- It is quite acceptable to touch students;  1
- Staff are never to touch students;  2
- When a student, either verbally or non verbally, indicates discomfort to any invasion of her/his personal space or touching, such behaviour should cease.  3

## **DISCRIMINATION : GENDER**

*Anti-Discrimination legislation was introduced into Queensland in 1991 in order to extend a variety of Commonwealth Legislative Provisions that had been in existence for some time. The following scenarios reflect the combined legislation and actual cases brought before The Human Rights and Equal Opportunity Commission and Tribunals.*

39.

Catherine is about to enter Grade 11. She alleges that she is being discriminated against because the school does not provide classes in Computer Education in her mainstream subject of Home Economics. Catherine maintains that as a consequence of her not being able to take courses in computers, her career choices are considerably reduced. She threatens to bring an action against the school and the Catholic Education Office in The Human Rights and Equal Opportunity Commission. In her allegations, Catherine notes that computer classes are available to Grade 11 boys who are studying Manual Arts.

### ***Should the Principal :***

*( remember only tick one box; the most appropriate response )*

- Make special arrangements for Catherine to access Computer Education classes;  1
- Refuse to provide Catherine with Computer Education classes as she is the only student from the Grade 11 Home Economics class who wants this subject;  2
- Remove the option for Grade 11 boys from Manual Arts to have access to Computer Education classes.  3

40.

### ***Should Catherine proceed with an action in The Human Rights and Equal Opportunity Commission, do you think the Commission would:***

*( remember only tick one box; the most appropriate response )*

- Find that it is unreasonable to rule against the school;  1
- Uphold Catherine's action.  2



## **DISCRIMINATION : SPECIAL NEEDS**

41.

Anthony is a boy of nine years of age and it is recognised that he requires special services and facilities. He has an intellectual impairment that has had a severe impact on his educational development, ability to communicate, gross and fine motor development and his ability to care for himself generally. Associated with his impairment is a degree of social and emotional stress, which at times manifests itself in violent verbal and physical outbursts against classmates, teachers and teacher aides. When Anthony was enrolled in Year 1 the school believed it had the expertise and facilities to cater for him. Also, when undergoing the correct special enrolment procedures as set down by The Catholic Education Office, the school was advised by the 'experts' that the regular school was the correct placement for Anthony.

However, the situation has deteriorated to the extent that the gap between Anthony and other students his age has widened considerably, his aggressive outbursts are a daily occurrence, students in his class are frightened of him, there are constant complaints from parents of how Anthony's behaviour is affecting their children and their children's learning, and there is a deal of reluctance on the part of teachers and teacher aides to support Anthony, particularly in that those trained in Special Education have transferred from the school, and none of those remaining have expertise in this area.

Having followed an agreed process between the parents and school, Anthony's outbursts have led to a number of suspensions, and now the school wishes to exclude Anthony. The parents are objecting to the exclusion and intend to take the matter to the Queensland Anti-Discrimination Tribunal.

***In your view, in an action against exclusion before The Tribunal, do you think the Tribunal might rule :***

*( remember only tick one box; the most appropriate response)*

- That the school has discriminated against Anthony and will have to re-enrol him;  1
- That the school has not discriminated against Anthony;  2
- That discrimination has occurred. However, the discrimination is not unlawful in the circumstances, for to cater for Anthony would impose unjustifiable hardship on the school;  3
- That in the circumstances the school has not discriminated against Anthony. However, should specialist teachers and teacher aides be appointed, the school would have to re-enrol Anthony.  4

## **COPYRIGHT**

42.

Helen teaches Music in the Primary Department at St John's School, which is a multi-campus school with separate Secondary and Primary Departments. The school is under the administration of the Catholic Education Office and therefore is covered by the various copyright licensing agreements, including the Australian Mechanical Copyright Owners Society (AMCOS) Agreement. Helen's friend, Elizabeth, teaches Music at a nearby school, and has written a number of compositions suitable for class and school liturgies. Helen has her own hand written copy of the words of one particular song; 'My Friend', which was composed by Elizabeth. The sheet music with melody and words is not available separately but has been published in an album of which there is one copy in the Primary school library. Helen wants to keep her copy of the words and not give it to the school. The album in the library is used regularly, and attached to the contents page, is an entry indicating that three other works in the publication have already been copied for the Primary school use. Helen approaches the Principal to get some advice on her responsibilities with regard to copyright.

***Which one of the following responses given by the Principal is correct :  
( remember only tick one box; the most appropriate response )***

- There is no copyright on the hand written words, because it is not part of a publication and there is no copyright symbol; make as many copies as you like;  1
- There is no copyright on the hand written words because they are not with the music; make as many copies as you like;  2
- Purchase another copy of the album in the library, complete the necessary paper work , including noting the use of the work in the contents page, but only make 30 copies;  3
- I do not think there is copyright on the hand written words. However, to be sure, use the correct AMCOS stamp, fill out the details, make 40 copies only, but you will need to hand over your hand-written copy to the school;  4
- Use the publication in the library, complete the necessary paper work, including noting the use of the work in the contents page, but because three other works have been used in this album you can only make 15 copies.  5

Please comment on any concerns you have with regard to legislation and regulations as they affect you as a School Principal within the Catholic Education system.

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Space is provided here for you to add any further comments you would like to make regarding the impact of the law on your role as Principal of a Catholic school, or any other comment you wish to make about the law and education.

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I thank you sincerely for the time you have spent, and for your co-operation in completing this survey. I hope you have found it interesting and informative.

# APPENDIX 1

## ETHICS APPROVAL LETTER



COPY

**AUSTRALIAN CATHOLIC UNIVERSITY**  
Office of Research

University Research Projects Ethics Committee  
Ethics Clearance for a Research Project - Approval  
Form

<b>Supervisor(s)</b>	1) Dr Denis McLaughlin	<b>Campus:</b> McAuley
<b>Researcher(s) (if student/s)</b>	1) Mr Paul McCann	<b>Campus:</b> McAuley

**Ethics clearance has been provisionally extended / approved for the following project:**

*Principals' understandings of aspects of the law impacting on the administration of Catholic schools: Some implications for leadership*

**for the period:** 1/06/1988 to 1/06/1999

University Research Ethics Committee Register Number: 098-8

**subject to the following conditions as stipulated in the National Health and Medical Research Council (NHMRC) Statement on Human Experimentation and Supplementary Notes 1992:**

- (i) *that principal investigators provide reports annually on the form supplied by the Institutional Ethics Committee, on matters including:*
  - *security of records;*
  - *compliance with approved consent procedures and documentation;*
- (ii) *as a condition of approval of the research protocol, require that investigators report immediately anything which might affect ethical acceptance of the protocol, including:*
  - *adverse effects on participants;*
  - *proposed changes in the protocol, and/or*
  - *unforeseen events that might affect continued ethical acceptability of the project.*

**and subject to clarification of the following to the University Research Projects Ethics Committee:**

1. *Information Letter to Participants*
  - *Please amend the address of McAuley Campus in paragraph 1 from 'Dutton Park' to 'Mitchelton'.*
  - *Please amend to include the statement that 'If you agree to participate in the project, you should sign both copies of the Informed Consent Form, retain one copy for your records and return the other copy to Researcher'*
2. *Other*
  - *Please forward a copy of the external approval from the Brisbane Catholic Education Office Research Committee when it is available.*

*A Final Report Form will need to be completed and submitted to the URPEC within one month of completion of the project*

OR

*An Annual Progress Report Form will need to be completed and submitted to the URPEC within one month of the anniversary date of approval.*

Please sign date and return this form (with any additional information or material, if requested by the Committee) to the administrative Officer (Research) whom you submitted your application, for approval to be confirmed.

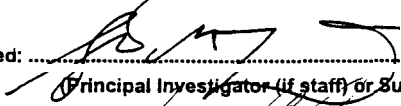
Signed: ..... Date: ..20 / 5 / 98 .....

Administrative Officer (Research)


**(To be completed by the Principal Investigator, or Student and Supervisor, as appropriate.)**

The date when I/we expect to commence contact with human participants or access their records is:

**I / We hereby declare that I / We am / are aware of the conditions governing research involving human participants as set out in the Research Projects Ethics Committee's *Guidelines and Instructions for Researchers / Students* and agree to the conditions stated above**

Signed:  ..... Date: ..22 / 05 / 98..  
(Principal Investigator (if staff) or Supervisor, as appropriate)

(Researcher (if student

Signed:  ..... Date: ..22 / 05 / 8..

OR/ E30/974

## APPENDIX 3

### LETTER TO PARTICIPANTS' EMPLOYER REQUESTING AUTHORITY TO UNDERTAKE THE RESEARCH

Mr Jeff Kemp  
Chair Research Committee  
Brisbane Catholic Education Office  
G P O Box 1201  
BRISBANE QLD 4001

Dear Jeff,

Further to our recent discussions please find enclosed an application to carry out a research project in Catholic schools within the Brisbane Archdiocese.

This research project forms the basis of my Ph D studies being undertaken at the Australian Catholic University, McAuley Campus, Everton Park.

In the attached material you will find:

- A description of the project including:
  - the title of the project;
  - the names and contacts for the researcher and supervisor;
  - the background to the project;
  - the purpose of the project;
  - the research design, methodologies and procedures to be used in the project; and,
  - the measures to be applied in relation to confidentiality, storage and disposal of materials.
- A copy of the questionnaire to be distributed to Principals as part of the project and the covering letter which will accompany the questionnaire; and,
- A copy of the consent forms to be used in the case studies which are also part of the project .

This project has received approval from the Australian Catholic University Projects Ethics Committee. On its completion, a report on the project will be provided to your Research Committee.

Could you please advise me at your earliest convenience of the outcome of this application or of any further information you might require.

Kindest regards and best wishes.

**APPENDIX 4**

**LETTER OF APPROVAL FROM PARTICIPANTS' EMPLOYER**

*Archdiocese of Brisbane*

**CATHOLIC EDUCATION**

Catholic Education Centre  
243 Gladstone Rd,  
DUTTON PARK  
AUSTRALIA  
PH: 07 38400400P  
Fax: 07 38445101

28 May 1998

Mr Paul McCann

5 Auld Court

M/S 531  
MOUNT CROSBY Q 4306

Dear Paul

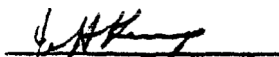
**Re: Research Application: Principals' Understandings of Aspects of the Law  
Impacting on the Administration of Catholic Schools: Some Implications for  
Leadership**

On behalf of the Research Review Committee of Brisbane Catholic Education I am pleased to approve your research application subject to your acceptance of the following conditions:

1. It is clearly understood that this approval is to approach school principals in regard to the research and that the principal of any school approached has the right of final approval.
2. Confidentiality of teachers, students and the schools involved is of paramount importance.

The Research Review Committee wishes you well with your research and looks forward to learning of the outcome.

Yours sincerely



J S KEMP

Chair

Research Review Committee

## APPENDIX 5

### SAMPLE LETTER TO PERSONS ASK TO CRITIQUE THE REVISED QUESTIONNAIRE

May, 1998.

Dear ,

As explained to you on the phone and/or in person in recent days, I am in the process of finalising a Questionnaire for my doctoral studies. The topic of my research is *Principals' understandings of aspects of the law impacting on the administration of Catholic schools: Some implications for leadership*.

The purposes of the study is :

- To examine the areas of law impacting on the administration of Catholic schools particularly within the Archdiocese of Brisbane; to see how these are identified by Principals and to probe any differences in these understandings that might be related to secondary and primary schools, the size and location of schools;
- To examine the understandings Principals have of the law impacting on their schools; to investigate how these understandings are acquired, and, in particular, to investigate preparation for teaching and principalship, and the value of inservice and professional development in this area; and,
- To examine the impact of the law and its effect on leadership within the ethos of the Catholic school. Within this area it is proposed to inquire into the time Principals spend on legal issues, the stress and conflict, if any, created by conflicting perspectives, and also to explore the compatibility of the resolutions reached in legal issues and the processes used to achieve these resolutions with the ethos of the Catholic school.

The results of this study project a number of benefits. Firstly very little research has been carried out in this area in Australia, and in Catholic schools in particular. The literature, however, indicates that the law is having an increasing impact on school administration. This research project should give



us an indication of this impact of the law on our schools in the Brisbane Archdiocese, particularly from the perspective of the principalship within the ethos of a Catholic school. It should also give us valuable information which we can be used in providing professional development activities and in preparing people for principalship within our schools, and identify areas in which we can add more support to our Principals in dealing with these issues.

Evidence gathered during this study will include data gathered by a Survey Questionnaire. For this questionnaire I will be using, as a basis, the questionnaire developed by Dr Douglas (Doug) Stewart from the Queensland University of Technology, from the work he has done in this area within Queensland State Schools.

However, from the reading of the literature and follow up discussions I have had with educational administrators and support personnel within the Catholic Education System, there appears to be some areas of law which have more impact on Catholic schools than State schools. Also, there are some areas of legislation which impact substantially on State schools but which do not apply to Independent or Catholic schools, and since Dr Stewart developed his questionnaire there have been changes to some legislation and more recent cases which have clarified or developed further some aspects of the law. Consequently, I have adjusted some parts of Dr Stewart's questionnaire and added some additional items myself.

Enclosed is a draft of the questionnaire. Having been a Principal in a school and/or having supervised and supported Principals in their roles, I would like you to critique this documentation and offer me feedback on it before it is finalised for ethical clearance and distributed to Principals. I thank you for agreeing to peruse the attached material and offering to provide me with this feedback. Could you please treat this material as confidential and not discuss it with other people as I do not want to contaminate possible participants and I also want to make communication with participants myself.

I would be grateful if you could provide comments in the following areas where you feel they are appropriate:

- How realistic the scenarios are when compared with real life experiences with which you may have been involved;

- The appropriateness of the responses in identifying aspects of the law which apply to the scenarios;
- The general lay out, wording etc of the scenarios.

Any questions or points of clarification can be directed to me on (07) 3201-0533.

I am very appreciative of your assistance, in particular providing me with some of your valuable time. I trust this is not been too much of an inconvenience.

I would be grateful if you could provide any feedback by Friday 15th May, 1998. Verbal feedback via a phone call to (07) 3201-0533 would be quite acceptable. However, could you also return the draft questionnaire in the stamp addressed envelope provided. Feel free to write comments on the questionnaire itself.

Once again many thanks.

Yours sincerely

Paul McCann.

## APPENDIX 6

### SAMPLE OF THE LETTER THAT ACCOMPANIED THE SURVEY QUESTIONNAIRE

May, 1998

Dear ,

As explained to you on the phone and/or in person in recent days, I am in the process of completing a research project, the focus of my doctoral studies at the Australian Catholic University, McAuley Campus, Mitchelton.

#### TITLE OF THE PROJECT:

*PRINCIPALS' UNDERSTANDINGS OF ASPECTS OF THE LAW  
IMPACTING ON THE ADMINISTRATION OF CATHOLIC SCHOOLS :  
SOME IMPLICATIONS FOR LEADERSHIP.*

#### NAME OF RESEARCHER

The research project is to be carried out by myself: **Paul McCann**

#### PURPOSES OF THE RESEARCH PROJECT

The purposes of the project are :

- To determine the areas of law impacting on the administration of Catholic schools; to see how these areas of law are identified by Principals, and to explore possible differences in the areas of law impacting on schools that

might be related to secondary and primary settings, the size, complexity and location of schools;

- To examine the understandings Principals have of the law impacting on their schools; to investigate how these understandings are acquired, and in particular, to investigate preparation and induction of teachers and Principals, and the value of inservice and professional development in this area; and,
- To examine the impact of the law on leadership within the ethos of the Catholic school. Within this area it is proposed to inquire into the time Principals spend on legal issues, the stress and conflict, if any, created by conflicting perspectives, and also to explore the compatibility of the resolutions reached in legal issues and the processes used to achieve these resolutions with the ethos of the Catholic school.

## **PROCEDURES**

As mentioned to you earlier, to be part of this project I am asking if you would please complete the enclosed questionnaire.

The questionnaire is divided into three sections. In **Section A** you will be asked to tick the appropriate box to a number of general questions and in some instances rate your responses with 1 being the highest rating, 2 the second highest rating and so on. In **Section B** you will be asked to tick the box which gives what you consider to be the appropriate response to Common Law scenarios. **Section C** is similar to Section B but refers to legislative issues.

To some questions you may be asked to provide further details, and also there are opportunities to provide additional comments if you choose to do so. All this is clearly indicated on the questionnaire. A stamped addressed envelope is provided for you to return the document when you have completed it.

Following preliminary analysis of the data collected from the questionnaires a small number of Principals will be selected for follow up case studies. This will involve participating in a semi-structured taped interview. Principals selected for this part of the project will be contacted by me individually. However, if you would like to be involved in this part of the project please give me a call.

## **INCONVENIENCE**

The major inconvenience for you in relation to this project will be another intrusion into your already busy schedule. The questionnaire will take approximately 75 minutes to complete. I know how busy you are and the demands on your time are many and varied, but I ask you to please consider taking the time to support this project. Those selected for follow up case studies will be contacted individually to negotiate their involvement and to arrange convenient interview schedules.

## **BENEFITS OF THIS PROJECT**

Hopefully the outcomes of this project will provide solutions to help alleviate pressure in the legal issues area in the future. In particular the project should:

- Heighten the awareness of legal issues confronting Principals of Catholic schools;
- Provide valuable information on which to base professional development and induction of Principals in the legal issues area;
- Provide an avenue for Principals to raise concerns they have in the legal issues area;
- Heighten areas in which Principals need support with regard to legal issues; and,
- Give valuable insight into the impact of the law on administration of Catholic schools.

## **CONSENT TO TAKE PART IN THE PROJECT**

While it is my hope that all Principals in the Archdiocese will take part in this project you are free to withdraw consent and discontinue participating in the study at any time. Please understand that any decision by you not to be involved in the study or to withdraw from the study at any time, will not in any way be prejudicial to you. Return of the questionnaire will be taken as an indication of your consent to participate in that part of the project, while those of you selected for follow up case studies will receive individual consent forms to complete prior to any interviews being undertaken.

## QUESTIONS ABOUT THE PROJECT

An questions about the project can be directed to me the Researcher or to Dr Denis McLaughlin the supervisor of the project. Details for contacting either person are listed below.

## CONTACTS FOR RESEARCHER

### Home

5 Auld Court  
M / S 531  
MOUNT CROSBY QLD 4306

Phone (07) 3201 0533

### Work

C/- Brisbane Catholic Education Office  
243 Gladstone Road  
DUTTON PARK QLD 4102

Postal Address

G P O Box 1201

BRISBANE QLD 4001

Phone (07) 3840 0556

Fax (07) 3844 5101

Email p.mccann@bne.catholic.edu.au

## SUPERVISOR OF THE PROJECT

Dr Denis McLaughlin

## CONTACT FOR SUPERVISOR

Dept of Educational Leadership  
Australian Catholic University  
McAuley Campus  
EVERTON PARK QLD 4053  
Phone (07) 3855 7154

## APPROVAL

Please note that this study has been approved by both the University Research Projects Ethics Committee at Australian Catholic University, and the Research Committee of the Brisbane Catholic Education Office.

## CONFIDENTIALITY, STORAGE AND DISPOSAL

Identity of the participants will be known to the researcher only. This is required to identify responses to the questionnaire and possible participants

for the follow up case studies. Numbers will be allocated to each school and these will be securely kept by the researcher along with all other data.

The data gathered in this project may be aggregated and used in publications, in teaching and lecturing, and in sharing with other researchers. However, specific reference to data gathered will be by number or through pseudonyms. All material relating to the study will be stored securely by the researcher. After five years material on tapes and data stored on computers will be erased, and all other documentation shredded.

## **CONCERNS**

In the event you have any complaint about the way you have been treated during this project, or a query that the researcher has not been able to satisfy, you may write, care of the nearest branch of the Office of Research, which for you is as follows:

Chair , University Research Projects Ethics Committee  
C/- Office of Research  
Australian Catholic University  
McAuley Campus  
EVERTON PARK QLD 4053

Phone : (07) 3855 7154  
Fax : (07) 3855 7105

Any complaint made will be treated in confidence, investigated fully and the participant informed of the outcome.

I thank you for your support of this project.

Kindest regards and best wishes.

Yours sincerely

Paul McCann.

**APPENDIX 7 (15)**

**ELIGIBILITY CRITERIA FOR THE POSITION OF PRIMARY PRINCIPAL**

<b>Essential System Criteria</b>	<b>Class 1A &amp; 1B</b>	<b>Class 2A &amp; 2B</b>	<b>Class 3A, 3B &amp; 4</b>
1. Committed Catholic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Understanding of and commitment to education in the Catholic tradition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Professional Qualifications in: <ul style="list-style-type: none"> <li>(a) Education                             <ul style="list-style-type: none"> <li>Masters Degree in an appropriate discipline or its equivalent (eg. two degrees). <b>- Mandatory 2000</b></li> <li>A Degree or Four Year Trained (in an appropriate discipline). <b>- Until 1999 Class 1</b></li> </ul> </li> <li>(b) Religion – (EXCLUSIVE OF PRESERVICE COURSES)                             <ul style="list-style-type: none"> <li>(i) completed 8 semester units of recognised tertiary studies in religion inclusive of Theology, Scripture and Christian Leadership <b>- Mandatory 2000</b></li> <li>(ii) completed 8 semester units of recognised tertiary studies in religion inclusive of Theology, Scripture and Christian Leadership OR show through other related activities, evidence of knowledge in areas of Theology, Scripture and Christian Leadership <b>- Until 1999</b></li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Successful Primary Teaching Experience <ul style="list-style-type: none"> <li>• minimum of 10 years</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Success in teaching Religious Education in Catholic Schools <ul style="list-style-type: none"> <li>• minimum of 5 years</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Registered teacher or eligible for registration in Queensland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. Brisbane Catholic Education Centre, 1977



<b>Essential System Criteria</b>	<b>Class 1A &amp; 1B</b>	<b>Class 2A &amp; 2B</b>	<b>Class 3A, 3B &amp; 4</b>
7. Administrative experience: <ul style="list-style-type: none"> <li>• previous successful experience as Principal in a Catholic school</li> <li>• previous experience in Administrative position</li> <li>• demonstrated ability in educational leadership</li> <li>• demonstrated administration ability</li> <li>• demonstrated ability in interpersonal skills</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. A knowledge and experience of contemporary curriculum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Knowledge of contemporary educational issues at State and National levels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Highly Desirable System Criteria</b>	<b>Class 1A &amp; 1B</b>	<b>Class 2A &amp; 2B</b>	<b>Class 3A, 3B &amp; 4</b>
1. A Masters degree in Education (Catholic School or related areas)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Tertiary Administrative qualifications	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Involvement in Professional Associations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Proven ability in Curriculum Development	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Demonstrated ability to contribute to the professional development of staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. A variety of Primary School experiences	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**SCHOOL CLASSIFICATION**

<b>Class</b>	<b>Enrolment levels</b>	<b>Class</b>	<b>Enrolment levels</b>
1A	P801-1200	3A	P101-200
1B	P451-800	3B	P25-100
2A	P301-450	4	P<25
2B	P201-300		

**APPENDIX 8 (16)**

**ELIGIBILITY CRITERIA FOR THE POSITION OF SECONDARY PRINCIPAL**

Essential System Criteria	Class 1A	Class 1B & 2A
1. Committed Catholic	<input type="checkbox"/>	<input type="checkbox"/>
2. Understanding of and commitment to education in the Catholic tradition	<input type="checkbox"/>	<input type="checkbox"/>
3. Professional Qualifications in: <ul style="list-style-type: none"> <li>(a) Education               <ul style="list-style-type: none"> <li>Masters Degree in an appropriate discipline or its equivalent (eg. two degrees). <b>- Mandatory 2000</b></li> <li>A Degree or Four Year Trained (in an appropriate discipline). <b>- Until 1999 Class 1A</b></li> </ul> </li> <li>(b) Religion – (EXCLUSIVE OF PRESERVICE COURSES)               <ul style="list-style-type: none"> <li>(i) completed 8 semester units of recognised tertiary studies in religion inclusive of Theology, Scripture and Christian Leadership <b>- Mandatory 2000</b></li> <li>(ii) completed 8 semester units of recognised tertiary studies in religion inclusive of Theology, Scripture and Christian Leadership OR show through other related activities, evidence of knowledge in areas of Theology, Scripture and Christian Leadership <b>- Until 1999</b></li> </ul> </li> </ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
4. Successful Secondary Teaching Experience	<input type="checkbox"/>	<input type="checkbox"/>
5. Success in teaching Religious Education in Catholic Schools: <ul style="list-style-type: none"> <li>• minimum of 5 years</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
6. Administrative Experience: <ul style="list-style-type: none"> <li>• previous successful experience as Principal in a Catholic school</li> <li>• previous experience in Administrative position</li> <li>• demonstrated ability in educational leadership</li> <li>• demonstrated administration ability</li> <li>• demonstrated ability in interpersonal skills</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
7. Registered teacher or eligible for registration in Queensland	<input type="checkbox"/>	<input type="checkbox"/>

<b>Essential System Criteria</b>	<b>Class 1A</b>	<b>Class 1B &amp; 2A</b>
8. A knowledge and experience of contemporary curriculum	<input type="checkbox"/>	<input type="checkbox"/>
9. A knowledge and experience of Secondary Pastoral Care practices	<input type="checkbox"/>	<input type="checkbox"/>
10. Knowledge of contemporary educational issues at State and National levels	<input type="checkbox"/>	<input type="checkbox"/>
11. Written and verbal communication skills of a high order	<input type="checkbox"/>	<input type="checkbox"/>

<b>Highly Desirable System Criteria</b>	<b>Class 1A</b>	<b>Class 1B &amp; 2A</b>
1. A masters degree in Education (Catholic School or related areas)	<input type="checkbox"/>	<input type="checkbox"/>
2. Tertiary Administrative qualifications	<input type="checkbox"/>	<input type="checkbox"/>
3. Involvement in Professional Associations	<input type="checkbox"/>	<input type="checkbox"/>
4. Proven ability in Curriculum Development	<input type="checkbox"/>	<input type="checkbox"/>
5. Demonstrated ability to contribute to the professional development of staff	<input type="checkbox"/>	<input type="checkbox"/>
6. A variety of Secondary School experiences	<input type="checkbox"/>	<input type="checkbox"/>

<b>SCHOOL CLASSIFICATION</b>	
<b>Class</b>	<b>Enrolment levels</b>
1A	S651-1200
1B	S351-650
2A	S<350

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