

Schools Go to Court: Education Case Law for New Zealand Schools

Patrick J Walsh & Josephine Ruth Bartley

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The law of education permeates the decisions of principals, school boards and their advisers, not to mention the increasing scrutiny to which unpopular school decisions are subjected by commentators inside and outside the school community. Further, the modern proliferation of specialist tribunals and agencies has created different forums for the redress of educational grievances. (1)

Patrick Walsh is a lecturer in law in New Zealand, the author of books in education law and deputy principal of De La Salle College in Auckland. Josephine Bartley is a barrister and solicitor employed by the Parliamentary Service as a Community Liaison Advisor. This short book on education case law was prompted by the author's realisation that the decisions of New Zealand courts and other agencies are not as well known within school communities as they ought to be (especially given the "devolved" structure of the education system.) As the authors point out, the importance of the cases is that they illustrate the types of issues being raised in school communities; clarify important points of law and define key terms in legislation. They highlight the errors made by schools whose practices the courts and agencies have found unacceptable and raise schools' awareness of the penalties or remedies which may result from such errors.

The first section deals with employment cases, where the Employment Court has ruled on matters of personal grievance between a teacher and the Board of Trustees as employer, or between a principal and the Board of Trustees. Most commonly, such cases brought under the *Employment Contracts Act 1991* have been concerned with unjustified dismissal or other action that disadvantages the worker's employment.

Schools Go To Court then turns to judicial review of decisions made by a principal or the Board of Trustees in relation to a student's education. Actions resulting in indefinite suspension or expulsion have been challenged on grounds such as whether applicable statute law was complied with, whether bias, predetermination or absence of natural justice intruded, or whether the facts relied on in making the decision were true and accurate.

The third section is concerned with cases brought under the *Human Rights Act 1993* and the *Privacy Act 1993*, the former being aimed at the prevention of discrimination on prohibited grounds and the latter at establishing principles relating to the collection, use and disclosure of information about individuals by agencies, as well as access by individuals to information about themselves. Both statutes have clear significance in the educational context.

The final section addresses decisions by agencies other than courts, particularly those of Ombudsmen and Privacy, Children and Human Rights Commissioners. Clearly the former will have a legitimate role to play in the mediation of complaints involving organisations such as school Boards of Trustees. The Commissioners will likely be involved since schools are social institutions and deal on an everyday basis with matters involving children's privacy and rights.

The authors have necessarily been selective in their choice of cases, but clearly they have touched on the more important issues and cases of recent times. One example is the landmark High Court case *M and R v Syms and the Board of Trustees of Palmerston North Boys' High School 1990*, which defined the meaning of "gross misconduct" in section 13 (1) of the *Education Act*. Each of the cases is concisely presented through a summary of the background facts; a listing of the legal issues raised; the reasoning and decision of the court or other agency; and, very usefully, a section on implications for schools to which the experience of Walsh as a practising administrator in schools lends authority.

A sample of the last can be found in the *Palmerston* case referred to above:

Implications for Schools

- ❖ "Gross misconduct" involves conduct striking and reprehensible to a high degree which warrants removal of the student from the school despite damage that would result to that student
- ❖ Schools may have a general policy towards alcohol and drugs, but cases of alcohol and drug use must not be resolved automatically in accordance with such policy.
- ❖ Board and principals must consider all circumstances no matter how troublesome.
- ❖ Even where "gross misconduct" and harmful or dangerous examples have been found to exist principals must not suspend automatically.
- ❖ These statutory approaches are for the protection of children. They are not to be sacrificed to administrative or disciplinary efficiency or some supposed need for absolute certainty.
- ❖ Results must not be fixed. They must be fair. (p.35)

There were occasions in the perusal of the book when more detail on relevant statutory provisions would have been of use to this non-New Zealand reviewer. However, given the target audience of busy decision-makers in education such brevity is inevitable; and, as the authors themselves note, there is no substitute for reading the full cases or seeking expert opinion.

Schools Go to Court seeks “to inform and guide busy education managers who wish to avoid complaints to outside agencies and the prospect of expensive litigation.”
(vi) The authors have succeeded admirably in this aim.

Endnotes

1. Rishworth, P.T., (1996) Recent Developments in Education Law in New Zealand. *Australia & New Zealand Journal of Law & Education* vol. 1 no. 1 1996

Derek Cameron
Marist Brothers High School, Brisbane, Australia