

Education Law

1. INTRODUCTION	1
The rise of "education law"	1
But what exactly is "education law"?	2
The sources of education law	3
The "parallel universe" of education law	4
Scope of this seminar	4
2. LEGAL LITERACY	6
3. AN OVERVIEW OF THE EDUCATION SECTOR	7
4. GUIDING PRINCIPLES IN EDUCATION LAW	9
1. School attendance is the legal right of students	9
2. Students have the <i>obligation</i> to be enrolled at a school	9
3. A school must have certain powers to discharge their responsibility	10
4. The responsibility is to all students	11
5. School power must be exercised for the purposes for which it is granted	11
6. Student rights are not always the same as adult rights	11
7. Boards of trustees and principals run state schools, not the courts: the politics of "deference"	13
8. Courts, however, are there to ensure that the rights of students and parents are properly observed	15
Reconciling principles 7 and 8	15
Not everything that is lawful is a good idea	15
5. SCHOOL GOVERNANCE	17
Principal/Board of trustee relationship	17
Theme 1	18
Theme 2	18
Theme 3	19
School charters	21
"In loco parentis"	21
6. ENROLMENT SCHEMES	24
Backgrounds	24
7. SUSPENSIONS AND EXPULSIONS	27
Education Amendment Act (No 2) 1998	30
Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999	36
Errors in suspensions	40
8. JUDICIAL REVIEW OF SCHOOLS' DISCIPLINARY DECISIONS	42
9. THE EXTENT OF SCHOOL RULE-MAKING POWERS: FREEDOM OF EXPRESSION AND DRESS AND APPEARANCE RULES IN SCHOOL	52
Introduction	52
School rule-making power	52
By-laws and general "control and management"	53
The Bill of Rights dimension	53
How freedom of expression issues arise in schools	53

General principles about freedom of expression	54
<i>What is freedom of expression?</i>	54
But freedom of expression is not absolute	55
Determining reasonableness	56
<i>The Human Rights Act 1993</i>	59
Specific issues	59
<i>Student expression of ideas</i>	59
<i>Lewd or suggestive expression</i>	60
<i>Harassing or demeaning expression</i>	61
<i>Student clubs</i>	62
<i>School library decisions</i>	62
<i>School uniforms</i>	63
<i>Religious expression and exemptions from uniform codes</i>	63
<i>Dress codes other than compulsory uniforms</i>	63
<i>Tongue studs and body piercing</i>	64
10. SEARCH AND SEIZURE IN PUBLIC SCHOOLS	65
Introduction	65
The circumstances in which school powers of search will be tested	65
No New Zealand legal authorities	66
The starting point: Is there a source of power to search students and their property?	66
<i>The "no search power" view</i>	66
<i>The "implied power" view</i>	67
The case for an implicit power of search and seizure in the Education Act 1989	67
<i>United States of America</i>	68
<i>Canada</i>	69
<i>The New Zealand context: Can a power of search be said to be implied in the Education Act 1989?</i>	69
The effect of the Bill of Rights on school search powers	74
<i>First, is there a "search" at all?</i>	74
Assessing reasonableness of a search	76
<i>Is the search justified at its inception?</i>	76
<i>The ground for a search is suspicion or "articulable cause"</i>	77
<i>Suspicion must generally be individualised</i>	79
<i>Conclusion of grounds to commence search</i>	80
<i>Reasonableness in the procedure and scope of the search</i>	80
<i>Search of a person</i>	81
<i>Searches of bags</i>	82
<i>Lockers and desks</i>	82
The mechanics of searching	82
The involvement of the police	83
Drug testing in schools	83
<i>The 1997 proposals</i>	83
<i>Is a drug test a search?</i>	84

<i>Applicable law</i>	84
<i>The USA position</i>	85
The Privacy Act 1993 and its application to school searches	88
<i>Principal 1: Purpose of collection</i>	88
<i>Principle 2</i>	88
<i>Principle 3</i>	89
<i>Principle 4</i>	89
<i>Other rights of students affected by disciplinary procedures</i>	90
<i>Detention</i>	90
<i>Cruel degrading or disproportionately severe treatment or punishment</i>	91
<i>Rights against self-incrimination</i>	92
<i>The right to natural justice</i>	92
<i>The need for a school policy on searches</i>	92
<i>Conclusion and summary</i>	93
11. EMPLOYMENT ISSUES	95
Legislative framework	96
School charters	96
State Sector Act 1988	97
Employment Contracts Act 1991	98
Significant cases	98
Dismissal from educational institutions	99
Substantive and procedural fairness	100
<i>Implications for schools</i>	101
Summary dismissal	102
<i>Summary</i>	106
12. THE HUMAN RIGHTS ACT AND DISCRIMINATION	108
Introduction	108
The grounds of prohibited discrimination	108
The application of the Human Rights Act to state schools	109
Relationship of the Bill of Rights to the Human Rights Act	111
The Human Rights Act in education	113
The Human Rights Act in operation in schools	114
<i>"Political opinion" discrimination and the "direct resourcing" dispute</i>	114
<i>The social studies curriculum and racial discrimination</i>	116
<i>School uniforms and appearance rules as discrimination</i>	117
<i>The Muslim and the school uniform rule</i>	118
<i>The Maori dimension in education and the use of the Human Rights Act</i>	120
<i>School enrolment schemes and discrimination</i>	121
<i>Harassment issues</i>	123
<i>Peer harassment</i>	124
<i>Affirmative action</i>	125
<i>Gendered reassignment of pupils to new class</i>	126
<i>Special education issues</i>	126
<i>Religious issues</i>	128

<i>Matters that are sometimes said to be Human Rights Act issues but are not, really</i>	130
<i>School ball and same sex partners</i>	130
<i>General comments</i>	130
<i>Procedural matters</i>	131
Sexual harassment (homosexual orientation) - education	132
13. EDUCATION AND THE PRIVACY ACT 1993	135
Introduction	135
<i>Principle 1: Purpose of collection of personal information</i>	135
<i>Principal 3: Collection of information from subject</i>	135
<i>Principle 4: Manner of collection of personal information</i>	136
<i>Principle 5: Storage and security of personal information</i>	136
<i>Principal 6: Access to personal information</i>	136
<i>Principle 8: Accuracy of personal information to be checked before use</i>	137
Privacy officers	137
Privacy cases before the Ombudsman and Privacy Commissioner	137
14. THE HEALTH AND SAFETY IN EMPLOYMENT ACT 1992	139
Introduction	139
Health and safety issues	139
<i>Workshop technology</i>	139
Students as "significant hazards"	140
Communicable diseases	140
15. EDUCATION AND THE COPYRIGHT ACT 1994	141
Introduction	141
APPENDIX - Ministry of Education, "New Zealand Schools - a report on the compulsory school sector in New Zealand", Appendix II	145
REFERENCES	151