SPANZ
SECONDARY PRINCIPALS' ASSOCIATION OF NEW ZEALAND INC.
Professional

President's Comment 6

Sandy Pasley
SPANZ President

4 June 2015

Dear Colleagues

Earlier this year, the news was full of the St. Bede's College rowing team and the misbehaviour of two of the students in the squad. From all accounts, all the rowing students signed to abide by a code of behaviour and knew the consequences that any inappropriate action would mean they were sent home.

To interfere with airport security and be on the conveyor belt was certainly a serious misdemeanour. If they had injured themselves, which was a risk, the school would no doubt have been censured for not looking after student safety.

Sport is a co-curricular activity and outside the academic education that schools are obliged to provide. Schools want to provide many different sporting and cultural opportunities to fully develop each student. It is a privilege and not a right that students have these co-curricular opportunities. St. Bede's was well within their rights insisting that students behave appropriately and if they could not, that the privilege be withdrawn.

I find it extraordinary that the parents of the two boys did not support the school when their sons behaved badly. Schools rely on support from parents to make sure students learn they have to take responsibility for their actions. Students will not learn valuable lessons if parents continue to excuse them and protect them against the consequences of their actions.

SPANZ Executive and lawyer, Patrick Walsh, is working with the Ministry of Education so that schools can have good advice when in situations such as St Bede's College found themselves in. His comments on the legal aspects are given below.

Courts at Risk of Undermining School Autonomy and Discipline

A series of decisions by the courts in recent times but in particular, the St Bede's College Case, Kennedy v Boyle [2015] NZHC 536, are coming dangerously close to undermining the self-managing principle enshrined in the Tomorrows' Schools regime and the autonomy given to Principals to manage schools as they see fit.

Prior to these cases, the judiciary adopted, in my view, a more balanced approach in that they accepted in relation to school discipline, that Boards of Trustees were made up of the elected representatives of the community and therefore had a right to determine by–laws (school rules) for the community. Likewise, it was accepted that principals should be free to manage school discipline, subject to the legal requirements of stand-downs and suspensions.

The jurisprudence on the subject was captured well in the case of Maddever v Umawera School Board of Trustees [1993] 2NZLR 478, which has until recently, stood the test of time. Williams J sensibly said:

"Indeed, even in cases where pupils' rights are concerned, it seems to me, with respect, that there is need for very considerable judicial caution. In the sensitive area of education, there is significant risk that the courts will, in administering judicial review, unwittingly impose their own views on educational issues when they have no special competence for that task and the legislature has made it tolerably clear that such matters are not primarily judicial issues, but rather issues of educational policy for school Boards operating against the broad backdrop of the National Educational Guidelines."

It was unfortunate that not all the relevant case law and arguments were fully explored in the St Bede's case and that the matter did not proceed to a substantive hearing. If it had have, the outcome may have been very different.

As it stands, the decision in my view sends the wrong message to parents. It strongly indicates to them that if their child seriously misbehaves, including 'gross misconduct' and the principal determines to manage this by denying them a right to participate in a sports team or event, then they can turn to the courts to prevent this.

Although the courts have a right to review any decisions by a principal since they are exercising a statutory power, they are now running the risk of micro-managing principals and substituting their views on disciplinary matters usurping the role of principals who under the Education Act 1989, were appointed to determine these very matters.

Principals and Boards recognise the need to make decisions, which are substantively and procedurally fair, particularly if removing a student's right to an education by way of stand-downs or suspension. It is also necessary and desirable that parents have a right to challenge this decision making in court.

Courts however, should be very reluctant and cautious to delve into by-laws and decisions about hair length, personal grooming, uniform and extra-curricular activities, unless there is a serious Bill of Rights or natural justice issue to be determined.

Your SPANZ Executive will be working collaboratively with the Ministry of Education's legal team to determine the best way for schools to respond to recent Court decisions.

Ngā mihi

Sandy Pasley
President