ANZELA
AUSTRALIA AND NEW ZEALAND EDUCATION LAW ASSOCIATION

ANZELA NZ *Update* October 2018

From the Chair

Kia ora koutou

Welcome to the Spring edition of the ANZELA *Update*. Some 17 ANZELA members have just enjoyed the warm tropical weather at the annual conference in Cairns but they weren't there only for the bird and bat watching, the rainforest, and the snorkelling in the Great Barrier Reef (although they certainly did enjoy those adventures after the conference). The main feature was of course the conference itself and an opportunity to engage in stimulating discussion and, at times, debate, in relation to current issues in education and law.

Amongst the most interesting (and some of the best attended) papers were those by New Zealand presenters: Julia McCook-Weir (Enhancing the status of the teaching profession: from regulatory to professional body); Denise Evans and Kristine Brown (Working with the grain when resolving education disputes: an education law discussion); Fiona McMorran (Employment investigations in the education sector: corrective or restorative?); Kate Shevland and Anna Kenny (Orewa Kahui Ako te Hapori Waihanga (Orewa Community of Learning): building a learning community); Dr Gaye Greenwood (Leading diversity and inclusion: opportunities for unions and employment problem resolution in schools); and Mary Redmayne (Screen-centred schools: the new Wild West). We felt it was a pity that more New Zealand members and schools were not able to hear these speakers and , while the papers themselves will be available to members on the ANZELA website, the chance to discuss the issues with the presenters won't be, so the Chapter committee will be exploring ways we might bring these topics together for a wider home audience in 2019.

A highlight of the conference was the dinner at the new Cairns Aquarium. This was preceded by an hour and a half for a guided or individual tour to explore the wonders of the Great Barrier Reef and the Daintree Rainforest and the creatures who live there. The dinner speaker was Gareth Phillips of Reef Teach, who was a delight – both entertaining and informative.

Special moments at the dinner included acknowledgement of the two New Zealand awardees of ANZELA grants in 2018, Mary Redmayne and Genevieve Brown, and two of the NZ Chapter committee, Jane and Virginia. The latter were particularly moved by the waiata sung by their colleagues when they were presented with certificates of appreciation.

ANZELA is an expanding whanau in New Zealand and we embrace our own culture in every sense of the word. We are very fortunate to have the friendship and fellowship that ANZELA provides for those of us who share a commitment to and enthusiasm for its objectives.

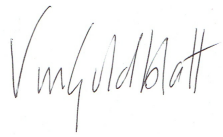
We encourage those of you who are members to be further involved in our activities – whether it is attending the conference, hosting a seminar in your region or serving as a member of the Chapter committee.

The AGM will be on Monday 12 November at 4pm. Please contact Jane (jane.battersby@xtra.co.nz) if you would like to attend or if you would be interested in joining the 2019 committee.

For now

He waka eke noa

Nga mihi



Virginia Goldblatt

Guideline for schools developing a firearms policy

The NZ School Trustees Association and Ministry of Education have developed a policy guideline to assist schools considering allowing firearms in schools in certain circumstances, including firearms safety training, sports shooting club, visits by Police or Defence forces.

The guidelines provide assistance with understanding responsibilities under the Arms Act, Arms Regulations, and Health and Safety at Work Act, drafting the policies and keeping the school community informed of decisions.

A full copy of the guidelines and draft policies can be found at:

http://www.education.govt.nz/assets/Documents/Firearms/Firearms-in-Schools-Guidelines-and-Tool-Kit.pdf

Alan Knowsley, Rainey Collins Lawyers, Wellington

Cavanagh v Cavanagh – a case review

In July 2017 the High Court released a decision[1] that related to a dispute between separated parents over which school their child should attend. A key aspect of the dispute was the extent to which various schools could support the te reo Māori needs of the child. As a result the judgment makes some interesting comments on the approach considering te reo Māori issues in decision-making.

[1] *Cavanagh v Cavanagh* [2017] NZHC 1646 [6 July 2017]. Note that the decision is subject to orders preventing the publication of names or other identifying information. The current article references the anonymised, published version of the judgment.

The background facts are that Mr and Ms Cavanagh's relationship had broken down. Ms Cavanagh is of Tainui and Ngā Puhi descent, while Mr Cavanagh is Pākehā. They have a daughter, Olivia.

When the relationship initially broke down, Ms and Mr Cavanagh reached an agreement that Olivia would attend pre-school at kōhanga reo – a te reo Māori immersion setting.

The relationship between Mr and Ms Cavanagh worsened. Unfortunately this occurs during the period when Olivia is transitioning from pre-school to a primary school. It appears there was an initial agreement that Olivia would attend a Roman Catholic girls' school, however, at the last minute Ms Cavanagh enrolled Olivia in a total immersion kura kaupapa school.

This results in further tensions, and various allegations fly between the parents. The issue comes before the Family Court a number of times. Various proposals for schools are canvased during this process; though positions do seem to be entrenched, the nature of the engagement by some parties is not as helpful as it might be. The result is a judgment in the Family Court that Olivia should attend a second Roman Catholic school – "St P" – mainly because this school has the highest educational achievement and least travel time of the various options on the table at that point.

That decision, and various steps in the Family Court's processes before it, are appealed to the High Court by Ms Cavanagh.

By this point there are now three options on the table. A total immersion kura kaupapa – "Te K" – is preferred by Ms Cavanagh. Mr Cavanagh prefers St P, and there is a school with a bilingual unit – "NC" – now also in the mix. NC is seen by Mr Cavanagh as a compromise, while Ms Cavanagh had originally suggested this option but has since changed her position and now sees Te K as the only option.

The question for the Court then essentially turns on the significance given to te reo Māori, as a element of Olivia's cultural identity, in considering what is in Olivia's best interests.

Interestingly the Court places that consideration in the wider context of the new Te Ture mō Te Reo Māori 2016/Māori Language Act 2016.

That Act, as part of significant changes from the previous Māori Language Act, contains a number of strongly worded acknowledgements of the place and importance of te reo in New Zealand. It also includes, in section 9, some requirement on "departments of State" to be guided by a need to deliver their services in te reo Māori.

While this particular requirement doesn't extend to the Court's consideration here, the interesting point to note is the way the new Act is used as a lever by counsel for Ms Cavanagh to argue for recognition of the importance of te reo Māori and the general acceptance by the Court that the Act has set a new context for decision-making. It will be interesting to see how this change in context plays out in settings other than the Family Court – for example, the public law implications of the new Act and whether this impacts on decision-making by government departments.

Returning to this particular case though, ultimately the Court decided on "NC" – the bilingual option.

That decision is one that is very much a compromise. It is no party's preferred option. An important factor here is the extent to which Mr Cavanagh would be excluded from Olivia's education were she to attend a total immersion school.

It is a little discomforting that the trade-off for Mr Cavanagh's involvement in Olivia's education is potentially some of Olivia's te reo fluency. But, ultimately, in this instance, what that compromise does reflect is ability for Olivia to connect with both sides of her whakapapa, Māori and Pākeha, and the overriding benefit of having both parents fully engaged in her education.

But there is something about the discomfort of that trade-off that resonates with the place of te reo generally in Aotearoa/New Zealand. This is a sense that a resurgence of te reo is still tied to a need for Māori speakers to be the ones to adapt to accommodate the wider culture of non Māori speakers.

However, there is a flavour in this judgment that the tide is changing, and increasingly the expectation is that wider New Zealand society should adapt to accommodate te reo Māori. That sense comes from the Court's noting of the wider context the new Te Tūre mō Te Reo Māori 2016 creates. It comes from the judge's surprise that not all schools today offer te reo Māori. And it comes from the closing comments from the bench about the importance of ensuring the legal system is adequately providing for the needs of Māori – such as by being able to appoint an appropriate lawyer for a child who's preferred language is te reo Māori. There might be still be a long way to go, but that these issues are simply being seen is a start.

Baden Vertongen, barrister and solicitor, Wellington

Case notes

Teacher disciplined for tripping student …
The Teachers' Disciplinary Tribunal has censured a teacher and required him to show any prospective employers the decision of the Tribunal for three years after an incident where a teacher intentionally tripped a student.

The teacher had worked at a school providing specialist education for students with complex emotional and behavioural needs for 18 years. The incident which led to the disciplinary hearing involved a student who told the teacher he was going to abscond from the classroom. As the student moved past the teacher, the teacher deliberately put out his foot and tripped the student. The teacher's explanation was that he did not intend to trip the student but was attempting to step across the student so that he may perform a restraint hold on the student.

The Disciplinary Tribunal did not accept that explanation and found that the use of a restraint on the student was not justified, as absconding was not a situation which required restraint, because there was no immediate threat of inevitable or imminent harm to the student.

Teacher wins $98,000 compensation …
The Employment Relations Authority has upheld a constructive dismissal claim brought by a kindergarten teacher. The teacher had raised allegations of bullying against her manager and was placed on leave during the investigation. The investigation by the employer did not uphold any of the teacher's complaints of bullying. Instead a letter to the teacher told her that, if she was to return to work, she had to agree to a return to work plan and that that would be in full and final settlement of any complaints she had about her treatment by the kindergarten manager.

The ERA held that treating her refusal to return to work, under those terms, as a resignation was an unjustified dismissal. The ERA awarded $15,000 compensation for humiliation and $83,000 in unpaid wages for the 17 months she was out of work.

Failure to report convictions …

The Disciplinary Tribunal has censured a teacher following a second failure to report a drink driving conviction to the Education Council. The first drink driving conviction was in 2007 and at the time the teacher was reminded of her obligation to report any convictions.

The teacher was again convicted of drink driving in 2016 and failed to report the matter to the Education Council again. The teacher had driven after drinking two bottles of wine. The teacher's driving was sufficiently dangerous to have caught the attention of members of the public.

The Disciplinary Tribunal decided that it could deal with the matter by way of a censure and requiring the teacher to notify any prospective employer of her conviction and the Tribunal's decision because of the long gap between the two offences and that there was no evidence that the teacher had an ongoing problem with alcohol.

Fraud convictions see teacher deregistered …

The Teachers Disciplinary Tribunal has censured and cancelled the registration of a teacher who failed to report convictions to the Education Council. The teacher was convicted of five offences of dishonesty. This was for not advising the Ministry of Social Development that she was working and earning money when she was receiving a benefit. The teacher failed to report those convictions to the Education Council.

The Disciplinary Tribunal decided that the convictions and the failure to report adversely reflected on the teacher's fitness to teach and, when coupled with 11 further dishonesty offences in her prior history, meant that she could not be trusted to maintain professional standards and to teach and model positive values to her students.

Teacher deregistered for drink-driving offences …

The Disciplinary Tribunal has deregistered a teacher after her fourth drink-driving conviction. The teacher was convicted of drink driving in December 2016 and during an investigation into this conviction, it transpired that she had received two more convictions, for drink-driving and driving while disqualified.

The teacher had previously been convicted for drink-driving on two other occasions.

Given her history of repeated convictions for drink-driving and other driving offences, and that the teacher was managing family stress with alcohol the Disciplinary Tribunal considered that the teacher did not have insight into her alcohol dependency. The Tribunal cancelled her registration.

Alan Knowsley, Rainey Collins Lawyers, Wellington – editor of the NZ ANZELA Update