

May 2010

NZ AREA SCHOOL CONFERENCE (Principals and Staff)

Principals' Advice & Support Limited

PRESENTERS

Barry Dorking and Fiona McMillan



Governance or Management

- **Education Act 1989 (s75)**
Except where the law provides otherwise, the Board has complete discretion to **control** the management of the school as it sees fit.
- **Education Act 1989 (s76)**
Except where the law provides otherwise a principal is the Board's CE in relation to the school's control and management and has complete discretion to **manage** the school's day to day administration as the principal thinks fit subject to the Board's general policy directions.



Governance

A way of ensuring that the school is well run without the Board itself trying to run the school.



Principal as Employee

- Board **controls** the management
- Principal responsible to Board
- Board has responsibilities to Principal:
 - Conduct itself as reasonable employer
 - Employment Law
 - Contract
 - State Sector Act



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Board as Employer

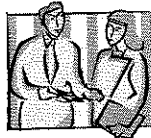
- Must have policies of a reasonable employer
- Can delegate powers to:
 - Trustee (single or group)
 - Principal
 - Person approved by Ministry
- Principal is Board's CEO



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Employment Relationship Problems

- Notify the insurer
- Fixing it yourself:
 - Informal discussion
 - Informal means informal



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Disciplinary Action

- Any formal action you take in response to alleged misconduct by an employee
- Misconduct = breach of obligations
- Performance
 - Can't do it (competency)
 - Won't do it (misconduct)



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Basic Principles

- Honest belief on reasonable grounds that the misconduct has occurred
- An admission is reasonable grounds
- Otherwise to establish reasonable grounds you must investigate the facts
- Proper investigation
- Then take action that a reasonable BOT would take in the circumstances (s103A)



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Proper Investigation

- Proper investigation includes:
 - Advising the employee of the allegations;
 - And of all the evidence supporting the allegations;
 - Making your own enquiries not relying on reports from others (Consultants, ERO); and
 - Not reaching a final decision until all relevant evidence, including the employee's response, is available.



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Meeting the Employee

- Schedule a meeting ensuring that:
 - The employee is aware of the:
 - purpose of the meeting
 - specific allegations
 - possible consequences
 - The employee has time to prepare a response
 - The employee is advised of their right to be represented at the meeting
 - Not for the Board or Principal to contact NZEI



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Meeting the Employee cont.

- Put all the matters in evidence before the employee
- Do not set traps for the employee
- Ask for the employee's version of events
- Adjourn the meeting if the employee requires further opportunity to put his or her case



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Making a decision

- Consider the employee's explanation
- Investigate further if necessary.
- Keep an open mind
- Do not pre-prepare letter of warning / final pay
- Take into account:
 - The employee's past service / work history
 - Any previous disciplinary action
 - Employer fault e.g. lack of supervision / training



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Warnings

Depends on type of misconduct

- Verbal warning
- Written warning (signed by employee)

Warnings expire



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Warnings and Performance

Ensure that the employee understands:

- the required standard of behaviour / performance
- his or her actual behaviour / performance
- the possible consequences of failure to achieve the required standards

Establish:

- remedial action
- method to measure achievement
- time to achieve the required levels (CEA)
- assistance to achieve the required levels
- review date



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Suspension of Employees

- Can suspend during investigation only if it is necessary and on pay
- Employee must have an opportunity to comment
- The rules of procedural fairness apply
- Must be what a reasonable employer would do
- An unjustified suspension can lead to a personal grievance
- Damage limitation: interim suspension



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Dismissal

- Only if:
 - Very serious misconduct; or
 - A final warning making consequences of future similar misconduct clear; and
 - Proper investigation



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Summary Dismissal

- Only behaviour totally destructive of the employment relationship justifies summary dismissal:
 - Assaulting a co-worker or student
 - Theft
 - Danger to others
 - etc



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Dismissal on Notice

- In all other cases you are not entitled to dismiss an employee without notice
- Salary in lieu



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Dismissal of Incapacitated Employees

Basis is "we cannot manage any longer without someone doing your work."

- Decision requires consultation
- Based on proper medical evidence not the employee's own assessment of incapacity
- Cooperation with ACC plan for return to work



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Stress

- Obligation to protect against **unnecessary** stress
 - Cannot protect against inherent stress
 - Need to be pro-active
- Stress itself is not a disease
- It is the symptoms which may incapacitate



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Constructive Dismissal

- Breach by employer
- Resignation foreseeable and a reasonable response to the breach
- During disciplinary process?
- Suggesting an "exit" is a constructive dismissal



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Personal Grievances - Section 103

Personal Grievance means any grievance because of:

- Unjustifiable dismissal
- Unjustifiable disadvantage
- Discrimination / harassment
- Different treatment because of union membership
- Failure to comply with Part 6A (restructuring)

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Section 103A Test of Justification

- Whether a dismissal / action was justifiable must be determined, on an objective basis, by considering whether the employer's actions were what a fair and reasonable employer would have done **in the circumstances at the time** of the dismissal /action



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PG Remedies

- Remedies in relation to personal grievances (s123):
 - Reinstatement (primary remedy)
 - Reimbursement of lost wages
 - Compensation for humiliation, loss of dignity, injury to the feelings
 - Compensation for loss of benefit



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Written Evidence

- All letters
- All internal emails
- All discussions / notes taken of meetings
- Unless they are privileged communications with your legal adviser or they are created solely for the mediation
- So write letters for the judge



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