

**Summary of the discussion following presentation
of the papers at the Legal Research Foundation seminar
on 19 March 1996**

Comments were made from the floor and from the panel (Messrs John Grant, Principal of Tamaki College, John Hannan, an Auckland lawyer who acts for school boards, Ann Dunphy, Principal of Penrose High School, Claire Trainor of Youth Law Project and Marie Sullivan, New Zealand Children & Young Persons Service).

Most of the discussion centred on the proposal to institute School Community Conferences [SCCs] for suspensions and expulsions.

There was a strong plea from a number of people for extra resources to be able to handle the extra work involved. On the other hand it was accepted that there would be some compensating resource savings within the education system as a whole where the procedure is successful. Justice Robertson referred to the high cost of imprisonment as another balancing factor.

Some schools are already applying an FGC-type process. Kaipara College has had 10 already this year and are near the point of exhaustion. However nine of those have been successful. Ann Dunphy of Penrose High School agreed about the time demands but said they had been allocated a social worker as part of a pilot project and this had been invaluable. She referred to a grave social problem involving at-risk families in a situation of acute social breakdown.

Sometimes the resources in the community are already over-stretched, as the Trustee from Kaipara College mentioned in relation to CADS (Community Alcohol and Drug Services).

John Grant from Tamaki College, which has adopted this type of process, stated that the FGC approach was overwhelmingly better than any alternatives, but he raised two caveats

- (i) if the student's family is unwilling to confront the problem, it is unlikely to succeed; this is true in a small number of cases; and
- (ii) youth support services require urgent overhaul to deal with the highly fragmented nature of those services. At present up to 10 agencies can be involved in the family support process.

Mr Grant also pointed out, in relation to the time demands, that there is no necessity for Board members to be involved if there is no question of the student being put out of the school. Judge McElrea pointed out also that only one or two Board members are involved in his proposed SCCs.

A speaker from New Lynn Primary School said that they did not regard suspension as an

option, but she asked why some police regard FGCs as a farce. Judge McElrea did not think these were likely to be Youth Aid police, ie those who actually attend FGCs, as they were very supportive of the process, and said that some front line officers did not seem to be aware of the ability of the Youth Court to convict and transfer repeat offenders into the District Court.

For students who have been suspended indefinitely, it was suggested by a Community Law Office worker that an independent review panel would be beneficial. Mr Hannan commented that such students in his experience usually did not try to get back into the school that suspended them.

Dr Harrison, in his address, had noted that the Act did not allow a Board to extend an indefinite suspension of a principal indefinitely – it must be for a defined period. (Some schools are apparently not complying with this requirement). Claire Trainor of Youth Law Office advised that the extensions she had dealt with were commonly until the student's 16th birthday.

Another speaker supported the need for alternative education for at-risk young people, and stressed that publicity given to adverse Education Review Office reports did not take account of the narrow focus of their reviews.

A Ministry spokesperson from Wellington (Mr Ken Rae) referred to a recent Ministry report to the Select Committee which raised issues of natural justice, the level of review, the conflicting roles of a principal, the implication in the term "suspend" that a student's tenure at the school would be resumed at some point, and the need in any future changes to recognise a right of the student to be heard and represented.

There was discussion on the topic of questioning students and whether there was an obligation not to misuse their trust in teachers by gaining admissions to offending behaviour. Paul Rishworth advised that the courts in New Zealand had not considered the question whether a student in those circumstances was "detained", thus triggering the need for advice pursuant to the New Zealand Bill of Rights Act concerning the right to silence, but said that American authorities are to the effect that where the questions relate to the welfare of the school, there is no "detention". Mr Hannan felt it was arguable that where a young person was not told that the enquiries could result in a suspension or expulsion, the courts could hold that there was a breach of natural justice (applying a similar principle from employment law). Dr Harrison did not think that the courts would go that far. Another speaker pointed out that there was no obligation to involve the police even where criminal offending was admitted.

On the school searches question, some panelists indicated general agreement with the view expressed in Paul Rishworth's paper. Claire Trainor of Youth Law Project disagreed. She advised that her view was that the Education Act conferred no powers for searches to be conducted in schools.

In summing up the seminar, Justice Robertson noted that a theme running through the

papers and discussions had been "reasonableness". He observed that in dealing with issues, schools should ensure whenever possible that they do not act hastily. There will usually be room for, and much benefit in, careful consideration and, (if necessary), the taking of advice, before acting.