

Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.

School Related Law: Do principals know what they need to know?

A report presented in partial fulfilment of the requirements for the degree of

Master of Educational Administration

at Massey University

David J. Wardle B.Ed

2006



VVA 4

Table of Contents

Abstract.....	i
Statement of Original Authorship.....	iv
Acknowledgements.....	v
Glossary of Abbreviations.....	vi

Chapter One: Introduction

1.1 The Research Problem and Questions.....	1
---	---

Chapter Two: The Literature Review

2.1 Rationale, Background and Significance of the Research.....	3
2.2 The Importance and Implications of the Research.....	7

Chapter Three: An Account of the Investigation

3.1 The Research Strategy.....	10
3.2 Choosing the Participants.....	11
3.3 Description of the Participants.....	12
3.4 The Data Gathering Method.....	16
3.5 Questionnaire and Interview Design.....	17
3.6 Administration of the Interviews.....	18
3.7 Analysis of the Data.....	19
3.8 Ethical Considerations.....	19

Chapter Four: The Case Studies

4.1 Case Study 1 – Principal 1.....	21
4.2 Case Study 2 – Principal 2.....	32
4.3 Case Study 3 – Principal 3.....	44
4.4 Case Study 4 – Principal 4.....	59
4.5 Case Study 5 – Principal 5.....	71
4.6 Case Study 6 – Principal 6.....	80

Chapter Five: Discussion of the Data - Emerging Themes

5.1	Research Question 1: What levels of legal literacy are evident amongst a cross section of New Zealand Principals?.....	90
5.2	Research Question 2: Where do principals gain their knowledge of school-related law from?.....	98
5.3	Research Question 3: What legal risk management policies and practices have these principals implemented and to what extent have they been able to determine or test their effectiveness in meeting the school’s legal obligations and in providing protection from litigation?.....	109
5.4	Research Question 4: How far are these principals able to determine when issues they are dealing with need professional legal advice?.....	112
5.5	Research Question 5: What suggestions did the principals have for improving the current situation?.....	115

Chapter Six: Conclusion and Implications

6.1	The Research Findings.....	118
6.2	Conclusions.....	120
6.3	Implications for Research and Practice.....	120

References.....	123
------------------------	------------

Appendices.....	127
------------------------	------------

Glossary of Abbreviations

A.C.C	Accident Compensation Corporation
A.S.T.U	Advanced Studies in Teaching Units
B.O.T	Board of Trustees
C.Y.F.S	Child, Youth and Family Service
E.R.O	Education Review Office
H.E.C	Human Ethics Committee
M.O.E	Ministry of Education
N.A.Gs	National Administration Guidelines
N.E.Gs	National Education Guidelines
N.Z.A.R.E	New Zealand Association for Research in Education
N.Z.E.I	New Zealand Educational Institute
N.Z.P.F	New Zealand Principals' Federation
N.Z.P.L.C	New Zealand Principals' Leadership Centre
S.P.I.N.Z	Successful Practice in New Zealand Schools
S.T.A	School Trustees Association
T.T.C	Trained Teachers Certificate

Chapter One - Introduction

1.1 The Research Problem and Questions

In a complex educational environment and in a society increasingly willing to resort to litigation in an attempt to solve problems, primary school principals in New Zealand are facing increasing risk of legal action being taken against them. (Walsh, 1997:2) While school leaders face many legal pitfalls with the potential cost of being ill-informed high both in financial and emotional terms, (Walsh, 1997: vi, Cuncannon and Dorking, March 2002:5) knowledge of the law should help principals fulfil their legal obligations and avoid litigation.

In an Australian study of government school principals' knowledge of the law, Stewart (1996:111) concludes that principals have a minimal knowledge of the laws they are required to manage. While there are no comparable studies in New Zealand, Rishworth and Walsh (1999:6) point out that it is likely that the situation described by Stewart is 'mirrored here'.

To counter this problem Stewart advocates that principals develop an understanding of areas of the law that impact on schools including legislation, common law, criminal law and grievance procedures, sufficient enough to enable them to implement preventative legal risk management policies and practices in their schools, with the dual aim of protecting the school from the risk of legal claim and helping to ensure that legal obligations are complied with. (Stewart, 1999 p.33) Furthermore he argues that principals need to be conversant with sufficient law to recognise whether a problem which has arisen is one which professional legal advice should be sought or not. (Stewart, 1996:111, Sungaila, 1988: xi)

This research is a small-scale exploratory study involving six New Zealand primary school principals. Its aim was to determine if there are grounds to conclude that overseas experience with regard to legal literacy is indeed mirrored here as Rishworth and Walsh contend. In particular the study asked the following questions:

1. What levels of legal literacy are evident amongst a cross section of New Zealand principals?
2. Where do these principals gain their knowledge of school-related law from?

3. What legal risk management policies and practices have these principals implemented and to what extent have they been able to determine or test their effectiveness in meeting the school's legal obligations and in providing protection from litigation?
4. How far are these principals able to determine when issues they are dealing with need professional legal advice?
5. What suggestions did the principals have for improving the current situation?

Finally the study proposed recommendations for future professional education in legal literacy which arose from this information.

Chapter Two: The Literature Review

2.1 Rationale, Background and Significance of the Proposed Research

During the past decade there has been an increase in the involvement of New Zealand schools with the law to the point that it is now evident that school leadership is involved with a large body of statute law. (Walsh, 1997: 1) The Handbook of Contractual Obligations and Undertakings, published by the Education Review Office, lists twenty nine statutes and regulations affecting schools. Walsh (1997:2) lists thirty three. Schools are also subject to common and criminal law and there is now considerable case law in education of which, Walsh argues, school managers should be aware. (ibid, p.3) Paralleling this has been the growth in the creation of governmental agencies with jurisdiction in schools, a greater awareness of parent and student rights, a more litigious attitude by those in the education sector, and a growing demand in society for greater accountability in the public sector generally. (Walsh, 1997:2, Cuncannon and Dorking, June 2002:16)

Rishworth and Walsh (1999:6, after Stewart 1996) argue that the importance of the law in education has developed to the point where legal literacy for principals is a core professional requirement. They define Legal literacy as involving sufficient awareness of legal issues and concepts to recognise a legal problem, and to recognise the occasions for seeking professional advice. (Rishworth, Walsh and Hannan, 2001:8) Legal risk management, they state, flows from legal literacy and is about developing policies and practices that protect individuals and organisations from the risk of legal claims.

However, Walsh (1997:1) contends that a great number of managers are unaware of their legal obligations and duties. He reports a rapid rise in litigation involving schools in recent years with the associated costs in financial and personal terms, and despite a growing body of case law many schools are repeating the same errors made in previous cases.

It is interesting to note that the Education Review Office (2003:1) reports a high level of compliance with legal requirements by schools. From information aggregated from the board assurance statements and self-audit checklists of 125 schools between October 2002 and April 2003 ERO claims an average 86 percent positive response to the legal compliance questions sent to schools. However, ERO's data gathering

methodology assumes that principals and boards are in a position to accurately report the state of legal compliance in their schools. If Walsh is correct in his assertions, then the accuracy of this information could be questioned. Alternatively one could conclude that overseas experience is not mirrored in this country as Rishworth and Walsh (1996:6) contend. Perhaps the period of feverish policy writing immediately following the introduction of 'Tomorrow's Schools' has created a successful preventative risk management environment.

Schools in the United States are heavily involved with, and considerably influenced by, a wide range of legal matters. (Stewart, 1996:112) Indeed, the American school system is claimed to be in a state of hyper lexis. (Manning, 1976, cited in Stewart, 1996:112) That is, it is legalised to such a degree that legalism has become an obstacle to quality schooling. Given this, one could reasonably expect that school administrators would be able to demonstrate a sound awareness of the law. However, 'innumerable studies' conclude that instead, there is a general lack of knowledge of school law among administrators. Indeed 'ignorance of school law prevails'. (Pell 1994, cited in Stewart 1996:114. See also Broussard, 1979, Hillman, 1988, Davidson, 2001, Kallio, 2002)

In Australia commentators have noted that while there has been a 300 % increase over the last decade in judicial decisions and statute law impacting on school leadership and management, there has not been much research done to determine schools involvement with legal matters. (Stewart, 1996: 115) Douglas Stewart's research that was carried out in 1996 in an attempt to rectify the situation found that Australian principals, like their American counterparts, have the potential to be involved with a considerable body of statute, common and criminal law, (ibid, p.126) and concludes that they too have a minimal level of knowledge of the law they are required to manage. Stewart goes on to argue that because school principals are being increasingly involved with matters of law which can be both complex and constantly changing, intuition and practical school-based experience can no longer be relied on to aid the implementation and maintenance of adequate preventative legal risk management practices. While he states that law degrees are unnecessary school principals do need:

'an understanding of the areas of the law that impact on schools including legislation, common law, criminal law and grievance procedures. Moreover, this knowledge should be sufficient for principals to be able to implement

preventative legal risk management procedures in their schools'. (Stewart, 1996:126).

In his discussion Stewart touches on a consequence of 'legal illiteracy'. While he warns that most educators have a lack of knowledge of school law he also points out that what knowledge they do have is often distorted, inaccurate or based on misinformation. (ibid, p.122) Tronc (2004:36), a Queensland Supreme Court barrister, argues that this leads to 'law suit paranoia', where 'bush-lawyer' misinformation, passed along the education grapevine, has led many principals to undertake what he describes as unprofessional and immoral actions in the name of legal risk management. Similar conclusions are drawn by Zehr (1999:3) in a study of how a climate of litigation is affecting American schools. Legal literacy concludes Stewart, should also be sufficient to dispel the tendency of principals 'to harbour unreasonable doomsday perceptions concerning their personal liability for all legal matters that arise in a school'. (Stewart, 1996:126)

The question to ask here perhaps concerns the level of legal literacy that Stewart has in mind. In other words what level of legal knowledge in practical terms is sufficient enough to enable principals to effectively carry out their duties? This is a question particularly relevant for those designing pre-service and in-service courses involving a legal component.

Fischer (1991:xix), writing about school law for educational counsellors, contends that people who work in schools cannot hope to keep abreast of all relevant laws and regulations. If they did, she argues, they could not possibly carry out their professional duties and keep up with other developments in the field. The same could be said for school principals. Not only are they dealing with legal matters but they must also be well informed about current curriculum issues, government policy changes, property and financial matters. Instead, Fischer (1991: xix) argues that people working in schools must understand the legal principles controlling the issues and processes used to resolve conflict and to know when to seek the advice of lawyers. In a similar vein Cuncannon and Dorking (March, 2002: 5) argue that while there will never be a school where there are no problems, schools can work to create an environment in which all levels of conflict are worked through in a manner which is conducive to productive solutions and lasting resolutions. An important step in this process, they argue, is for school leaders, boards of trustees and staff, and ultimately

parents and students to have an understanding of the legal principles that can have a profound affect on their rights and obligations. They discuss three legal principles – legality, reasonableness and natural justice, and the process of judicial review. Understanding the principles by which schools are judged, they argue, ‘could help prevent an acrimonious dispute and the necessity for the intervention of the courts or ombudsman.’ (ibid, p. 5)

Like Stewart, Walsh advocates knowledge of school law. His solution has been to provide pertinent case study material in two books designed to aid decision making by allowing principals to apply the results of court decisions to their own situations. An important point is made by David Stewart in the forward to Walsh’s book ‘Schools Go to Court’. (Walsh, 1999: v) He states that:

‘maintaining an effective school is much more than simply conforming to a range of specified requirements. It involves thinking and acting within the local context and developing ways of working and interacting that may be unique’.

Thus while a school may have a set of legal risk management policies and procedures, they may be of little value if the school leadership do not understand the underlying principles by which they were conceived.

What sort of training then should principals and prospective principals receive?

Broussard (1979) recommends that American administrators receive training in First Amendment rights; Davidson (2001) increased training in special-education law, and Kallio (2002) advocates the ‘shoring up’ of tort-liability law.

Stewart (1996) reports that as of 1996 there were no tertiary level diploma or degree courses in school or education law in Australia. With few exceptions pre-service and in-service law education were confined to brief introductory, awareness raising core or elective units within a Bachelor of Education or Master of Education Administration degree. Nor were there any official requirements for school principals to undertake any academic study in the area of law affecting schools. Not surprisingly then very few principals in Stewart’s study held law related qualifications. Less than 40% had attended an in-service course in school law and most courses attended were of insufficient duration to have made any significant difference to the overall level of legal knowledge for those who did attend. (ibid, p.117) Of the longer courses available most were limited to statute law relating to workplace health and safety and

anti-discrimination. Stewart lists a number of barriers to in-service training ranging from time and workload constraints to a perception that in-service and university courses were not important sources of legal knowledge. (ibid, p.123) Despite this he concludes that principals are more likely both to attend and to benefit from school law related courses which are of an immediate and specialist concern to them (ibid, p.124) and advocates further research into the content, structure and availability of in-service courses in school law. (ibid, p.123)

What then are the sources of principals' knowledge of the law? Stewart reports that most principals in his study drew on reactive rather than preventative processes in acquiring their knowledge. (ibid, p.125) That is, most respondents only learnt about the law from personal experience. More worrying to Stewart is the fact that principals were unable to recognise a legal problem, or potential legal problem, until after the event giving rise to the problem that had occurred. While knowledge of legal matters may be derived from relevant experiences over the length of a principal's service, this is not necessarily so, and what of novitiate principals? Stewart warns that, like their longer serving counterparts, they face the full range of school related legal matters, but have neither the qualifications nor the experience to effectively manage them. (ibid, p.126)

When principals do recognise they have a problem, Stewart reports that Department of Education manuals and advice from staff at regional and head offices were the most frequently cited sources of legal information. This was despite the limited nature of the help available from the manuals and the dissatisfaction expressed with the level of support and speed of response from departmental office personnel. (ibid, p.123) Principal networks, both formal and informal, are also cited as an important source of help.(ibid, p.123) If this is the case then not only do school principals need a knowledge of law relevant to schools so do the staff at head office, the writers of ministry manuals and the administrators of principal professional organisations.

2.2 The Importance and Implications of the Research

If we want principals in our schools to be in a position to make good decisions or seek professional advice when legal problems arise, who have the ability to design and implement effective legal risk management policies and practices, who can

successfully fulfil their legal obligations, or who can even avoid being taken to court, then it is clear from the literature that they must have legal literacy sufficient for the purpose.

Work to establish the level of legal literacy among principals has not been done in New Zealand. (Rishworth and Walsh, 1999:6) The hypothesis is made that the situation here is similar to that in Australia. While this may be a reasonable assumption to make, there are differences in the laws of the two countries particularly in relation to accident compensation which could have a significant effect on the attitude of principals and their perceived need to know more about school related law. Moreover, there are differences in the governance and support structures in both countries. The 'Tomorrows' Schools' reforms, for example, removed an entire layer of education bureaucracy in New Zealand and the support that went with it. (Whitty et al, 1998:32) The devolution of responsibility to the local level in New Zealand has arguably gone further than any other country in the world. (ibid, p.32) As a consequence, it could be argued that knowledge of the law becomes even more crucial and an investigation into the level of legal literacy of New Zealand school principals therefore is warranted.

If principals lack this knowledge then there are clearly some important implications for the principals themselves, for their employing boards and for the various agencies involved in schooling. Stewart would argue that it is not sufficient that principals be left to gain the relevant knowledge from experience alone. Principals in this situation are thrown back on their own resources and what they learn is contingent upon the opportunities and challenges they met in their particular school. (Southworth, 1995:205) Experiential learning by itself may prove costly in financial and emotional terms and has the potential to cause harm, and adversely affect their career if things go wrong.

While it is important that principals themselves reflect on their knowledge and understanding of the law and seek to improve it, other agencies also have some responsibility here. If principals lack sufficient knowledge of school related law then an investigation into the levels of legal literacy among officials of the Ministry of Education and the Education Review Office may be warranted as well since many of these people are also products of the teaching profession. If knowledge is low here then one could reasonably question the ability of such organisations to give useful advice to schools in trouble or even to provide accurate interpretation of the law as it

relates to such things as assessment and reporting and strategic planning. Indeed Flockton (2003:7) argues that principals should learn to work more closely to the seminal sources of the law, stating that:

‘the law as it is stated is not necessarily the same thing as the sometimes curious and often spurious interpretations and embellishments that are packaged for school consumption by those who would have others believe them.’

The failure of principals to understand laws and regulatory frameworks such as the National Education Guidelines as they actually stand, argues Flockton, has led to some ‘cumbersome, crazy, time consuming’ practices. The very efficacy of the self-managing school he contends relies on the board and principal knowing what is really required of their school, as opposed to what someone from somewhere might tell them is required. (ibid, p. 7)

Teacher training institutions and those responsible for first-time principal induction and on-going professional development also need to recognise the importance of education in the law affecting schools. What are the colleges of education, universities and teacher professional bodies offering in this area? Are these institutions meeting the need described by Stewart? Is the first-time principals’ induction programme, recently introduced by the New Zealand Ministry of Education providing relevant courses in the law? A cursory examination of its curriculum delivery documentation (See Eddy and Bennison, 2004:12) would suggest that little is offered and that it needs to widen its scope to include education in the law. Do more experienced principals know what is available for them? These are all important questions worthy of investigation. More important perhaps, is the question - do principals know what they need to know? If they do not then the education community needs to be alerted to the fact and something done about it.

Chapter Three: An Account of the Investigation

The study sought to determine if there are grounds to hypothesise that the overseas experience with regard to legal literacy is similar in New Zealand. To achieve this, a small-scale exploratory study involving six state primary school principals was carried out. While the size and scope of the research was small it was appropriate for a 50 point research project. Furthermore, as a pilot study it could be useful in providing an indication as to whether more comprehensive research is needed and would give an opportunity to develop and hone the questions for later use, especially if a large-scale questionnaire is deemed to be necessary.

3. 1. The Research Strategy

The research strategy chosen for the study was the qualitative, multi-site case study approach. A written questionnaire and semi-structured interview were used as the data gathering methods. The purpose of the research was to determine what knowledge and understandings, views and perceptions the principals had of school related law. While it did not seek to inquire into contextual complexities and connectedness of the principals, their situations and the law, a case study approach linked with the semi-structured interview allowed some of the 'how' and 'why' to emerge. As Yin (1994:4) argues, survey is more suited when the purpose is to ask the 'who', 'what', 'where', 'how many' and 'how much' questions, while case study is better able to describe, understand and explain, or to ask the 'how' and 'why' questions.

While using a qualitative approach has the potential to provide rich and detailed data, and can claim to be 'grounded' in reality, (Denscombe, 2003: 281) it also opens up the study to criticism around issues of a perceived lack of objectivity, reliability and generalisability which means that the findings are arguably more open to doubt than those from well constructed quantitative research (Denscombe, 2003: 281) However no attempt was made to claim that the study is representative or that it generated enough evidence to enable any form of generalisation. (Arksey, 1999:86)

3.2 Choosing the Participants

In the preliminary stages of research or pilot studies such as this study, non-probability sampling is entirely justified. (de Vaus, 2002:90, Wellington, 2000:60)

In this case there was an interest in selecting a variety of principals with particular characteristics without being concerned as to whether each type was represented in its correct proportion. As Wellington (2000:60) states, non-probability sampling is the only real option in small studies anyway.

Purposive sampling is a form of non-probability sampling where cases are judged as typical of some category of cases of interest to the researcher. (de Vaus, 2002:90)

This study sought to select six state-school primary principals using a 'critical case' or 'criterion' purposive sampling strategy (Wellington, 2000:61) – two recent first-time principals, two teaching principals with experience limited to reasonably isolated rural schools, two long serving walking principals from large urban schools. An even mix of female and male principals was considered desirable as was a mix of principals from schools with a range of decile ratings.

This selection enabled some tentative comparisons to be made between principals from:

- large and small schools; and,
- rural and urban schools

It also enabled tentative comparisons to be made between experienced principals and recent first timers who had had access to the First-time Principals Induction programme. (Eddy and Bennison, 2004)

In the case of this study the president of the local principals' association was approached and a list of possible respondents who met the criteria was made. A notice advertising the study was placed on the association's email notice board and initial contact was made by telephone. All respondents agreeing to take part were then sent a detailed letter, consent form and a copy of the questionnaire. Upon receipt of the questionnaire a time was then arranged for the interview.

3.3 Description of the Participants

Six principals were drawn from state primary schools. They included two recent first-time principals (Principal 1 and 2), two long serving walking principals from large urban schools (Principal 3 and 4), and two teaching principals with experience limited mainly to isolated rural schools (Principal 5 and 6). An even mix of female and male principals was selected.

3.3.1 Teaching Service History

This was an experienced group of educational professionals with an average of 23.5 years total teaching service between them. (See Table 3.1) Five had a total teaching service ranging from 17 to 33 years with the youngest principal serving a total of 6.5 years.

Table 3.1. Service History of the Participants

	Sex	Current school size & decile rating	Current school type & location	Service as Scale A teacher	Service as senior teacher AP/DP	Service as Principal	Total Education Service
Principal 1	M	U 3 Decile 9	Rural Full Primary	3.5 yrs	Nil	3 yrs	6.5 yrs
Principal 2	F	U 2 Decile 8	Rural Full Primary	10 yrs	16 yrs	2 yrs	28 yrs
Principal 3	M	U5 Decile 6	Urban Contributing	7 yrs	3.5 yrs	22.5 yrs	33 yrs
Principal 4	F	U 5 Decile 7	Urban Contributing	17 yrs	5 yrs	10 yrs	32 yrs
Principal 5	F	U 3 Decile 7	Isolated Full Primary	12 yrs	Nil	5.5 yrs	17.5 yrs
Principal 6	M	U 3 Decile 8	Rural * Full Primary	5 yrs	7 yrs	12 yrs	24 yrs

Please note: Principal 6 had been in his current school for 2 months. For 12 years he had served as the teaching principal of a small, isolated rural school.

3.3.2 Length of Time Spent as a Classroom Teacher

The average time spent as classroom teachers was 9 years. However there was a wide range across the group (3.5 to 17 years) and an interesting pattern between the male and female participants. Male principals spent a shorter period in the classroom (3.5, 5 and 7 years) before seeking senior positions, while the female principals had spent 10, 12 and 17 years respectively.

3.3.3 Length of Time Spent in Senior Teacher or Assistant Principal / Deputy Principal Positions

It is interesting to note that two participants, a male and a female, became the principals of small rural schools without any experience in 'middle management' as either a senior teacher, assistant principal, deputy principal or any combination of the three. The male became a principal after 3.5 years teaching service and the female after 12 years. Of the remaining four participants, three spent shorter periods in middle management (3.5, 5 and 7 years) while the sixth, a female, spent 16 years.

3.3.4 Length of Time Spent as Principals

The range of experience is quite wide with three principals serving 2, 3 and 5.5 years respectively, two serving 10 and 12 years and one with over 22 years experience. When their service in middle management and principal ship is combined, four of the six principals surveyed had a considerable amount of experience, ranging from 15 to 28 years. In comparison the remaining two were relatively inexperienced.

Four of the participants were teaching principals of small U2 and U3 schools. These principals would have had a classroom teaching component of one or perhaps two days a week with the remainder of their time dedicated to administrative duties. Since the advent of 'Tomorrow's Schools' the amount of administrative time granted to teaching principals has increased markedly as the administrative workload has increased. In turn the amount of time a teaching principal has had to think about and deal with legal issues has also increased. The principals of the larger U4 schools were 'walking principals' with a full-time administrative workload.

3.3.5 Geographical Location, School Type, School Size and Decile Rating

The range of experiences in terms of geographical location, school type, school size and decile rating and was quite varied with a good mix between small, medium-sized and large schools, contributing, intermediate and full primary schools, and urban, rural and isolated schools. The sample however did not include representatives from decile 1, 2 or 10 schools although a number of principals could not recall the decile rating of schools they had served in during earlier periods of their career.

Geographical Location

All principals started their teaching careers as beginning teachers in urban schools. Most continued in urban schools as classroom teachers, and then as senior teachers, A.Ps and or D.Ps. Two principals had had no experience in middle management in either urban or rural schools. Except for Principal 4 all began their principalships in rural or isolated schools. (Note: Principal 4 did not include this information when recording her years as a classroom teacher.)

Table 3.2. Service History - Geographical Location

	Time as a Classroom Teacher		Time in Middle Management		Time as Principal		Total
P 1	Urban	3.5 yrs			Isolated 2 yrs Rural 1 yr		6.5
P 2	Urban Rural	8 yrs 2 yrs	Urban 5 yrs Urban 11 yrs		Rural 2 yrs		28
P 3	Urban	7 yrs	Rural 3.5 yrs		Rural 17 yrs Urban 5.5 yrs		33
P 4	?	17 yrs	Urban 5 yrs		Urban 10 yrs		32
P 5	Urban Rural	6 yrs 6 yrs			Isolated 5.5 yrs		17.5
P 6	Urban	5 yrs	Urban 7 yrs		Isolated 12 yrs Rural 2 mths		24

School Type

All principals had taught in full primary schools during their teaching careers and all but one in contributing schools. Half the group had served in intermediate schools. All principals were serving in full primary schools with only one having been a principal of a contributing school. (Note: Principal 4 did not include this information when recording her years as a classroom teacher.)

Table 3.3. Service History – School Type

	Time as a Classroom Teacher		Time in Middle Management		Time as Principal		Total
P 1	Full primary Intermediate	1.5 yrs 2yrs			Full primary 3yrs		6.5
P 2	Contributing Full primary	7 yrs 3 yrs	Contributing 8yrs Intermediate 8 yrs		Full primary 2 yrs		28
P 3	Contributing Full primary Intermediate	2 yrs 4 yrs 1 yr	Full primary 3.5 yrs		Contributing 10.5 yrs Full primary 12 yrs		33
P 4	?	17 yrs	Contributing 3 yrs Full primary 2 yrs		Full primary 10 yrs		32
P 5	Contributing Full primary	6 yrs 6 yrs			Full primary 5.5 yrs		17.5
P 6	Contributing	5 yrs	Contributing 7 yrs		Full primary 12 yrs		24

School Size

Most principals had had a mix of experiences in small (U1 and 2), medium-sized (U3) and large schools (U4 to 6) during their teaching careers. All but one had had considerable experience in U4 schools which are relatively large schools in New Zealand terms, and three principals have taught in U 5 and U 6 schools. Of those who had had experience in middle management positions all had served in medium to large schools. At the time of writing two principals were serving or had had recent experience in small schools, two in medium-sized schools and two in large schools. (Note: Principal 4 did not include this information when recording her years as a classroom teacher.)

Table 3.4. Service History – School Size

	Time as a Classroom Teacher		Time in Middle Management		Time as Principal		Total
P 1	Medium	1.5 yrs			Medium	3 yrs	6.5
	Large	2 yrs					
P 2	Small	2 yrs	Medium	11 yrs	Small	2 yrs	28
	Medium	3 yrs	Large	5 yrs			
	Large	5 yrs					
P 3	Medium	1.5 yrs	Large	3.5 yrs	Small	12 yrs	33
	Large	5.5 yrs			Large	10.5 yrs	
P 4	?	17 yrs	Large	5 yrs	Large	10 yrs	32
P 5	Small	7 yr			Medium	5.5 yrs	17.5
	Large	5 yrs					
P 6	Large	5 yrs	Large	7 yrs	Small	12 yrs	24
					Medium	2 mths	

Decile Rating

All of the principals were serving in schools in the upper decile band between decile 6 and 9. None had had experiences of decile 1, 2 or 10 schools at any time in their careers. However many of the principals could not recall the decile ranking of schools they had served in during earlier periods. Of those who could, one had spent time at a decile 3 school as a classroom teacher and two others at decile 4 schools in the classroom and or in middle management. This gap in the sample was unfortunate. It may have been useful to compare the legal knowledge of principals in the upper band of schools with those in the lower band since it is not unreasonable to expect that principals in decile 1 or 2 schools could well be dealing with different legal issues than those in decile 10 schools.

Table 3.5. Service History – School Decile Rating

	Time as a Classroom Teacher		Time in Middle Management		Time as Principal		Total
P 1	Decile 5	3.5 yrs			Decile 9	3 yrs	6.5
P 2	Decile?	10 yrs	Decile? 8 yrs Decile 5 8 yrs		Decile 8	2 yrs	28
P 3	Decile? Decile 3	5 yrs 2yrs	Decile 6	3.5 yrs	Decile 6 Decile 7 Decile 9	5.5 yrs 12 yrs 5 yrs	33
P 4	Decile?	17 yrs	Decile? 2 yrs Decile 4 3 yrs		Decile? Decile 7	3 yr 7 yrs	32
P 5	Decile? Decile 9	6 yrs 6 yrs			Decile 7 Decile 9	1.5 yrs 4 yrs	17.5
P 6	Decile 4	5 yrs	Decile 4	7 yrs	Decile 8	12 yrs	24

3.4 The Data Gathering Method

The data was gathered in two stages. Initially a questionnaire, standardised in design so as not to be time consuming and onerous to complete, was used to gather information relating to years of experience, teaching service history, pre-service and in-service qualifications in school related law and the like. Its purpose was to allow the time in the follow-up interview to be used for questions which sought more depth and detail.

The semi-structured interview was chosen for the second stage. The structured interview like the questionnaire is standardised in design to allow for the collection of quantitative data, relatively easy data analysis and to claim a measure of reliability and validity. Each respondent is faced with identical questions and a range of precoded answers. However, in a small-scale study this level of standardisation is not necessarily required and the semi-structured interview is more appropriate. Arksey (1999:82) argues that unstructured interviews are to be avoided since they tend to produce a mass of incompatible data. The semi-structured interview, like its structured counterpart, still retains a clear list of issues to be addressed and questions to be answered, however it provides more flexibility by enabling the interviewee to develop ideas and speak more widely on the issues raised. Subjects can be probed, issues pursued and lines of investigation followed. Consequently the information produced is likely to contain more depth and detail. This was important in this study because a number of questions sought open ended answers and some from Sections C and D were intended to elicit an opinion. Allowing the respondents to develop and

elaborate their own thoughts and ideas were important in this process. Furthermore, the interviewer had the opportunity to frame and re-frame questions so that it became more certain that the participants understand what they are being asked. Interviews generally ensure a high response rate, are relatively easy to arrange, require only simple equipment, and the direct contact at the point of interview means that data can be checked for accuracy and relevance as they are being collected. (Denscombe, 2003:190, Scott and Usher, 1999:109.)

On the other hand data analysis is more difficult. The impact of the interviewer and of the context means that consistency and objectivity are hard to achieve and this can have an adverse affect on reliability. Furthermore the identity of the interviewer can effect the statements the interviewee makes. Data from interviews is based on what people say they do, say they prefer and say they think and cannot automatically be assumed to reflect what they actually do. (Denscombe, 2003:190, Scott and Usher, 1999: 109) In addition to this there can be problems relating to the impact of using recording equipment and to the invasion of privacy by tactless interviewing. (Denscombe, 2003: 190, Scott and Usher, 1999:110) While the semi-structured interview has a number of limitations, in this context it was well suited to the research purpose.

3.5 Questionnaire and Interview Design

The questionnaire was designed to elicit information relating to years of experience, teaching service history, pre-service and in-service qualifications in school related law, pre-service and in-service courses attended in school related law, involvement with principal induction programmes. (These relate to research question 2 – sources of legal literacy.) The questionnaire also included questions relating to research question 1, and in particular awareness of the main legislation affecting schools. (Walsh, 1997)

The interviews followed a one-to-one format using a semi-structured approach. (Denscombe, 2003:167) The interviews were designed and delivered in four parts.

Part A: In this section questions about the role of personal experience, the influence of colleagues and other principals and the barriers to the development of legal knowledge were asked.

Part B: This section asked questions relating to knowledge of school related law. These were grouped into the categories listed below, the rationale being that they are the areas of law which principals are most likely to be involved with.

- Employment Law in Education, Governance and Management, Student Management, Educational Negligence and Duty of Care and Criminal Law in Education.
- Knowledge of the three principles of natural justice. (Cuncannon and Dorking, 2002)

(Part B relates to research question 1 - levels of legal literacy)

The questions were framed as critical incidents and presented as vignettes. Examples from decisions reached in New Zealand courts or semi-judicial bodies such as the Human Rights Commission or Ombudsman were used to 'test' the principals' knowledge of law in these areas.

Part C: Questions in this section related to legal risk management policies and procedures, how the respondents determined their effectiveness, recognised legal problems, and what support systems they used. (Part C relates to research questions 3 and 4.)

Part D: Questions relating to their ideas for making the present situation more effective. (Research question 5)

3.6 Administration of the Interviews

Four of the six interviews were carried out face to face at the principals' schools at a time convenient for them. Two were carried out by telephone. This was done with the two isolated rural principals in an effort to save travel time and expense. Bailey (1987) and Oppenheim (1992) claim that there is a body of research evidence to indicate that the telephone interview is as effective as face-to-face interviewing in eliciting information. Moreover they claim that telephone interviews have a similar rate of respondent willingness to participate as in face-to-face interviewing. Oppenheim (1992) concludes that 'all but the most complex kind of question can be asked successfully over the phone.' (Oppenheim, 1992:98) A major disadvantage associated with telephone interviewing is said to be that respondents may be less motivated than with other interviewing methods. (Bailey, 1987:199). In this study this did not seem to be the case as both respondents were willingly prepared to answer the

questions asked of them. All interviews were recorded on audio-tape and transcripts made.

3.7 Analysis of Data

The interview method characteristically tends to produce non-standard responses. Semi-structured interviews produce data that are not pre-coded and have a relatively open format. (Denscombe, 2003:190) The sample is small enough to allow for a qualitative approach to analysis. (After Denscombe, 2003:272) Interviews were transcribed and checks made on the validity of the data by checking the accuracy of the transcripts with the participants where necessary. Each transcript was then divided into double columns with a summary of the principal's comments made in the right hand column.

The summaries of the transcripts were then combined with the data generated by the questionnaire (See Appendix I: Questionnaire Summary of Responses) and six case studies written, one for each principal. The themes and relationships, commonalities and differences were then identified with the aim of developing a set of generalisations that could explain the themes and relationships in the data.

3.8 Ethical Considerations

Educational researchers should be ethical. In collecting and analysing their data and disseminating their findings they are expected to respect the rights and dignity of those participating in the research project avoid any harm to the participants (and to themselves and their research institution) and operate with honesty and integrity. (Denscombe, 2003:134, Wellington, 2000:54, Punch, 1994:90)

This research involved a group of professional people who would likely find it embarrassing to reveal a perceived deficiency in an aspect of their work. Furthermore they would also face professional embarrassment if any deficiency was to be made public or revealed to their staff, school board members or other researchers. Confidentiality and security of data therefore was a prime concern of the research.

Participants had the right to voluntary participation and informed consent. (NZARE, 2002:1, Massey University H.E.C, 2002:14). A consent process was followed which provided the following information:

- the identity of the researcher;
- the nature of the research including: what the research is investigating, how it is being conducted, and what benefits are likely to emerge from the investigation;
- the expectations about the participants contribution and how much time is likely to be involved;
- the confidentiality and security of the data;
- the code of ethics the researcher will use;
- and, the right to withdraw consent.

This research followed the guidelines as outlined in the 'Code of Ethical Conduct for Research, Teaching and Evaluations Involving Human Participants'. (Massey University H.E.C, 2002) and sought and gained the approval of the University's Ethics committee.

Chapter 4: The Case Studies

4.1 Case Study 1

Principal 1

Principal 1 is a young male in his first year as teaching principal of a U3 Decile 9 rural full primary school fifteen minutes from a rural service town. Before this he had served for two years as the teaching principal of an isolated sole charge (U1) decile 9 school, one and a half years as a Scale A teacher in a U3, decile 5, rural school and two years as a beginning teacher in a U6, decile 5, urban intermediate school. With just over six years in teaching Principal 1 was the study's least experienced participant. He had had no other appointments in education but had been the assistant manager of a hardware retail store for two years. Principal 1 had attended the First Principals' Induction Programme run by the Ministry of Education.

Knowledge of School-related Law

Part B of the Principals' Questionnaire dealt with the issue of the principals' familiarity with school related law. While most principals rated their knowledge as either uncertain or disagreed that they were particularly familiar with school-related law, only becoming more confident when it came to recognising a legal problem and where to seek advice, Principal 1 seemed very confident in all his responses. Indeed he either 'agreed' or 'strongly agreed' with all six statements in the question. (See Table 4.1)

Table 4.1. Principal 1's Rating of His Knowledge of School-related Law.

	Rating
(a) I am familiar with the purpose and contents of most legislation affecting schools.	2
(b) My knowledge of school related law is sufficient for my work as a school principal.	1
(c) I have a good understanding of the principles of natural justice.	1
(d) My Knowledge of school related law is sufficient enough for me to recognise legal problems when they arise.	2
(e) I am confident that I am able to determine when an issue needs professional legal advice.	2
(f) If advice and support on legal issues is needed, I know where to get it.	1

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

When he was asked to rate his familiarity with the 39 pieces of legislation listed by ERO (2004) and Walsh (1997) as being relevant to a greater or lesser degree to the work of school principals, his response generally matched those of the other respondents who claimed that they had 'a very good working knowledge' of the National Curriculum Statements and were 'familiar with purpose and contents' of five or six other high profile pieces of legislation such as the National Education Guidelines (NEGs), the Collective Agreements for staff and the Smoke Free Environments Act.

The Critical Incidents

The test of all this was in Part B of the Principals' Interviews where the respondents were asked to comment on the 'critical incidents' presented in six vignettes. Each incident covered an aspect of school-related law – governance and management, employment issues, student management, educational negligence, duty of care and criminal law. Their responses were then matched with a legal opinion provided by the New Zealand Principals' Leadership Centre's legal website. (NZPLC, 2005, see Appendix I)

Like most respondents Principal 1 was able to correctly identify the issue in Vignette 1 as a 'clear crossing of governance and management'. (Transcript p.5) and outlined an appropriate course of action.

"I would have to certainly do a bit of work too and find out what the bullying issue involved or revolved around and I would certainly be happy to report to the board chair. I certainly wouldn't be letting him have contact with kids in that manner."
(Transcript p.5)

In the second vignette his proposal to release a school report to a non-custodial parent despite the objections of the custodial parent and the pupils concerned seemed to be based on the premise that there were no court imposed restraints against physical access to the children.

“So in that situation if we could verify that it was truly the girl’s father and that there were no custodial issues involved by way of the courts then he actually has access to those girls’ reports. I believe.” (Transcript p.6)

However this case is far more complex than it first appears. Indeed, there are three separate pieces of legislation that need to be weighed together before a decision can be made. Under the Guardianship Act 1968 the father is a ‘legal guardian’ and is entitled to exercise his guardianship which includes access to school reports. The school is also obliged under the Education Act 1989 to provide this sort of information to legal guardians whether or not they are separated or divorced. On the other hand, the Official Information Act affords protection to the privacy of individuals and this is claimed by some secondary-aged students to deny a non-custodial parent access to reports. In this instance Principal 1 did not consider the age of the children in reaching his decision even though it could be argued that for primary-aged children it was probably a reasonable one. Moreover, the issue of custody is quite separate from the ability to withhold information. In other words, even if there had been a custody order restricting access to the children, the father was still entitled to some information about their progress at school.

Vignette 3 dealt with a recently appointed teacher who was unhappy with the results of a performance appraisal and was accusing the principal of ‘having it in for her’.

While Principal 1 came up with some suggestions as to how he might deal with the alleged incompetency, he missed the main issue which centred on finding ways that would allow the school to review that teacher’s appraisal, while safeguarding the principal from accusations of unfair treatment and bias.

The NZPLC website suggests that schools could obtain an expert and impartial second opinion and, with the teacher’s consent, revisit her references and the appraisals provided by her former employers. (NZPLC, 2005)

As he talked the principal also seemed to reveal some confusion as to how he would handle the situation if incompetency was indeed confirmed. While he was concerned that the teacher received help, he seemed unsure about the point at which official competency proceedings should be initiated, suggesting that they should be enacted after some form of support and guidance has been given to address the competency issues first identified.

“...if there was a clear case of the teacher being incompetent the first thing would be that you'd give that teacher the opportunity to deal with the issues that you'd brought up and often add support in those areas.”(Transcript p.7)

In cases of incompetency the NZPLC website strongly counsels schools to seek legal advice at the earliest point. Principals should then carefully follow the provisions of the collective agreement, including advising the teacher of their right to representation and a providing them with a support and guidance programme put in place to help them reach the required standard. (NZPLC, 2005) To his credit Principal 1 was the only respondent who made reference to using an outside agency (the NZEI) as a source of legal advice, although he did not say at what point he would seek that advice.

“Just on that I do know that NZEI are very, very helpful for both parties, although they will go into bat for the teacher. And also from other colleagues ringing me up for advice their response has been that NZEI as the first port of call has been very, very helpful with how to deal with competency issues”. (Transcript p.7)

Principal 1 found the student management question in Vignette 4 a hard one to answer. Like most of the principals, he recognised that ‘you can’t be in a situation where you’ve got teachers or any staff who are unsafe physically or emotionally.’ (p.7) However, he did not weigh this against the right of the child with special needs to an education. Other than state that he would use the support that went with the ODD child and perhaps change the teacher aide working with the child, he was unable to describe the action he would take to resolve the situation in a way that would have enabled the school to meet its legal obligation towards the child and the staff member, or indeed deal with the letter of complaint.

Principal 1 seems to have an awareness of the importance of the duty of care. In Vignette 5 he correctly identified the camp owners as being responsible for the injuries to the boy using a waterslide while at a school camp, but also recognised that there was a responsibility on the part of staff to take all reasonable steps to safeguard the safety of their students. However, his warning that the slide was dangerous and

'out of bounds' probably cannot be regarded as 'taking all reasonable steps'. The NZPLC website advises schools to 'seek remedial action' (NZPLC, 2005), which in this case would have meant insisting that the hazard was removed or physically isolated rather than relying on the children to stay away.

When commenting on the actions of Mrs Hardcastle in Vignette 6, the principal identifies this correctly as behaviour that 'wasn't to continue', although he doesn't explicitly state that it is a breach of the law and the teacher could be charged with assault. He identifies the need to stop the practice and implies the need for professional development or 'further steps' if the behaviour continued. The NZPLC advises that counselling should be offered as well as suggestions for alternative methods of student management. (See Appendix I)

The Principles of Natural Justice

The second part of Section B of the interview asked the respondents to comment on their understanding of the Principles of Natural Justice. These were then compared to a definition provided by the NZPLC website (NZPLC 2005) and by Cuncannon and Dorking (2002).

Principal 1 thought that 'one of the main guiding principles of natural justice would be common sense and are you being fair and equitable to everyone'. (Transcript p.10)

"You've got to put the issue on the other foot. How would I feel to be on the receiving end of this and is everyone getting a fair deal particularly the kids which is what we're here for". (Transcript p.10)

While the basic idea of procedural fairness is indeed a very important aspect of the principles of natural justice, the requirement for an authority to act legally, to make a reasoned and reasonable decision and to make sure for the sake of transparency that the reasons for a decision are made known are also crucial things a principal should know. (Cuncannon and Dorking, 2002). When asked to comment on his understanding of the terms 'legality', 'reasonableness' and 'transparency' Principal 1 came up with a reasonable definition of legality but missed the others.

“I think reasonableness probably comes down to, is it reasonable and fair and equitable to everyone? Legality, I guess that comes down to asking the questions am I working inside the law. And transparency I guess is probably like I mentioned is something that is annotated and open and available to both parties.” (Transcript p.11)

Sources of Legal Knowledge

Pre-service and In-service Qualifications and Training

Principal 1 gained a Diploma of Teaching as a result of his pre-service education and training. According to his recollection, none of these courses touched on issues relating to school-related law. Surprisingly, he rated his course overall as ‘of some use’ in preparing him for the legal aspects of his principal-ship but qualified his statement by adding ‘only as it related to some basic compliance issues’.

Since then Principal 1 had passed two university school management papers as part of study towards a B.Ed degree and was continuing to work towards achieving this goal. Some of this work had involved material which he described as ‘entirely dedicated to legal issues’ and which he rated as ‘useful’, but again qualified his statement by adding that his course ‘is really for teaching but has relevance for my principal role’. He attended the First Principals Induction Programme (Eddy and Bennison, 2004) and chose to attend courses covering ‘a mix of legal issues affecting education and other matters’, describing the course as ‘of some use.’ Principal 1 reported attending short but ‘very useful’ seminars and workshops involving legal issues but ‘mostly to do with financial reporting requirements.’ Overall Principal 1 rated his in-service education in preparing him for the legal aspects of his job as a principal as ‘useful’ despite the fact that it seems reasonably brief and narrow in focus.

The Influence of Personal Experience

When questioned about the role of personal experience in helping him develop knowledge of school-related law Principal 1 replied that he had ‘learnt quite a lot’ about the role rights responsibilities and legal standing of board members from an

incident where a board member had acted outside the authority of the board of trustees.

“And it related to me personally so that has obviously influenced in a minor way how I relate to trustees and what I expect of them and what they expect of me.” (Transcript p.2)

The influence of School Type, Decile Rating and Geographical Location

Principal 1 thought that a school’s decile rating and location would have ‘huge impact’ on one’s knowledge of school related law. He contended that dealing with professional or semi professional trustees and parents, who would have certain expectations of the school and a working knowledge of common law, would influence the sorts of experiences a principal would face.

“I think that being a decile 9 rural school that we are probably drawing from a certain sector of society for our trustees and because of our proximity to town we also have a lot of professional or semi professional people who have a good background working knowledge of common law I would say. So it certainly influences the experiences that you get.” (Transcript p.3)

The Influence of Colleagues and Other Principals

When asked about the extent to which he relied on the experience or comments of colleagues and other principals to gain an understanding of what he should do in situations involving legal issues, he replied that he relied heavily on advice from other principals and other professionals.

“Particularly being a fairly young and reasonably inexperienced principal I’m quite frequently ringing up other principals and colleagues and people for assistance and advice. I do a lot of reading. But I rely quite a lot on colleagues and other professionals”. (Transcript p.3)

Barriers to the Development of Legal Knowledge

One barrier to the development of his knowledge of school-related law in Principal 1’s opinion was the belief that the subject is so vast that a principal cannot know it all.

“I believe you can only deal with so much of it at a time, on an as needed to know basis. Decisions, you try and make them on an informed basis. Whether you try and find appropriate material to read or ask colleagues for advice when things come up. The biggest barrier would be that I don’t believe you can have it all on tap”. (Transcript p.3)

Principal 1 claimed he was not really scared of legal issues. On being personally accused of misconduct and issues relating to staff competency he stated, ‘I wouldn’t call them scary, but they would be the most challenging or the most taxing or the most unwanted events in your school career’. (Transcript p.4)

Professional Sources of Legal Knowledge

Principal 1 rated other principals and principal associations, NZEI field officers and NZEI publications, MOE publications, hard copies of the legislation and the employment contract documents as being ‘very useful’ in the administrative decisions he has taken as a school principal in relation to legal matters.

Table 4.2. Principal 1’s Rating of Professional Sources of Legal Knowledge

Very useful	Useful	Of some use	Of no use
Employment contract documents	First Principals Induction Programme.	College Advisory services	MOE Leadspace website
Hard copies of legislation	In-service courses.	Education media	Principal mentors (First Principals Induction Programme)
MOE publications	MOE officers	ERO officers	
NZEI field officers	MOE publications	NZPF circulars and helpdesk	Uncertain
NZEI publications		Professional periodicals	
Other principals		STA advisors	
Principal Associations		STA publications	ERO publications
		University courses.	Mass media
			NZPLC legal website

He rated the First Principals Induction programme as ‘useful’, but the principal mentors provided as part of the scheme as ‘of no use’. In-service courses and Ministry of Education officers and publications were also rated as ‘useful’.

Legal Risk Management Policies and Practices

Like most of the respondents in the study Principal 1 had a comprehensive array of legal risk management policies and procedures to administer. (See Questionnaire Summary of Responses Appendix I) He did not have personal public liability insurance but said that the school was adequately covered. The principal claimed that 'having a look at what other schools are doing' largely determined what policies had been put in place. However when he was asked to comment on the extent to which policy writing was driven by the requirements of outside organisations rather than by school need he replied "Oh hugely really. A lot of what you do is for compliance reasons really policy wise. I believe that schools are overloaded with policies". (Transcript p.12) He then added that he got advice from people like rural advisors and the STA, and that he kept abreast of updates in the Education Gazette and Ministry circulars, and with compliance issues from the Ministry and ERO.

"There's all sorts of agencies that try and get their spoke in schools in respect of playground safety and swimming pool safety and you've got local bodies involved, you've got ACC involved, like you say you've got ERO and the Ministry involved and then you've got places like... even Plunket wanted to know what you can do for them in your schools. I'm trying to think of others... So many people have their finger in the pie". (Transcript p. 12)

In the questionnaire he claimed he checked the legality of his policies and procedures by using a number of sources including sample policies from the MOE, NZEI and STA, other schools' policies and hard copies of the legislation in the first instance, and then college of education advisors, MOE handbooks, publications and circulars ERO officers and the employment contract documents. But when asked in the interview how he reconciled his school's policies and procedures with the relevant legislation, he stated that 'often you don't know' and then added that 'over a period of time you put your stamp on what you believe is valid'. Policies, he said, came up for their regular cycle of review and were 'ditched' if they no longer had relevance. Agencies like ERO or CYFS advise on if 'you're on the mark or not and you make changes as you go.'

“To have a crystal ball and to know everything that was to come up is just nonsensical really. So it’s evolutionary until someone like ERO or whatever points a big hole at it or, sounds dreadful doesn’t it, sounds like we’ve got big holes everywhere but sometimes you just don’t know what you don’t know”. (Transcript p.13)

Determining When Issues Need Professional Legal Advice

Like the other respondents in the study Principal 1 had found himself in situations involving legal issues where he felt that he needed to seek advice and support. He thought that between 20 to 30 percent of his working week was spent on legally-related matters, far higher than the ‘less than 10%’ claimed by the other principals in the study. He said that this work caused him stress but no more than other administrative tasks and he was uncertain if his present situation was anymore stressful than in previous years. When asked what he thought the general signs that a situation might develop into a legal problem were, he gave three. (1) ‘When someone has already sought legal advice before they come and see you’. (2) By determining the ‘level of resolve’ of a complainant, and (3), ‘whether people are happy with what you have discussed and the compromise reached or whether you’ll need to seek further advice’. The principal then admitted that it was ‘hard to know’ and ‘then that he didn’t know’. (Transcript p.14) When the question was rephrased he stated that if an issue ‘was beyond your field or sphere of professional expertise or knowledge then you’d get help. I’m quite happy to get advice in a heart beat really. Just to ask around’. (Transcript p.14)

Lawyers, other principals and the NZEI had been significant sources of legal advice for Principal 1, rating the first as ‘useful’ and the latter two as ‘very useful. If a problem was to present itself tomorrow he said that he would consult the NZEI over staffing issues and the STA for a ‘complaint about a trustee’.

When asked when he would seek more than one source of advice he replied that he stopped asking questions when he started getting ‘concrete’ answers or some ‘quite definitive advice’. (Transcript p.14) He contended that government agencies like CYFS or the Justice Department and the Police were sources of ‘quite definitive advice’ as opposed to ‘asking colleagues or someone quietly on the side’.

Ideas for Making the Present Situation More Effective

Principal 1 thought that the NZEI Principal's kit on CDRom and the 'Successful Practice in New Zealand Schools' (SPINZ) CDRom were very helpful resources.

"A really good resource that was put out but that hasn't been updated to my knowledge for a while, was put out by NZEI and it was the school principals kit and it was a CDRom that you used to get and it gave you all the relevant acts, employment acts for support staff and teaching staff and it was really, really handy. It gave you something that you could quickly blast up on your computer and find without rifling through millions of files and individual contracts and things". (Transcript p.15)

He suggested a comprehensive resource similar to the above which increased the speed of access to information would be useful.

4.2 Case Study 2

Principal 2

Principal 2 is a middle-aged female with 28 years service. This included three years experience at the beginning of her career in a mix of medium sized urban schools and two years as a Scale A teacher in a small rural school. She then spent ten years as a senior teacher in a large urban contributing school and eleven years as a deputy principal in a medium sized decile 5 urban intermediate school. Her current school, a U2, decile 8, full primary ten minute's drive from a rural service town, is her first position as a teaching principal. She has held this position for two years. Principal 2 had had no educational service outside of the school sector but had attended the First Principals' Induction Programme.

Knowledge of School-related Law

Part B of the Principal's Questionnaire dealt with the issue of each principal's familiarity with school-related law. When answering this section Principal 2 displayed a negative perception of her knowledge of the law and the principles of natural justice. (See Table 4.3.) She was also uncertain that she could recognise a legal problem, or determine when she should seek professional advice. However she 'agreed' that if advice and support on legal issues was needed, she knew where to get it.

Table 4.3. Principal 2's Rating of Her Knowledge of School-related Law.

	Rating
(a) I am familiar with the purpose and contents of most legislation affecting schools.	4
(b) My knowledge of school related law is sufficient for my work as a school principal.	5
(c) I have a good understanding of the principles of natural justice.	4
(d) My Knowledge of school related law is sufficient enough for me to recognise legal problems when they arise.	3
(e) I am confident that I am able to determine when an issue needs professional legal advice.	3
(f) If advice and support on legal issues is needed, I know where to get it.	2

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

When she was asked to rate her familiarity with individual pieces of legislation her response generally matched those of the other respondents. That is, she claimed familiarity with a relatively small number of the 39 statutes, guidelines and regulations listed by the Education Review Office (2004) and Walsh (1997) as being

relevant to the work of school principals. This included a 'very good working knowledge' of the National Curriculum Statements and a 'familiar with the purpose and contents' rating for the National Administration Guidelines (NAGs), the National Education Guidelines (NEGs), the Collective Employment Agreements and the Smoke-free Environments Act. Principal 2 also claimed familiarity with two pieces of animal welfare legislation reflecting perhaps her school's environmental focus and the fact that they were keeping a number of animals as part of their learning programme.

The Critical Incidents

In Part B of the Principals' Interviews the respondents were asked to comment on a number of 'critical incidents' presented as six vignettes. Each incident covered an aspect of school-related law – governance and management, employment issues, student management, educational negligence and duty of care, and criminal law. Their responses were then matched with a legal opinion provided by the New Zealand Principals' Leadership Centre's legal website. (NZPLC, 2005)

In Vignette 1, a case dealing with the separation of governance and management, Principal 2 rightly claimed the responsibility to interview a boy in a case of alleged bullying.

"I would certainly want to see the boy before the chairman did. I would be saying to the chairman, 'No, I will interview if you give me the details.'"(Transcript p.25)

However her proposed course of action did not make it clear that the board chairman's direct intervention was inappropriate or indeed that his involvement in the matter should have ended.

In the second vignette Principal 2 seemed unsure of what to do in a case dealing with a non-custodial parent's request for access to school reports. She thought that the estranged father in the story 'could have been entitled' to the full reports despite the objections of both the custodial parent and the girls concerned.

“In dealing with that you still have to know the legality of the separation and the custody agreement and I mean he may have every right to those reports and if its just the mother saying... then sorry I would be asking the mother to supply me with copies of any legal custody agreement.” (Transcript p.26)

While she deliberated around custodial access and whether or not the parent’s separation was ‘legal’ she missed an important issue to do with the age and maturity of the pupils and their ability to make an independent decision to allow or deny access based on the Official Information Act 1982. (NZPLC, 2005)

Vignette 3 dealt with a recently appointed teacher who was unhappy with the results of a performance appraisal and was accusing the principal of ‘having it in for her’. Principal 2 said she would use the professional standards to measure the teacher’s performance and that she would set up an appraisal in negotiation with the teacher ‘to collect evidence’ to determine whether there was a problem or not.

“It’s all about collecting evidence rather than going in and accusing someone and saying the planning is shocking... I mean it’s because the evidence says it’s shocking.” (Transcript p.27)

However, she did not state how she would protect herself and the school from accusations of unfair treatment or bias which was the central issue of this case. Nor did she say what she would do if the teacher was found to be incompetent.

Vignette 4 dealt with the assault of a teacher’s aide by a child with special needs. Principal 2 had a clear understanding of the school’s responsibility to ‘adapt things’ to meet the needs of the child but seemed less aware of her legal obligation to provide a safe physical and emotional environment for her staff, or indeed of the legal ramifications of failing to do so.

“Yes I mean if the kid has bitten her for the third time something definite has to be done but if it’s a special needs child... I’ve never been a believer in zero tolerance. You get some people who say oh we have zero tolerance if kids do something wrong they’re out. But with special needs and main streaming you have to do things to adapt

things to meet their needs and quite often parents and teachers aides don't see that" (Transcript p.28).

The NZPLC website suggests that principals use a comprehensive three tiered approach to determine whether they done all they can to meet their obligations to both parties in this sort of situation. (NZPLC 2005) In comparison Principal 2's suggestions were rather vague.

"I would try to give the teacher aide a bit of a break if I could rearrange the timetable. But in our situation with only one teacher aide... if this happened I'd be stumped... there would need to be a consequence for the child and the teacher aide could go on a little bit of staff development just to realise that working with these children is difficult and we cannot always apply black and white rules." (Transcript p.28)

Like the other principals in the study Principal 2 had an awareness of the importance of 'duty of care', the central issue of Vignette 5. While she was unable to decide who was to blame for the injuries suffered by a pupil on school camp, she was aware of the need for camp owners to identify and inform users of the hazards and for schools to 'show you've done your best to identify the hot spots and know what you're going to do if it happens'. (Transcript p.29)

Principal 2 was adamant that the teacher's behaviour as outlined in Vignette 6 must stop, even though she stated 'we've all been guilty in the past of grabbing the odd child by the arm or moving them bodily when we shouldn't have.'(Transcript p.30) Although she does not state that it is a breach of the law and the teacher could be charged with assault, she does suggest a course of action which is similar to recommendations found on the NZPLC website. (NZPLC, 2005)

"I would be saying to the teacher 'Look sorry this is... that's it. You cannot do that again.' If they have a problem with that then maybe they need to speak to an NZEI officer or get some counselling. I would be suggesting that they did so that they could get it out of their system and go on some course, teacher effectiveness training or something that they could do that would teach them other ways of disciplining kids." (Transcript p.30)

The Principles of Natural Justice

The second part of Section B of the interview asked the respondents to comment on their understanding of the Principles of Natural Justice. These were then compared to a definition provided by the NZPLC website (NZPLC 2005) and by Cuncannon and Dorking (2002).

Principal 2 initially said that she did not know the Principles of Natural Justice although she did say after thinking about it for a while that natural justice was 'being a good listener and listening to both sides.' (Transcript p.31)

"You've got to listen to both sides always and that's part of natural justice. No leader can jump up and down on the side of one person until they've heard the other side of something and if you're not going to listen to both sides then you can't be fair can you?" (Transcript p.31)

While the basic idea of procedural fairness is indeed a very important aspect of the Principles of Natural Justice, the requirement for an authority to act legally, to make a reasoned and reasonable decision and to make sure for the sake of transparency that the reasons for a decision are made known are also crucial things a principal should know. (Cuncannon and Dorking, 2002). When asked to comment on her understanding of the terms 'legality', 'reasonableness' and 'transparency' Principal 2 was able to give a very basic definition for two of the three terms. She considered that legality meant that 'there are some legal things like you cannot hit children that are there and those things you can't avoid.' (Transcript p.32) Transparency meant being 'open and upfront with people and telling what you're dealing with from the start and not trying to set one person up against the other or hiding anything.' (Transcript p.32) Her definition of 'Reasonableness' as 'listening to and knowing that there are two sides of the story.' (Transcript p.32) was outside the definition given by Cuncannon and Dorking (2002).

Sources of Legal Knowledge

Pre-service and In-service Qualifications and Training

Principal 2 gained a Diploma of Teaching as a result of her pre-service education and training. None of her courses touched on issues relating to school-related law and predictably she rated her course overall as 'of no use' in preparing her for the legal aspects of principalship. As a teacher Principal 2 gained a B.Ed which, according to her recollection, did not cover legal issues. Again these courses were rated as 'of no use'. Nor did the courses she encountered as part of her attendance of the First Principals Induction programme (Eddy and Bennison, 2004) cover issues related to school law. Since becoming a principal she has gained a Certificate in School Marketing. Again this course did not touch on legal issues. Principal 2 is not currently involved in academic study, however she has attended a short in-service seminar run by the New Zealand Law Society and directly related to school-related law which she described as brief and introductory and rated as 'of some use'. Surprisingly, despite the paucity of in-service experiences in this area, Principal 2 rated her in-service education in preparing her for the legal aspects of her job as 'of some use'.

The Influence of Personal Experience

When questioned about the role of personal experience in helping develop her knowledge of school-related law, Principal 2 claimed that she hadn't had 'much personal experience' (Transcript p.17) but went on to state that being involved with an issue helps to highlight the need or guidelines and policies to be put in place.

"When the need comes up you think 'oh heck'. It shouldn't be like that, but it jolts your mind to do something' (Transcript p. 17)

She cites one experience in particular, the imprisonment of a close and trusted teaching colleague for long term and serial sexual abuse of young boys that had 'brought us to a halt and I had to find out about that'. (Transcript p. 17) The principal

talked at length about the lasting impact the sexual abuse case and the publicity surrounding it had had on her personally, on other pupils, and on the school. However, in particular interest to this study were her comments surrounding an on going debate between her, as deputy principal, and the principal about the appropriateness or otherwise of a staff member taking children away on holiday even with parental permission.

“The principal and I had several conversations about this saying ‘Look I don’t like this...it’s not on.’ That he’s doing it. And the principal had talks with him...and “No I’ve got the parent’s permission and it’s my holiday time.’ (Transcript p.21)

Clearly the school’s management knew and had misgivings about what the staff member was doing and one would have expected at the very least that advice from an outside agency should have been sought. Moreover it could be argued that if the school had had legal risk management procedures in place to cover such eventualities and the then principal had insisted that they be followed, then the offending may not have taken place or at least not with the pupils of that particular school. Furthermore, Principal 2’s admission that despite the ‘horrific’ nature of the event and the damage caused she had not enacted any policy in her present school to help prevent a similar situation from reoccurring is disturbing. When asked why she replied:

“I don’t know whether the school can control what people can do in their holiday time anyway and I have never made enquiries and perhaps I should’ve.... I am pretty positive that the school didn’t do anything about it in terms of having a policy. I was there two... after he went. I don’t think they ever thought right we better have a policy here that says out of school time you cannot and I don’t think many schools have. That is the difficulty. Can you actually control what people do out of school time. I guess yes if it concerns pupils from your school. ” (Transcript p. 23)

The Influence of School Type, Decile Rating and Geographical Location

When asked about the extent to which the type of school, its decile rating and its geographical location had on the development of her experiences with and knowledge of school-related law Principal 2 replied that she thought that the decile rating or the

'social location and social type of your school' would effect how much law related work a principal would have. She generalised that low decile schools would have more issues relating to the transience of children, unstable family relationships, custodial and behavioural issues. On the other hand she contended that in her own school, a decile 9, with 'good average kiwis', parents were more 'intelligent and realistic' and thus more supportive and trusting of the school and its ability to keep children safe, inferring that this would mean less legal issues.

"I guess you could get the other extreme where you are at a posh-nosh place where perhaps their parents would be more picky. We're probably good average ordinary kiwis who just get on with everyday life." (Transcript p.19)

Principal 2 said she did not know whether geographical location would have an effect because she had never taught 'out in the sticks' but advised that help from the NZEI and STA was only a phone call away.

The Influence of Colleagues and Other Principals

When asked about the extent to which she relied on the experience or comments of colleagues and other principals to gain an understanding of what she should do in situations involving legal issues, she replied that she certainly turned to other principals whom she relied on and sometimes contacts the principals in her cluster before she even thinks of ringing STA or NZEI.

"And certainly the principal who does my appraisal I ring her a lot and I share a lot of worries and concerns. She's probably the first person I ask actually." (Transcript p.19)

Barriers to the Development of Legal Knowledge

The barrier to the development of her knowledge of school-related law in Principal 2's opinion was that it was 'sometimes too big to know it all' and that she did not 'really know where to start.' Not that she thought she needed to know it all.

“I mean I don’t need to know all the ins and outs of the law providing I can communicate well with the NZEI and STA and my colleagues down the road. Why do I need to know all the ins and outs of it? I just get the experts in. And I guess it’s sometimes knowing when you have overstepped the mark and being aware that you probably need to get that knowledge or talk to someone early in the piece rather than leaving it too late or trying to handle it yourself.” (Transcript p.19)

Being able to recognise when something was a problem and knowing when to get expert advice was more important to Principal 2 than a standing knowledge of the law.

Professional Sources of Legal Knowledge

Principal 2 rated other principals and principal associations, NZEI field officers and publications, and STA advisors and publications as being ‘useful’ in the administrative decisions she had taken as a school principal in relation to legal matters. (See Table 4.4)

Table 4.4. Principal 2’s Rating of Professional Sources of Legal Knowledge

Very useful	Useful	Of some use	Of no use
	Other principals Principal Associations NZEI field officers NZEI publications STA advisors STA publications	In-service courses. Principal mentors (First Principals Induction Programme) College Advisory services MOE publications	University courses. First Principals Induction Programme. MOE officers MOE Leadspace website NZPF circulars and helpdesk NZPLC legal website ERO officers ERO publications Hard copies of legislation Employment contract documents Professional periodicals Education media Mass media

She rated the First Principals Induction programme as ‘of no use’ but the principal mentors provided as part of the scheme as ‘of some use’. In-service courses, Ministry of Education publications and college advisors were also rated as ‘of some use’.

Legal Risk Management Policies and Practices

Principal 2 had a comprehensive list of legal risk management policies and procedures to administer. (See Questionnaire Summary of Responses Appendix I) She had no personal public liability insurance but reported that the school was adequately covered. When asked to comment on how she determined what policies and procedures to put in place she replied that she tended to react to incidents and formulate policy after the event.

“You know someone falls off a trampoline and breaks their leg so you go out there and look at where you shift it to or how you make it safer”. (Transcript p.32)

She also admitted that she was ‘a little bit lost as to what legally’ a school was required to have and relied on outside agencies to tell her what she needed.

“I think I do rely on someone telling me from above because at the end of the day that’s how you are going to be judged by people in authority...and just being given a tick or cross by ERO is meeting their requirements. But I’m reluctant. We should not be operating like that”. (Transcript p.33)

Principal 2 said that did not check the legality of her policies and procedures although she claimed she ‘took notice’ of the National Education Guidelines (NEGs) and the National Administration Guidelines (NAGs) when formulating policy. Instead she relied increasingly on policy templates developed by the Ministry and the NZEI and accessed from their websites. For her this was a positive development possibly because it saved her time rather than providing any legal certainty for what the school had in place.

“They actually did have a template that you could download and just fill in your name and alter to your school and they’ve now got a policy for the clustering of release time and you can go to the NZEI website and download a template. So whether that’s going to become more of a thing to do, which I think is a good idea because why should each school should try to madly write and they should have done that right from the beginning.” (Transcript p.33)

The school had a self review process and sent new policies and procedures out for community consultation as a way of checking their ‘appropriateness’ although the principal made an admission that suggests that she saw the provision of legal risk management policies and procedures more as a matter of compliance than need.

“And we’re still guilty... I mean just because you’ve got a policy doesn’t mean you’re going to run to the book and do exactly what’s in the policy anyway ... or you should do but you can’t always do that.” (Transcript p.34)

Determining When Issues Need Professional Legal Advice

Principal 2 had found herself in situations where she felt she needed to seek advice and support. She estimated that she spent less than ten percent of her working week on legally-related matters but indicated that this work was more stressful than other administrative tasks and was becoming even more so.

When asked what she thought the signs that an issue might develop into a legal problem were, she said ‘tension levels’ and ‘if people are getting angry’. (Transcript p.34)

“If people are comfortable and talking then you know you’re dealing with a different level than if people are angry and threatening and as soon as people are becoming agitated and threatening you think ‘Oh I’m on to the next level here’.” (Transcript p.34)

Principal 2 rated NZEI field officers and STA advisors as ‘very useful’ sources of advice and support. Indeed, in both the questionnaire and the interview these were the only sources of advice and support that she rated at all. She consulted the STA for board and parent issues and the NZEI for employment and staffing. She said she put a lot of trust in the STA and NZEI reps and might go ‘somewhere else’ on their advice. She was not sure if she would consult a lawyer or that the school even had one.

Ideas for Making the Present Situation More Effective

Principal 2 thought that receiving brochures and booklets was of little help because of the language used and because she never had time to read them. She described a course run by a legal firm as too high powered or 'high fluting'. In her opinion the chance to sit and talk about issues with NZEI or STA reps on a 'lower level' would be quite good, but contended that principals do not need a lot of legal knowledge as long as they know where to go when they need help.

"I just ring anyway and I sort it out. So maybe we don't need to have to have a lot of knowledge. As long as you know where to go when you need help do you need to have a lot of knowledge of school related law?" (Transcript p.35)

She argued that 'you can only hold so much knowledge in your head' and that adults have a common knowledge of the law.

"I mean as adults I think we have a common knowledge of things like employment law and the rights of people and the rights of kids and generally just hang on to that common sense. I think the big message is don't be afraid to ring and ask. That's what NZEI and STA are there for." (Transcript p.35)

4.3 Case Study 3

Principal 3

Principal 3, a middle-aged male, was the study's most experienced participant with 33 years of service. Of this just over 22 years had been spent as a principal in four schools; twelve years as teaching principal in two small, full primary, upper decile, rural schools and ten years as walking principal in two large, urban, mid decile, contributing schools. Seven years were spent as a Scale A teacher in large urban primary schools, including his beginning year in an urban intermediate, and just over three years as a deputy principal of a 350 pupil rural school. While Principal 3 had no education appointments, administrative or otherwise, outside the school sector he had been instrumental in the development of a Ministry of Education funded website designed to provide New Zealand principals with legal information. This mainly involved the input and updating of legal information provided by lawyers.

It is important to note that Principal 3's inclusion in the study was not based on his involvement with the legal website. Indeed his association with the website was not known to the study's author until the principal was formally approached to take part. After some debate it was decided to continue with the principal's participation because his involvement with the legal website was a legitimate part of his experience. While it could be argued that experience of this nature is not typical it is not unreasonable to expect a person with such a long service history to be involved in advisory positions of this sort.

Knowledge of School-related Law

Part B of the Principal's Questionnaire dealt with the issue of each principal's familiarity with school-related law. When answering this section Principal 3 indicated that he was 'uncertain' of his knowledge of the law and whether or not the knowledge he did have was sufficient for his work as a school principal. However he 'agreed' that he had a good knowledge of the Principles of Natural Justice, that his knowledge of school law was sufficient enough for him to recognise legal problems when they arose, and that he had the ability to seek professional advice and support if needed. (See Table 4.5)

Table 4.5. Principal 3's Rating of His Knowledge of School-related Law.

	Rating
(a) I am familiar with the purpose and contents of most legislation affecting schools.	3
(b) My knowledge of school related law is sufficient for my work as a school principal.	3
(c) I have a good understanding of the principles of natural justice.	2
(d) My Knowledge of school related law is sufficient enough for me to recognise legal problems when they arise.	2
(e) I am confident that I am able to determine when an issue needs professional legal advice.	2
(f) If advice and support on legal issues is needed, I know where to get it.	2

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

When he was asked to rate his familiarity with the 39 pieces of legislation listed by ERO (2004) and Walsh (1997) as being relevant to a greater or lesser degree to the work of school principals, he claimed that he had ‘a very good working knowledge’ of the National Curriculum Statements and the collective agreements for all staff. He also claimed that he was ‘familiar with purpose and contents’ of 13 other pieces of legislation which he had ‘used parts of, either directly or indirectly in his work’.

The Critical Incidents

In Part B of the Principals’ Interviews Principal 3 was asked to comment on a number of ‘critical incidents’ presented as six vignettes and covering an aspect of school-related law.

In Vignette 1 Principal 3 correctly identified the matter of a board chairperson’s intervention in an alleged case of bullying as a governance / management issue.

“As governance he can come and say we have a problem with bullying but when he comes to me then it’s my responsibility to interview the child and I think I would be landing myself in the cart if I had a parent interview. I mean we have a fairly firm policy in the school that parents have not got the right to go and talk to or interview.”
(Transcript p.43).

The principal then said that he might report the results of his investigation back to the board chair in confidence but that the matter would not reach board level unless issues of suspension were involved.

In the second vignette, a case dealing with a non-custodial parent's request for access to school reports, Principal 3 rightly identified the age of the children as being the crucial issue. In his opinion the father had the right to 'information about his children's progress or things that are impeding their educational background'. (Transcript p.44) However he argued that the children's right to privacy might prevent the release of the reports 'if the children are old enough to justify their reasons for withholding the information'. (Transcript p.44) Principal 3 stated he would release the information for primary aged children.

The legislation (Guardianship Act 1968, Education Act 1989) makes it clear that non-custodial parents are entitled to some information about their children's progress even if they are separated or divorced. However the Official Information Act 1982 affords protection to the privacy of individuals so that if students are considered to be old and mature enough to make an independent decision then access to the reports can be denied. In these cases the ombudsman usually resolves in favour of the student with the added ruling that instead of a full report being released a letter indicating the general progress of the child is sent. (NZPLC, 2005)

Despite his comprehensive understanding of what he considered to be a 'curly' issue Principal 3 still said that he would seek advice to 'double check what I did before I did it'. (Transcript p.45)

In Vignette 3 Principal 3 outlined a sound strategy for dealing with a recently appointed teacher who was unhappy with the results of a performance appraisal and was accusing the principal of 'having it in for her'. He suggested that a second opinion be used to determine whether the school's appraisal of the teacher was correct.

"I mean our appraisal system allows people to go for a second appraisal so if they're not happy with what their appraiser has said about them. Then part of the signing off is saying 'I want it redone.' So in this particular case if they thought they were totally off base with it then I would be suggesting we get another person to redo the appraisal and to see if someone else agreed with that appraisal or not." (Transcript p.45)

He also stated that he would be seeing permission from the teacher to talk to previous principals.

“I would be probably seeking permission from the teacher to go back and talk to previous principals in that case, but I think that I would be going to someone else to do it and even to the extent to getting an outside person if it was obviously a conflict type situation.” (Transcript p.45)

He did not say what he would do if the poor appraisal was confirmed.

In Vignette 4 Principal 3 was able to identify the issue at the centre of a case dealing with the assault of a teacher’s aide by a child with special needs; that is, the right of the child to an education weighed against the obligation of the school to provide a safe working environment for its staff. He was also aware of the processes a school needed to go through to ensure that it had met its obligations.

“You’ve got an obligation to ensure the safety of your staff at all times, so it’s a matter of saying, ‘Have we put everything in place that we possibly can for this child to stop him from doing these various things?’(Transcript p.46)

In dealing with this issue the NZPLC website suggests obtaining legal advice at an early stage and using a three pronged approach to assess the situation. Firstly, the school needs to consider if it has done all it can within its resources to meet the student’s needs in terms of resourcing, equipment and staffing, provision of programming to meet academic, social and behavioural needs, and reactive strategies to gain rapid and safe control of situations that may pose risk to others. Secondly, the school needs to assess the health and safety risks to other students and staff. Thirdly, if there is likelihood that even with the interventions in place that serious harm will occur then serious consideration has to be given to the standdown and suspension provisions in Section 14 (1) of the Education Act 198. (NZPLC, 2005)

In Vignette 5 Principal 3 was able to identify who was responsible for the injuries suffered by a boy while using a waterslide at a school camp.

“I would think the camp itself would be responsible for it. I mean they’re obliged to provide a safe environment for people within the site.” (Transcript p.47)

He also thought that the school would also ‘get a rap over the knuckles’ depending on whether they had done any checks or not.

“I still think the school has a responsibility to check out even when you’re going to a camp. But at the end of the day you’re relying on their (the camp owners) self checks. You are presuming they have done all the safety checks of the equipment.” (Transcript p.48)

When commenting on the actions of Mrs Hardcastle in Vignette 6, the principal identified the shaking and squeezing of a pupil as illegal behaviour and was able to outline an appropriate course of action to remedy the situation.

“The bottom line is that Mrs Hardcastle needs to be told in no uncertain terms that she’s not to do that. It’s illegal to touch a kid in that manner.” (Transcript p.48)

He also suggested that the teacher receive assistance from a ‘behaviour support person’ to help her with ‘improved methodology’ for dealing with children who misbehave. He added that he would also put the incident in writing ‘so that she has knowledge of that. And if it happened again I guess you’d be down other lines of discipline for the teacher.’ (Transcript p.49)

The Principles of Natural Justice

In the second part of Section B of the interview the respondents was asked to comment on their understanding of the Principles of Natural Justice. To Principal 3 they meant that people are dealt with in ‘a fair, even handed and open way’. (Transcript p.49)

“It’s the notion of allowing people an opportunity for people to speak to situations, that you do do due investigations, that you do talk to other people concerned, that you

ensure that you have followed due process to ensure that whatever consequence might be happening and the people have had the opportunity to talk to it.” (Transcript p.49)

When asked to comment on his understanding of the terms ‘legality’, ‘reasonableness’ and ‘transparency’ Principal 3 considered that ‘legality’ was “what is written down in legal law, how things should be dealt with and what the legal rights are’. He saw that transparency meant that ‘everything is open and above board’.

“And I guess reasonableness is saying you’re dealing with it in a way that other reasonable people would deal with it, how other principals would deal with it much the same way as I would deal with it or is it beyond the realms of what a normal school would do.” (Transcript p.50)

Sources of Legal Knowledge

Pre-service and In-service Qualifications and Training

Principal 3 gained a Trained Teachers Certificate (TTC) as a result of his pre-service education and training. As a teacher he gained a B.Ed and Diploma of Teaching and when working as a principal he worked towards various Advanced Studies in Teaching Units (ASTU). As far as he could recall none of these courses had touched on issues relating to school-related law and he rated them overall as ‘of no use’ in preparing him for the legal aspects of principalship. At the time of the interview Principal 3 was not currently working towards any academic qualification. He had, however, attended a number of ‘brief and introductory in-service workshops’ which included a ‘mixture of legal issues and other matters’ and which he rated as ‘of some use’. Overall he rated his in-service education as a principal in preparing him for the legal aspects of his job as ‘of some use’.

The Influence of Personal Experience

When questioned about the role of personal experience in helping develop his knowledge of school-related law, Principal 3 claimed that most of his legal

knowledge had come from personal experience and in particular from talking to colleagues about specific incidences.

“Certainly it hasn’t come from any training, so it’s come from casual things you pick up talking to colleagues. In my case of course the legal website I guess is where I got most of my stuff from. But generally it’s talking to other people saying ‘what do you do if, what do you know if.’ Of course their knowledge is no better than mine so it’s probably not a good source, but that’s where I certainly tended to go in the past. (Transcript p.37)

He added that knowledge also comes from the actual process of dealing with particular incidents specific to the principal and gave the example of a custody issue which lead to him researching the legal aspects of it.

‘If that hadn’t happened I wouldn’t have chased up that legal knowledge. So it’s a case of getting knowledge simply because you might or might not have had various things happen in your career.’ (Transcript p.37)

Perhaps of more significance to Principal 3 had been his experience with the development and ongoing maintenance of a legal website aimed at informing New Zealand principals about various legal issues. At the time of the interview he was acting as the site’s webmaster.

“I would say probably 80% of my knowledge comes from that. Most of my legal knowledge would have come from that I would suspect. And also because I know what’s there I can go back to it. I know readily where it is and I’ve got hardcopies as well but I guess that’s where I go for most of my information. By doing it, it highlights various things I may not have thought about as well.’ (Transcript p38)

It would seem that the act of helping develop and manage the website had acted as a useful training ground for him in a way that more formal training had not.

It also had become a useful reference point to refer back to. Knowledge of where to find information in this case had been of benefit when incidents had occurred. Also he claimed that the vary act of putting together information on the website had spurred

him to look at how issues on the website had affected his own school and had influenced the development of 'one or two' policies. He gave as examples work he had done surrounding duty of care towards 'latchkey kids', the wearing of jewellery and school uniform, custody and guardianship, and the allocation of management units.

The other big sources of legal knowledge for Principal 3, when dealing with industrial issues, had been the STA and NZEI, and he cited personal experience dealing with contractual 'stuff', redundancy and teacher competency.

"I mean we've been through redundancy and I've been through issues where we've looked at teacher competency and certainly I've relied very heavily on advice from NZEI and STA when it comes to those sorts of things." (Transcript p.39)

The Influence of School Type, Decile Rating and Geographical Location

When asked about the extent to which the type of school, its decile rating and its geographical location had on the development of his experiences with and knowledge of school-related law Principal 3 contended that a principal's career path would have an influence on knowledge of school related law. The experience of being principal starting in a small school and over twenty years progressing to larger and thus more demanding appointments, gives a back ground that a person promoted from a senior teacher's position to a principal of a large school would have missed out on.

'Perhaps if I'd come through a senior teacher role and then jumped straight into a principal's job like this which people do, then I don't think you'd have had that background of the incidental stuff, the learning as you go sort of stuff, so you'd missed out on that.' (Transcript p.39)

His experience talking with colleagues from decile 1 schools is that they are 'tied up' a lot more in social issues and involvement with organisations such as CYFS and the police. This experience, in his view, would lead to different sorts of legal knowledge developing than if a principal had come through a high decile school that did not have the same social issues.

“I would think that if you have been through the sorts of issues where you have a heavy police involvement in your community or CYFS or whoever you’re going to develop a different sort of knowledge, by need, for those sorts of things’. (Transcript p.40)

He also thought that working in rural schools for the first half of his career had given him ‘a different flavour to things’. (Transcript p.40)

The Influence of Colleagues and Other Principals

When asked about the extent to which he relied on the experience or comments of colleagues and other principals to gain an understanding of what he should do in situations involving legal issues, he replied that he relied heavily on other principals and because of his experience and association with a legal website he is consulted on those matters by others. He was aware of, and concerned about, the dangers of rumour and ‘bush lawyer’ talk amongst principals.

“I guess when I talk to people it’s like any research. How do you know that? What is your justification for that? I mean things like altering the number of days you can open and saying ‘Oh I think we can do this or that’. Somewhere along the way you’ve got to have someone who checks out the legality of what you are or are not allowed to do. I guess that’s always something to watch. Whether their knowledge is just bush knowledge or gut reaction.” (Transcript p.40)

A little later on in the interview the influence of other principals came up again when a question was asked about his involvement in principal mentoring and cluster groups. He went on to talk about his local cluster group of about eleven schools and the informal, but very significant discussion and sharing of information on issues, including those relating to legal matters.

“I mean our cluster group gets together once a term and often things will come up. We’ll have this issue and we’ll throw around ideas, ‘What’d you do, what’d you do if, have you got a good idea for?’ And the other thing, because we’ve got a reasonably effective email environment in our area a lot of the time it’s a matter of people

emailing round to all the schools saying 'Has anybody got anything on?' I mean when I sent out about this custody issue in schools I said 'Has anyone out there got anything?' And a couple of schools sent me what they had." (Transcript p.55)

He gave a recent example of using the network to seek information and feedback when formulating a policy on using cars for school trips after a parent had voiced concern that his school did not have a procedure for checking if cars were licensed and registered.

"People put out all sorts of questions to other members, whether anyone has got any spare furniture, or just the other day I wanted to know what other schools' policies were on the use of cars and vehicles and checking on driver's licences and all those sorts of issues... and I had about fifteen schools send me back what they had in that regard and then we formulated our statement which has gone through the board and we will now put out to my community in this newsletter or the next newsletter about what we have decided to do. Put a draft out first and get feedback to that. So that was the input of other schools before I actually drafted and wrote for our school and at the end of the day I would put out to other schools "Thanks for your contributions. This is what we ended up with." (Transcript p.55)

He quickly added that it did not mean that the policy necessarily met the requirements of being a legal document but he said, 'at least you're getting other good practice around'.

Barriers to the Development of Legal Knowledge

The biggest barrier in Principal 3's opinion to the development of his knowledge of school-related law was the lack of easy access to information and the complexity of the language used. Another barrier he raised was that some issues have no definitive legal answers because they are yet to be tested in the courts.

"So no one can actually provide you with a legal answer that says 'yes you must do this or that because it has been proven in court'...So I guess the more court cases

there that are publicised then we can learn from that. So it's a barrier if that's not published and out there in your face." (Transcript p.41)

He also argued that because principals are 'bombarded with information' they tend to 'push it to one side'.

"I mean it's like all the health and safety regulations. Unless it's pertinent to me at the time it's just another jungle of stuff that I don't really want to know." (Transcript p.41)

Having some training to point principals in the right direction and immediate access to information was important to this principal.

When asked what sorts of legal issues concerned or scared him the most Principal 3 thought it a concern if a principal was to act in ways that were not legal. His most important concern was being involved with a legal issue where the principal or the school ends up 'in the cart' because the principal did not know about it, handled it in the wrong way or got it wrong despite good intentions.

"I guess it's the thought you do something wrong that could end up with a kid being hurt or you being taken to the cleaners when that wasn't your intent at all". (Transcript p.42)

The principal then gave an example of using video surveillance to catch a child vandalising the school without first checking the legality of doing so.

"I never actually used the video tape for anything but I guess it's those round about legal loopholes that you can end up in if you don't know what the legal right is". (Transcript p.42)

He argued that having some legal knowledge and ensuring that school policies were legally sound would prevent principals from being 'tripped up' or accused of acting illegally.

Professional Sources of Legal Knowledge

Principal 3 rated NZEI field officers and STA advisors, employment contract documents and the New Zealand Principals’ Leadership Centre legal website as being ‘very useful’ in the administrative decisions he had taken as a school principal in relation to legal matters. (See Table 4.6) NZEI and STA publications, Ministry of Education officers and gazette notices were rated as ‘useful.’

Table 4.6. Principal 3’s Rating of Professional Sources of Legal Knowledge

Very useful	Useful	Of some use	Of no use
Employment contract documents NZEI field officers NZPLC legal website STA advisors	MOE Gazette notices MOE officers NZEI publications STA publications	College Advisory services Education media Education media ERO publications Hard copies of legislation Mass media MOE Leadspace website MOE publications NZPF circulars and helpdesk Other principals Principal Associations Professional periodicals Professional periodicals	ERO officers University courses. Uncertain In-service courses.

Legal Risk Management Policies and Practices

Principal 3 was able to list a comprehensive set of legal risk management policies and procedures that had been developed by his school. (See Questionnaire Summary of Responses Appendix I) He did not have personal public liability insurance but claimed that his school was adequately covered. When asked to comment on how he determined what policies and procedures to put in place Principal 3 stated that a ‘large number’ were determined by ministry directive. He went on to argue that it was important that directives contained information sufficient enough to enable schools to draft policies that met legal requirements.

“It’s really important that we get that information through. Here’s your draft policy. Because there is a danger there that it doesn’t meet legal requirements. At least if

they'd given us the legal stuff or stuff that has to be in there. I mean if it's non – negotiable then why not tells us.” (Transcript p.50)

The other determiner, according to this principal, was need. He gave an example of a policy dealing with custody and guardianship that was drafted from a perceived need by the school.

“I mean it grew out of an event. We had an issue with somebody's guardianship and we had to say well we haven't got any procedural policy in the school that covers that eventuality so therefore we need to put something in place.” (Transcript p.51)

Principal 3 said that his school did not check the legality of its policies and procedures, but relied on draft policies and ‘background information and guidelines’ from the STA when formulating policy.

“...but I can't say that I go back to legislation and say ‘Does this fit our current policies?’ If something comes up yes sure I pull out their guidelines but I'm relying very heavily on STA increasingly providing that sort of ... because they are increasingly seen to be the people who provide that sort of background.” (Transcript p.51)

Principal 3 contented that the process of ensuring that policies were appropriate was largely a matter of testing and trialling them to see if they worked in practice.

“Does it work or are you actually using it or are you doing your own thing anyway and ignoring what's written down on a piece of paper. So I guess part of that is ensuring that there is a regular review process going on of your policies saying is this policy (a) being used and (b) are we actually doing what's there and if we're not what do we need to change about it so that it's appropriate to what's going on in our school.” (p.52)

Determining When Issues Need Professional Legal Advice

Like other respondents in the study, Principal 3 claimed that he could recount situations where he felt he needed to seek advice and support. While he estimated that he spent less than ten percent of his working week on legally-related matters and that

this work was no more stressful than other administrative tasks, he did indicate that stress related to legal issues was increasing. When asked to list the signs that an issue might develop into a legal problem he stated that people talking about lawyers was an immediate one. He contended that one of the general signs was when 'good common sense' did not give the answers.

"When an issue arises common sense would say this, but is that actually right or do I feel comfortable with the decision or do I need to know more? And I guess that's when it's got a legal basis to it." (Transcript p.52)

Other indicators mentioned included when people were injured, when outside agencies wanted to interview people at the school, or when situations seemed 'intricate'. NZEI field officers and STA advisors had been significant sources of advice and support for Principal 3 although other principals had been 'of some use'. According to Principal 3 the STA would be one of his 'earlier ports of call' because they were 'providing a lot of information these days'. (Transcript p.53) He would use NZEI for industrial matters and STA for issues involving the board. He said he would use the NZPLC legal website if appropriate and then consult colleagues, although depending on the issue, he might contact a colleague first.

"I can't say I've ever been to a lawyer or anyone of that nature but I guess that depends on your past experience and what association you've had with them in the past or whether your board happens to have a lawyer on tap who's happy for you to ring up about things. And I would be thinking about the ministry if it was going to go down that line but they're not the first people who come to mind." (Transcript p.53)

Principal 3 stated that he would seek more than one source of advice when the first line of advice was not 'authoritative enough'.

Ideas for Making the Present Situation More Effective

Principal 3 thought that there was a need for school law issues to be placed in front of principals on an ongoing basis and argued that this could be done with courses, by incorporating it into other things that are going on, or by local principal associations taking it on board. He thought that the Ministry of Education should be proactive in providing legal information about issues in plain English and in layman's terms. Draft policies and information 'on disk', he said, should be sent to schools.

“...if there are changes to legislation then some boffin down in Wellington should be sitting down and saying ‘What should be sent to schools and what changes are needed?’ And if that means writing up draft policies... they should be coming out.” (Transcript p.54)

He also thought school law should be part of induction programmes for new principals and part of all the programmes being run for principals, including ‘principals going to training centres, and that would be a component to include in it. So it’s highlighted to people about those issues’. (Transcript p.54)

The discussion then turned to cluster groups and while he did not explicitly advocate the development and strengthening of cluster groups as a way of improving the legal knowledge of principals, he was obviously enthusiastic about benefits of sharing information in such a forum. He claimed that principals can ‘come unstuck’ if they do not communicate to others about their legal problems.

“I think that where some principals come unstuck is because they haven’t bothered to ask anyone or at least highlighted that I’ve got this legal problem what do I do about it? And I think that is when they’re most inclined to fall over because they haven’t talked to anyone.” (Transcript p.56)

Principal 3 thought that the NZPLC legal website he was involved with was a good start to providing principals with legal information. But added that, like the Leadspace site, people had to have the time to use it.

“I guess all you can do is highlight the fact that it’s there and that there are occasions when it’s put in front of people so they know it’s there and hopefully... I mean it’s an ongoing contract. We’re certainly looking at it and there are probably better ways of doing it now if we were starting again but we’re relying largely on an injection of funding from the ministry to redesign and improve it. But I think it has served its purpose at this stage.” (Transcript p.57)

4.4 Case Study 4

Principal 4

Principal 4, a middle-aged female, had taught for 32 years exclusively in large urban primary schools. At the time of writing she had been the walking principal of a U5, decile 7, full primary school for seven years. Prior to that two years were spent as the principal of a U4 full primary school, three years as the deputy principal of a U4, decile 4, contributing school, two years as the deputy principal of a U4, full primary and one year as the principal of a U4, full primary - a total of 15 years in senior management. Principal 4 had also spent two terms as a review officer for the Education review Office (ERO) and had been involved with the First Principals' Induction programme as a facilitator.

Knowledge of School-related Law

Part B of the Principal's Questionnaire dealt with the issue of each principal's familiarity with school-related law. When answering this section Principal 4 indicated that she was 'uncertain' of her knowledge of the law and whether or not the knowledge she did have was sufficient for her work as a school principal. However she 'agreed' that she had a good knowledge of the Principles of Natural Justice. She indicated that she was confident that her knowledge of school law was sufficient enough for her to recognise legal problems when they arose but was 'uncertain' that she could determine when an issue needed professional advice. She 'agreed' that she had the ability to seek professional advice and support if needed. (See Table 4.7)

Table 4.7. Principal 4's Rating of Her Knowledge of School-related Law.

	Rating
(a) I am familiar with the purpose and contents of most legislation affecting schools.	2*
(b) My knowledge of school related law is sufficient for my work as a school principal.	3
(c) I have a good understanding of the principles of natural justice.	2
(d) My Knowledge of school related law is sufficient enough for me to recognise legal problems when they arise.	2
(e) I am confident that I am able to determine when an issue needs professional legal advice.	3
(f) If advice and support on legal issues is needed, I know where to get it.	2

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

* Principal 4 circled the word 'purpose' indicating that she agreed that she was familiar with the purpose of the legislation but not necessarily with the contents.

When she was asked to rate her familiarity with the 39 pieces of legislation listed by ERO (2004) and Walsh (1997) as being relevant to a greater or lesser degree to the work of school principals, she claimed that she had ‘a very good working knowledge’ of the National Curriculum Statements, the National Education Guidelines (NEGs) and the National Administration Guidelines (NEGs). She also claimed that she was ‘familiar with purpose and contents’ of 16 other pieces of legislation which she had ‘used parts of, either directly or indirectly in her work’.

The Critical Incidents

In Part B of the Principals’ Interviews the respondents were asked to comment on a number of ‘critical incidents’ presented as six vignettes and covering an aspect of school-related law.

In Vignette 1 Principal 4 identified the matter of a board chairperson’s intervention in an alleged case of bullying as a governance / management issue and was quick to offer a remedy.

“First of all, because it’s a newly elected board chair, we would certainly be talking about the programmes and the procedures we have in place in the school, and it is my role to address that. I would be expecting the board chairperson to be going back out to whoever had given them the complaint and asking them to work through the complaints procedure we have in place in the school. It’s certainly not the board chairperson’s role to come in and interview an individual child.” (Transcript p.62)

In the second vignette, a case dealing with a non-custodial parent’s request for access to school reports, Principal 4 contended that the estranged father had a right to receive the information about his children unless there was proof of a court imposed restriction.

“I would be asking for written documentation to show that that there is a court order in place that the father can’t have contact or can’t have information because we can’t go just on the mother’s hearsay.” (Transcript p.63)

However, this case is far more complex than it first appears. Indeed, there are three separate pieces of legislation that need to be weighed together before a decision can be made. Under the Guardianship Act 1968 the father is a 'legal guardian' and is entitled to exercise his guardianship which includes access to school reports. The school is also obliged under the Education Act 1989 to provide this sort of information to legal guardians whether or not they are separated or divorced. On the other hand, the Official Information Act affords protection to the privacy of individuals and this is claimed by some secondary-aged students to deny a non-custodial parent access to reports. In this instance Principal 4 did not consider the age of the children in reaching her decision, even though it could be argued that for primary-aged children it was probably a reasonable one. Moreover, the issue of custody and contact are quite separate from the ability to withhold information. In other words, even if there had been a custody order restricting access to the children the father was still entitled to some information about their progress at school.

Vignette 3 dealt with a recently appointed teacher who was unhappy with the results of a performance appraisal and was accusing the principal of 'having it in for her'. Principal 4 stated that, using her team leaders and senior staff, she would work through the school's appraisal process and make sure that the teacher received the necessary support and guidance. However, her suggestion for dealing with the teacher's accusation of unfair treatment seemed more like a brow beating and was unlikely to improve a difficult situation.

"The teacher thinks you have it in for her. We would be having a fairly serious one to one discussion about that and establishing why we're all here, what we're here for, the professional way we are going to deal with this. And obviously the appraisal process has to work through and it would be my job as principal to ensure that that teacher got the support and guidance necessary." (Transcript p.64)

The NZPLC website suggests a three part course of action. (1) That an impartial and expert second opinion be sought on the teacher's performance to safeguard against any accusations of bias. (2) That, with the teacher's consent, former references and appraisals be discreetly revisited to test whether the concerns now appearing were ever the subject of appraisals at other schools, and (3), if the competency process is

initiated then legal advice should be sought, the provisions of the collective contract followed, including advising the teacher of their right to representation and a support and a guidance programme put in place that will help them reach the required standard. (NZPLC, 2005)

Vignette 4 dealt with the assault of a teacher's aide by a child with special needs. Principal 4 talked to this scenario in a very general sense focusing in particular on the need to use 'people management skills' to resolve the issue in a 'win – win' situation before 'it gets worse and it festers away.' (Transcript p.64)

"It's all about people, people, people and people management. You can have every bit of paper in the world in place but it's your skill as a principal. About 90 percent of the job is about relationships. If you can't do that then you can't do the job." (Transcript p.65)

While this is no doubt true, Principal 4 missed the central issue of the scenario; that is, the teacher aide's right to a safe working environment weighed against the obligation of the school to provide the child with a suitable education. The NZPLC website suggests that principals use a comprehensive three tiered approach to determine whether they have done all they can to meet their obligations to both parties in this sort of situation. (NZPLC 2005) In comparison, Principal 4's suggestions were rather vague. She offered some suggestions for resolving the issue.

"Maybe that teacher aide works with another child and someone else comes and works. I mean there are all sorts of possibilities without knowing the actual people and personalities involved." (Transcript p.64)

Like the other principals in the study, Principal 4 seemed to have some awareness of the importance of 'duty of care', the central issue of Vignette 5. She could not say who was responsible for the injuries but was confident that because of the pre-camp checking and safety preparation done by her staff, and the fact that her school used recognised camps which had their own safety systems in place it was unlikely that a similar incident would happen. She did acknowledge that despite safety procedures injuries can occur and gave the example of a boy who broke his arm at a camp. She

contended that if the correct procedures are in place and followed, then the school's liability is lessened and litigation can be avoided.

"The last camp our Year 7 & 8s went away to a child broke two bones in his arm but it was the way in which it was dealt with that we got high commendation for."
(Transcript p.66)

She also contended that if the relationship and communication with parents and the school community are good then this sort of action will not arise.

"And again it's all part of the relationship you develop with your parents and community. It's the talk you do with them. The communication you do with them. Often parents will be reasonable. I mean our parents were great with what happened. I mean the child ended up in (name) hospital. It was a serious accident but the processes we went through to address the accident meant that this sort of action wasn't taken." (Transcript p.66)

When commenting on the shaking and squeezing of a pupil by Mrs Hardcastle in Vignette 6, Principal 4 stated that the teacher 'needs a very clear message that this sort of thing stops'. (Transcript p.67) Although she does not state that it is a breach of the law and the teacher could be charged with assault, she does say that she would work with the teacher to help her 'think of other ways that are appropriate to manage behaviour'. She also would want to look at the teachers classroom programme.

"Sometimes little questions go off in your head. Well what's the classroom programme like that the child wants to be naughty? You know. Is it the classroom programme that is so boring that the child... you know there are all sorts of things... but there's no way any teacher, any adult should be squeezing or shaking a child. That's the bottom line." (Transcript p.67)

The Principles of Natural Justice

In the second part of Section B of the interview the respondents were asked to comment on their understanding of the Principles of Natural Justice. Principal 4 initially associated them with 'procedural stuff'.

“Your procedural stuff has to be there and it’s not something we read every week but we certainly talk about them from time to time. So they’re not just a piece of paper somewhere. Oh we’ve got something on that somewhere. But it has to be accessible. People need to be able to know where to source it.” (Transcript p.67)

While it seems that Principal 4 may not have been familiar with the term she did have some understanding of natural justice. When the question was rephrased, she said it was about children getting a ‘fair outcome’.

“Yes, and that children in the end get a fair outcome from it and this is what I am saying. You learn to be calm, you learn to be reasoned, you learn to listen to everyone.” (Transcript p.68)

In a previous question Principal 4 had said that there were a number of things she worked from when dealing with an issue. This, too, indicated some understanding of natural justice.

“Like buy yourself time, assure people you’ll get back to them, and do so. Find out all the information before you address it. Don’t leave it too long. Fix it in the meantime. Take time to consider. Don’t react from the hip.” (Transcript p.65)

While the basic idea of procedural fairness is indeed a very important aspect of the principles of natural justice, the requirement for an authority to act legally, to make a reasoned and reasonable decision and to make sure for the sake of transparency that the reasons for a decision are made known are also crucial things a principal should know. (Cuncannon and Dorking, 2002). Asked to comment on her understanding of the terms ‘legality’, ‘reasonableness’ and ‘transparency’ Principal 4 considered ‘transparency’ to mean that the investigator would take the complainant seriously, listen to them and not to be seen protecting the teacher. The complainant, parent, child or teacher should feel that they are being supported, although, she said, they might not necessarily get the outcome they expected.

“A parent needs to know that if they come in here (a) I take it seriously (b) I do listen to them and don’t put the shutters down and a parent doesn’t walk out of here and say ‘Oh she didn’t listen to me she’s just protecting the teacher.’ You know that kind of thing. That the parent or child comes in to say something or a teacher, anyone, comes in and feels that they’re being supported.” (Transcript p.68)

The principal considered that ‘legality’ meant that her decisions, behaviour and outcomes were within the law – a good definition according to Cuncannon and Dorking (2000). She did not attempt to define ‘reasonableness’.

It is difficult not to draw the conclusion here that Principal 4’s understanding of procedural fairness and transparency as she explained them might lead her to act in a way that disadvantaged the teachers in her school. The point of natural justice is that every person should expect a ‘fair outcome’, not just children and parents.

Sources of Legal Knowledge

Pre-service and In-service Qualifications and Training

By the time Principal 4 had entered her first principalship she had gained a B.A. and a Diploma of Teaching. None of the courses in her pre-service education and training, and her in-service professional development prior to becoming a principal, had touched on issues relating to school-related law and predictably she rated them all as ‘of no use’ in preparing her for the legal aspects of principalship. She had gained no further academic qualifications since becoming a principal and at the time of the interview was not currently working towards any. She had, however, been a presenter in the First Principals Induction Programme (Eddy and Bennison, 2004) for four years and had been seconded to the Education Review Office (ERO) as a reviewer for a short period. Both experiences had informed her knowledge of school-related law and influenced the policies and practices put in place in her own school. But only in a ‘small way.’ She had also attended a number of ‘brief and introductory in-service workshops’ which included a ‘mixture of legal issues and other matters’ run by Patrick Walsh and which she rated as ‘very useful’. Overall, she rated her in-service education as a principal in school-related law as ‘of some use’.

The Influence of Personal Experience

When questioned about the role of personal experience in helping develop her knowledge of school-related law Principal 4 argued that experiential learning is not enough. In her view principals need to go out and seek knowledge.

“I guess the first thing is that you have to actually make an effort and go out and actually seek knowledge. It doesn’t necessarily come into the school, fly in the door and land in your lap. So as a principal you need to find that professional development”. (Transcript p.58)

She contended that ‘the most extreme learning is when something comes and hits you in the face and you’ve got to sort it out and you’ve got to learn and have to find out’. (Transcript p. 58)

The Influence of School Type, Decile Rating and Geographical Location

When asked about the extent to which the type of school, its decile rating and its geographical location had on the development of her experiences with, and knowledge of, school-related law, she replied that from her own experience of working in rural schools she thought that geographic isolation makes it harder to learn about legal matters.

“...it is a lot harder because they tend to be smaller schools, often less experienced people and they are learning everything. And the law part, I believe they only learn when they have to”. (Transcript .p 60)

She also argued that isolation can be relative.

“I think the location one is a personal choice on the part of the principal. I mean you could be in the middle of an urban area and principals can isolate themselves and not seek advice or help’. (Transcript p.59)

The Influence of Colleagues and Other Principals

When asked about the extent to which she relied on the experience or comments of colleagues and other principals to gain an understanding of what she should do in situations involving legal issues, she replied that she used other principals for advice 'a lot', but qualified her statement by saying that she was also 'choosey' about the people she asked for advice.

"And again you choose carefully who you're going to talk to. I mean I choose people who are more experienced than I am because hopefully their knowledge is more than mine". (Transcript p.60)

She also recognised the danger of 'rumour' and the importance of using organisations like the Principals Federation who have access to the 'right knowledge and the right processes.' (Transcript p.60)

"...it's the lack of knowledge that kind of happens within it. That people have a little bit of knowledge and kind of make the rest of it up in a sense, not intentionally, but that's how it works when you're using just your buddies who might be geographically close to you and actually no one has the right process or answer". (Transcript p.60)

Barriers to the Development of Legal Knowledge

The barrier to the development of her knowledge of school-related law in Principal 4's opinion, was that school-related law is only one part of school management and unless it 'hits you in the face or a course comes up and it all gets very scary for a while' principals put it to one side hoping that they will never have to face the issues involved.

"...and it isn't very often that you do. I'm thinking of high level stuff and hopefully in your career you don't often have to face some of these really difficult issues, but if we are talking about the law in say attendance registers or something then obviously that's a far more day to day thing". (Transcript p.61)

The principal contended that it was important to have procedures in place to cover the more 'day to day' sorts of legal issues like the rules surrounding attendance registers.

When asked what sorts of legal issues concerned or scared her most Principal 4 was concerned with personnel matters, although the experience of going through the competency process had helped overcome her fears. She contended that no amount of study could replace actual experience dealing with such issues. Facing issues professionally and using due process 'when things come up', getting advice from the 'right people' and talking to 'people about each step of the way' was important to this principal. (Transcript p.61)

Professional Sources of Legal Knowledge

Principal 4 rated eight sources of legal knowledge as being 'very useful' in the administrative decisions she had taken as a school principal in relation to legal matters. In common with the other respondents NZEI field officers and STA advisors were included in this group. (See Table 4.8)

Table 4.8. Principal 4's Rating of Professional Sources of Legal Knowledge

Very useful	Useful	Of some use	Of no use
Employment contract documents	College Advisory services	Education media	ERO officers
In-service courses.	Gazette notices	ERO publications	Mass media
NZEI field officers	MOE officers	Hard copies of legislation	
NZPF circulars and helpdesk	MOE publications	MOE Leadspace website	
NZPLC legal website	MOE publications	University courses.	
Other principals	NZEI publications		Uncertain
Principal Associations	Principal mentors		
STA advisors	Professional periodicals		
	STA publications		

Legal Risk Management Policies and Practices

Principal 4's school had a comprehensive array of legal risk management policies and procedures which was not surprising given her strong advocacy of the importance of procedures and processes in guiding the workings of the school.

‘In any school the people need to know there is a structure there and everyone’s familiar with it and we’re all going in the same direction. And so if issues do arise there is something to refer to.’ (Transcript p.69)

She was the only principal to have personal public liability insurance in addition to her school’s cover. Moreover, she was the only principal to claim that her school had intentionally set out to draft a suit of policies and procedures that they thought they needed rather than as an ad hoc response to external directive.

“As a board we sat down for a weekend, and this was years ago, and said ‘Well what do we need? What do we want it to look like and what do we want it to say basically? And now every two years when we review each section we just look at what else is required from the new legislation.’ (Transcript p.69)

She reported that a board member had been especially tasked to keep abreast of new legislation and that the board regularly read ‘all STA information’ and enacted ‘things you need to have in place’. (Transcript p.70)

Principal 4 claimed that her school checked the legality of its policies and procedures by ‘cross checking them with legislation’ (Transcript p.70) and by using Ministry of Education officers, NZEI field officers, STA advisors and STA handbooks and publications. The appropriateness of each was determined by ‘using them and reviewing them’.

“For instance we have some information in place that if there is a crisis that happens, and we had one about a year ago, and we knew exactly where to go. We referred to what we had in place and we reviewed it afterwards. We did everything we said we should do it. So that was a really good check.” (Transcript p.70)

Determining When Issues Need Professional Legal Advice

Principal 4 had found herself in situations where she felt she needed to seek advice and support. While she estimated that she spent less than ten percent of her working week on legally-related matters and that this work was no more stressful than other administrative tasks, she did indicate that stress related to legal issues was increasing.

When asked to list the signs that an issue might develop into a legal problem she stated that 'usually you know if a parent is unhappy fairly quickly. Often they're the vocal ones.' (Transcript p.70). She was also quite confident that the systems within the school would show up problems such as 'teacher competency or something'.

When problems had arisen Principal 4 had received help and support from a variety of sources. While she rated NZEI field officers, STA and MOE advisors as 'very useful' her first preference was the New Zealand Principals Federation and other 'experienced' principals. However, she argued that it was important to seek more than one source of advice when conflicting advice is received and gave the example of NZEI giving one piece of advice and STA another.

Ideas for Making the Present Situation More Effective

Principal 4 thought that the NZPLC website was a good source of information about legal issues along with contact with the Ministry of Education through the Leadspace website.

"But not everyone uses those, so I think it's really encouraging people to take some time to talk about the 'what ifs' or scenarios just like you've got here, so that they're thinking through. Even though none of these particular scenarios might ever arise with them. But at least they're thinking through processes and talking to each other about it." (Transcript p.72)

She ended by saying that she thought that the whole area of litigation had not really hit principals yet and was going to get harder.

"I think we need to be more aware of it without scaring everyone". (Transcript p.72)

4.5 Case Study 5

Principal 5

Principal 5, a middle-aged female, was the teaching principal of an isolated U3, decile 7, full primary school, one hour from the nearest rural service town and over two hours from the nearest advisory services. She had held this position for 18 months following a four year period as the teaching principal of a sole charge, decile 9, full primary school, fifteen minutes drive further west. Of her seventeen and a half years teaching service only six had been spent in urban schools; one year as a beginning teacher in a U3 contributing school and five years in a U4 contributing school.

Knowledge of School-related Law

Part B of the Principal's Questionnaire dealt with the issue of each principal's familiarity with school-related law. Principal 5 rated her knowledge of school-related law and the Principles of Natural Justice as 'uncertain'. (See Table 4.9.) She was also uncertain that her knowledge of school-related law was sufficient enough for her to recognise legal problems when they arose, but 'agreed' that she was confident enough to determine when she should seek professional legal advice. She also 'agreed' that if advice and support on legal issues was needed, she knew where to get it.

Table 4.9. Principal 5's Rating of Her Knowledge of School-related Law.

	Rating
(a) I am familiar with the purpose and contents of most legislation affecting schools.	3
(b) My knowledge of school related law is sufficient for my work as a school principal.	3
(c) I have a good understanding of the principles of natural justice.	3
(d) My Knowledge of school related law is sufficient enough for me to recognise legal problems when they arise.	3
(e) I am confident that I am able to determine when an issue needs professional legal advice.	2
(f) If advice and support on legal issues is needed, I know where to get it.	2

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

When she was asked to rate her familiarity with individual pieces of legislation she indicated that she did not have a 'very good working knowledge' with any school-

related law. However she claimed 'some familiarity' with ten of the thirty-nine statutes, guidelines and regulations listed by the Education Review Office (2004) and Walsh (1997) as being relevant to the work of school principals. These included the National Curriculum Statements, the National Administration Guidelines (NAGs), the National Education Guidelines (NEGs), the Collective Employment Agreements and the Smoke-free Environments Act – all high profile pieces of legislation for primary schools. She also claimed some familiarity with the Fencing of Swimming Pools Act 1987, the Protected Disclosures Act 2000, the Official Information Act 1992, the Ombudsman Act 1975 and the Privacy Act 1993.

The Critical Incidents

In Part B of the Principals' Interviews the respondents were asked to comment on a number of 'critical incidents' presented as six vignettes and covering an aspect of school-related law.

In Vignette 1 Principal 5 quickly identified the nature of the issue in a case where a boy is accused of bullying and the board chairperson attempts to intervene.

"He may not do that under any circumstances. This is nothing to do with governance, it's a management issue, and that as principal, I would be looking into the situation and investigating." (Transcript p.75)

She also identified the issue as one that could develop into a legal problem but was confused about the source of her legal authority in asserting her right to act in this matter.

"I would quite quickly tell him that if he was to become involved there could be legal implications because under the Privacy Act he has no right to do that." (Transcript p.75)

It is the Education Act 1989 that gives principals the power to manage the day-to-day affairs of the school. (NZPLC, 2005)

In the second vignette, a case dealing with a non-custodial parent's request for access to school reports, Principal 5 said that she would not give the reports to the father.

"He would need to go and get special permission from the girls' mother who was the kids' custodial parent. She should give him that information." (Transcript p.76)

According to the NZPLC website (2005) the correct response would have been to have released some information unless 'the children were old enough to justify their reasons for withholding the information under the Official Information Act 1982'. Even then the ombudsman has ruled that the school should provide a generalised letter indicating the progress of the children.

Vignette 3 dealt with a recently appointed teacher who was unhappy with the results of a performance appraisal and was accusing the principal of 'having it in for her'. Principal 5 was able to give some useful advice for dealing with the alleged teacher incompetence outlined in the case. She said that she would work 'through a system whereby you were letting her know that there were some concerns and giving her the opportunity to do something about them.' (Transcript p.76) If things got out of hand she would advise the teacher to get representation from the NZEI and follow the 'very correct procedures, the competency thing, and carefully go down that track.' However, she missed the main issue of the case which centred on finding ways that would allow the school to review that teacher's appraisal while safeguarding the principal from accusations of unfair treatment and bias.

The NZPLC website advises that an expert second opinion agreeable to both parties provides a useful safeguard against this and also stresses the importance of getting legal advice when starting competency proceedings. (NZPLC, 2005)

Vignette 4 dealt with the assault of a teacher's aide by a child with special needs. Principal 5 correctly recognised that the teacher aide should not be put in a position where she was being assaulted and that potentially there were legal implications for failing to act.

"One would have to put some assistance in place to see really that that didn't happen otherwise she could say that people weren't following...That she could take a

personal grievance perhaps against the school if action wasn't being taken because there is no way she should be put in a position where she is being bitten or scratched." (Transcript p.77)

The NZPLC website suggests that principals use a comprehensive three tiered approach to determine whether they have done all they can to meet their obligations to both the child and the staff member in situations of this sort. (NZPLC 2005) In comparison Principal 5 was unable to suggest any specific action apart from meeting with the parents.

Principal 5's response to the question in Vignette 5, asking her to determine who was to blame for the injuries received by a boy while on school camp, was brief and to the point.

"I think in that case it would be the camp because the camp has not done enough to ensure that people were aware of the hazard. There needed to more detailed hazard identification." (Transcript p.78)

While correct in her apportioning of blame, a more complete assessment of the situation should have also considered the duty of care owed by the school, a point picked up on by the other principals in the study. The school in question had provided adequate supervision and was absolved of any liability. However, the implication in the court judgement was that, despite paying for an activity, schools still owe a duty of care to pupils and, in addition to what is already provided, must ensure that their own safety standards are adhered to and that all reasonable steps are taken to safeguard their pupils. This would include pointing out any hazards and seeking remedial action before visiting sites controlled by others. (NZPLC, 2005)

When commenting on the actions of Mrs Hardcastle in Vignette 6, Principal 5 correctly stated that the teacher would need to be told 'that she must not do that'. (Transcript p.78) and gave the reason that 'it's not acceptable behaviour to a child.' Another important reason, missed by Principal 5, is that shaking and squeezing a child is also a breach of criminal law and the teacher could be charged with assault. However, Principal 5 did say that she would get some assistance for the teacher 'so that she could learn some other strategies for dealing with Sebastian Forbes-

Hamilton', (Transcript p.78) a course of action recommended by the NZPLC website. (NZPLC, 2005)

The Principles of Natural Justice

In the second part of Section B of the interview Principal 5 was asked to comment on her understanding of the Principles of Natural Justice. She stated honestly that she did not know how to answer the question. When asked to comment on her understanding of the terms 'legality', 'reasonableness' and 'transparency' Principal 5 thought the 'legality' meant 'something that is either legal or illegal' then said she didn't know enough to talk about the Principles of Natural Justice. When the question was rephrased the principal talked about getting both sides of the story before going any further.

"Well that's what I think all principals would be doing. Because you need to get both sides of the story before you move forward. And sometimes that can take a lot of time. I know of a situation here where, it was actually a bullying situation, it took me all day by the time I found out both sides of the story and how at the end of the day there had been a misunderstanding between two of the parties and that a third party became involved. But by looking at the whole case and looking at it in a reasonable way you can deal with the matter before it can go any further."(Transcript p.79)

Sources of Legal Knowledge

Pre-service and In-service Qualifications and Training

Principal 5 gained a Diploma of Teaching as a result of her pre-service education and training but had not added to her academic qualifications since. Seemingly her only formal exposure to law related issues was a short one off seminar organised by the local principals' association which she described as 'useful', and an NZEI special session on common legal issues which she found 'very helpful'. Overall however, she rated her pre-service and in-service education and training as 'of no use' when it came to preparing her for the legal aspects of her job as a school principal.

The Influence of Personal Experience

When questioned about the role of personal experience in helping develop her knowledge of school-related law Principal 5 noted that 'previous' personal experience had been helpful in developing her legal knowledge as a principal, citing experience as a parent rep on a board of trustees.

"Trying to be a teacher in today's world, being a parent rep on a board of trustees was a good thing to help me with that. Also just being aware with what's going on in the world, your general knowledge of newspapers and things like that would probably help you". (Transcript p.73)

The Influence of School Type, Decile Rating and Geographical Location

When asked about the influence of school type, decile rating and geographical location on the development of her experiences and knowledge of school-related law Principal 5 thought that lower decile schools might have more 'issues', but that size and location 'probably doesn't matter', because 'you are going to have things that happen'.

"On my development of experiences and knowledge. I've only really worked in the rural area so I guess I haven't really had the experience of big towns so maybe I can't comment on that". (Transcript p.73)

The Influence of Colleagues and Other Principals

When asked to comment on the extent to which she relied on the experience or comments of colleagues and other principals to gain an understanding of what she should do in situations involving legal issues she replied that she talked to colleagues and other principals 'a lot', and that included legal issues.

"It's always a good idea if you're not sure of something to ask another colleague who may have been in the same situation and who may be happy to assist". (Transcript p.74)

Barriers to the Development of Legal Knowledge

Principal 5 contended that principals are so busy dealing with day to day issues that they have not the time to read up all the information given to them and that this was a barrier to the development of their knowledge of school-related law. For her the best way to get knowledge was to talk with experienced colleagues. Another way to learn about school law was by direct experience when ‘you’re thrown into the situation that you suddenly have to find out in one heck of a hurry’, but added...

*“Not necessarily the best way to know the knowledge you should for your job”.
(Transcript p.74)*

When asked what sorts of legal issues concerned or scared her most Principal 5 thought that a principal’s actions can be misconstrued causing problems.

“Principals are always trying to be really careful about what they’re doing but sometimes whatever is said can be conveyed in a different meaning and that can cause you problems”. (Transcript p.74)

Professional Sources of Legal Knowledge

Principal 5 rated eleven sources of legal knowledge as being ‘useful’ in the administrative decisions she had taken as a school principal in relation to legal matters. In common with the other respondents NZEI field officers and STA advisors were rated relatively highly.

Table 4.10. Principal 5’s Rating of Professional Sources of Legal Knowledge

Very useful	Useful	Of some use	Of no use
	Employment contract documents	College Advisory services	Education media
	Gazette notices	MOE Leadspace website	ERO officers
	In-service courses.	MOE officers	ERO publications
	MOE publications	NZEI publications	Hard copies of legislation
	MOE publications	NZPF helpdesk	Mass media
	NZEI field officers	NZPLC legal website	University courses.
	NZPF circulars		Uncertain
	Other principals		Professional periodicals
	Principal Associations		
	STA advisors		
	STA publications		

Legal Risk Management Policies and Practices

Principal 5 was able to show that her school had a comprehensive list of legal risk management policies and procedures. (See Questionnaire Summary of Responses Appendix I) She said that she did not have personal public liability insurance but her school was adequately covered.

It would seem that policy making in Principal 5's school was largely driven and guided from the outside. When asked how she determined what policies and procedures to put in place she said that she was guided by information received from the Ministry of Education or from the principals' association.

"If there is a new policy that schools need, people become aware of it. It doesn't take long for word to get through from the Principal's Federation." (Transcript p.80)

She claimed that she put in place 'required' policies and any others that 'that you know might be necessary to make sure that everybody is safe, that you are a safe school'. (Transcript p.80) She also claimed that her school checked the legality of its policies and procedures by using a number of sources including lawyers, other principals, College of Education advisors, NZEI and STA field officers and the NZPLC legal website. (See Questionnaire Summary of Responses Appendix II) However when she was asked a similar question in the interview she said that she relied on the 'recommendations of the Ministry or the principals' association'. (Transcript p.80)

Determining When Issues Need Professional Legal Advice

Principal 5 said that she had found herself in situations where she felt she needed to seek advice and support on legal issues but had not really come across a situation she thought might develop into a legal problem. The only incident she could recall that came close involved a board chairperson who had become too involved in a case of bullying. However she said that she would 'probably quite quickly get the idea.' (Transcript p.80)

NZEI field officers and STA and NZPF advisors had been a significant source of advice for her, but despite her rating of 'very useful' for the NZEI and STA, Principal 5 thought she would initially seek help and support from other principals first. Depending on the problem she would then contact the NZEI or STA. She said that she would have no hesitation contacting a lawyer and was aware of legal support from the NZPF. She also said that she would seek more than one source of advice when she was 'really unsure' and 'not exactly happy with it'. (Transcript p.81)

Like most of the other respondents Principal 5 estimated that she spent less than ten percent of her working week on legally-related matters but was unsure if they caused her any stress.

Ideas for Making the Present Situation More Effective

Principal 5's consideration of this issue was brief but she thought that more NZEI run courses on legal issues common to schools would be helpful.

"So I guess if more of those were held whereby things that other schools have found principals need to know were put together and you could have a short sharp intensive getting-to-know things that would be really good". (Transcript p.82)

4.6 Case Study 6

Principal 6

Principal 6 is a middle aged male with 24 years service. He had been in his present school, a U3, decile 8, full primary in a small rural service town for 2 months. Prior to that he had spent 12 years as the teaching principal of an isolated, U2, decile 8, full primary about two hours from the nearest service town and three hours from the nearest advisory services. He had served in a U4, decile 4, urban contributing school as a senior teacher for 7 years, and 5 years as a Scale A teacher. Principal 6 had held no other positions administrative or otherwise outside of the school sector but had been involved as a presenter with the First Principals' Induction Programme in 2003. (Eddy and Bennison, 2004)

Knowledge of School-related Law

Part B of the Principal's Questionnaire dealt with the issue of each principal's familiarity with school-related law. When answering this section Principal 6 displayed a negative perception of his knowledge of the law and was 'uncertain' of his understanding of the Principles of Natural Justice. (See Table 4.11.) He also 'disagreed' that he could recognise a legal problem, and was 'uncertain' that he could determine when he should seek professional advice. However he 'agreed' that if advice and support on legal issues was needed, he knew where to get it.

Table 4.11. Principal 6's Rating of His Knowledge of School-related Law.

	Rating
(a) I am familiar with the purpose and contents of most legislation affecting schools.	4
(b) My knowledge of school related law is sufficient for my work as a school principal.	4
(c) I have a good understanding of the principles of natural justice.	3
(d) My Knowledge of school related law is sufficient enough for me to recognise legal problems when they arise.	4
(e) I am confident that I am able to determine when an issue needs professional legal advice.	3
(f) If advice and support on legal issues is needed, I know where to get it.	2

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

When he was asked to rate his familiarity with the 39 pieces of legislation listed by ERO (2004) and Walsh (1997) as being relevant to a greater or lesser degree to the work of school principals, he claimed that he had ‘a very good working knowledge’ of the National Curriculum Statements, the National Education Guidelines (NEGs) and the National Administration Guidelines (NAGs), three pieces of legislation at the forefront of the work of principals in recent years. He also claimed that he was ‘familiar with purpose and contents’ of 13 other pieces of legislation which he had ‘used parts of, either directly or indirectly in his work’.

The Critical Incidents

In Part B of the Principals’ Interviews the respondents were asked to comment on a number of ‘critical incidents’ presented as six vignettes and covering an aspect of school-related law.

In Vignette 1 Principal 6 identified the matter of a board chairperson’s intervention in an alleged case of bullying as a governance / management issue and was quick to offer a remedy.

“I would ask the board chairperson for the evidence he’d collected. I would be very insistent that he wasn’t involved in the interviewing of this particular child. It’s a very clear governance/ management issue... I would request he backed off and it was dealt with at a school level and the board was informed of how it was resolved in a general sense. That level of detail and intervention by the board chairperson I would see as inappropriate.” (Transcript p.86)

In the second vignette, a case dealing with a non-custodial parent’s request for access to school reports, Principal 6 said that his ‘gut feeling’ was that the school was not in a position to withhold the reports from the father even though he was estranged from the mother and correctly identified one of the issues at the heart of the case.

“The custodial issue is quite separate from our ability to withhold information from the father so I think I would provide information on request to the father.”(Transcript p.87)

According to the NZPLC website (2005) schools should release some information unless the children are old enough to justify their reasons for withholding the information under the Official Information Act 1982. Even then the ombudsman has ruled that the school should provide a generalised letter indicating the progress of the children.

When pressed to comment on the children's request to withhold the information Principal 6 was wise enough to say that he would seek advice.

"If it were starting to get a little bit intricate and they made an impassioned plea that the information not be supplied I think I would seek advice on that one. If I saw that it wasn't an emotive sort of issue and so on probably I would just supply the information, but if I could see that there might be some litigation or people felt so strongly that it could become an issue I think I would sense that. My intuition would put the hairs up on the back of my neck and I would seek advice as to whether I was required to provide the dad with the information. I would put it in the too hard basket for myself on that one." (Transcript p. 87)

Vignette 3 dealt with a recently appointed teacher who was unhappy with the results of a performance appraisal and was accusing the principal of 'having it in for her'.

Principal 6 said that in the first instance he would consult the collective contract and be guided by the teacher competency provisions, carefully documenting each stage and ensuring that the teacher concerned 'knew and was aware of which stage we were at.'

"So you would make it as clinical as possible and keep the emotion out of it, but make sure the stage was tied very much into a teacher competency issue as detailed in the collective contract." (Transcript p.88)

While this is very good advice it is questionable that this alone would have addressed the central issue of the case; that is, of finding a way that would enable the school to review that teacher's appraisal while safeguarding the principal from accusations of unfair treatment and bias. The NZPLC website advises a three part course of action. (1) That an impartial and expert second opinion be sought on the teacher's

performance to safeguard against any accusations of bias. (2) That, with the teacher's consent, former references and appraisals be discreetly revisited to test whether the concerns now appearing were ever the subject of appraisals at other schools, and (3), if the competency process is initiated then legal advice should be sought, the provisions of the collective contract followed, including advising the teacher of their right to representation, and a support and guidance programme put in place that will help them reach the required standard. (NZPLC, 2005)

Vignette 4 dealt with the assault of a teacher's aide by a child with special needs. It was quite clear that Principal 6 was well aware of the issues involved in this case. His decision to 'prioritise' his efforts to deal with safety of the teacher's aide did in no way reduce the awareness that he also had as obligation to provide for the needs of the child.

"I think clearly you've got an employee at risk there. The inclusiveness of the special needs child is in the background but I think if I was to prioritise the thing that really stood out at me there would be the obligation as an employer to the teacher aide to make sure they were working in a safe environment." (Transcript p.89)

Principal 6 said he would use 'somebody like NZEI' for advice on how the safety issue could be dealt with. Second in priority would be to deal with issues surrounding the special needs of the child.

"But the thing that probably stands out there is the liability of the employer, that you are not looking after an employee." (Transcript p.89)

Principal 6 was in no doubt as to who was responsible for the injuries suffered by a boy while using a waterslide at a school camp, and had a good understanding of the duty of care owed by the school – the central issues in Vignette 5.

"I think the onus there is on the campsite provider and owner to assure us that the risks had been minimised." (Transcript p.90)

He also stated that there was an obligation on the part of the school staff to ensure that the appropriate documentation for risk management was in place and that the school

had done its own pre-camp site safety check – good practice according to the NZPLC website (NZPLC, 2005)

“I would also look at how it transferred to a ‘as you see it type sense’ in terms of doing a sensible look around myself.” (Transcript p.90)

When commenting on the actions of Mrs Hardcastle in Vignette 6 the principal identified the shaking and squeezing of a pupil as illegal behaviour.

“I think I would make her very aware of the risks she is presently taking professionally and the consequences of that and that world has moved along and persisting with shaking and squeezing a child could ensure that she, that the parents could take action against her.” (Transcript p.90)

The NZPLC website recommends that principals in this situation should also offer counselling as well as suggestions for alternative methods of student management. (NZPLC, 2005)

The Principles of Natural Justice

In the second part of Section B of the interview Principal 6 was asked to comment on his understanding of the Principles of Natural Justice. This principal said that while the term was familiar to him he was reluctant to give a definition.

“I know it’s a common legal term but I have very little understanding of the Principles of Natural Justice I’d have to admit.” (Transcript p.91)

Principal 6 decided to pass on the remaining questions stating ‘otherwise I’ll just get myself in a corner’. (Transcript p.91)

Sources of Legal Knowledge

Pre-service and In-service Qualifications and Training

Principal 6 entered the teaching service with a B.A and a Diploma of Education. However, according to his recollection, none of the courses he attended during his pre-service education and training touched on issues relating to school-related law

and like the other respondents in the study rated it as 'of no use' in preparing him for the legal aspects of principal-ship. As a teacher he gained a university paper in Geography and as a principal studied for a Diploma of Educational Management. One would have reasonably expected an educational management course to at least touch on legal issues, but according to Principal 6 it did not.

"A year or so ago I finished Dip. Ed. Man. and I can't recall any sort of legal aspect of that in any of the papers I did. It was all on pedagogy and leadership. Bits and pieces, but no nitty-gritty on law." (Transcript p.83)

At the time of the study Principal 6 was not working towards an academic qualification but he had taken part in STA sponsored board training on legal issues and had once heard a lawyer speak on legal issues at a local principal association meeting. He rated these events and his in-service education as a principal overall as 'of some use'.

The Influence of Personal Experience

When questioned about the role of personal experience in helping develop his knowledge of school-related law Principal 6 contended that the development of legal knowledge is a needs based thing.

"When something comes up you go into it. There's no point in having a great body of knowledge that you never use. So I have, in my twelve years in a small rural school, called upon people as I need them really". (Transcript p.83)

The Influence of School Type, Decile Rating and Geographical Location

When considering the question to what extent do you think the type of school, its decile rating, its geographical location has on the development of your experiences and knowledge of school-related law Principal 6 claimed that isolation made it a little more difficult to get legal advice, although during a 'sticky incident' he was able to access advice from the New Zealand Principals' Federation (NZPF).

"I was certainly more isolated in terms of not having professional people around me as you would in town and be able to get some off the cuff advice. So definitely isolation made it a little more difficult to access legal advice". (Transcript p.84)

The Influence of Colleagues and Other Principals

When asked about the extent to which he relied on the experience or comments of colleagues and other principals to gain an understanding of what he should do in situations involving legal issues, he replied that isolation does not serve isolated rural principals well. While there was a network of colleagues in his area it was fairly thinly spread and the tendency was to have people in rural one and two teacher schools who were less experienced.

"...if you needed to go and talk to colleagues it was generally in larger centres in (name) and (name). The network wasn't as strong there because they were so far away and you didn't meet them on a regular basis. But local principal associations and so on, if something did crop up, they were there. And even the NZPF helpline I used on a couple of occasions". (Transcript p.84)

Barriers to the Development of Legal Knowledge

When talking about the barriers to the development of his knowledge of school-related law he argued that there are so many other compliance issues and so many legal issues impinging on schools that principals deal with the most pressing. He contended that this was especially so for teaching principals in small schools who may choose to take less administration time if there was a learning need in the school. Unless there was 'something large' to deal with he argued that legal knowledge is not needed.

"I had over 80 percent of my day teaching and I only took 0.2 management so all the 0.2 was taken up on the most immediate administrative aspects of running a school and legal would have been 0.001 of a percent probably. It became larger when I obviously had something large to deal with but for most of the time I didn't need that knowledge". (Transcript p.85)

When asked what sorts of legal issues concerned or scared him most Principal 6 said he was concerned about his vulnerability to complaints and particularly anonymous accusations. He recounted his experience of defending himself against a 'malicious' accusation and going through the investigative procedures of CYFS.

“I had one instance where an anonymous complaint was made to Child Youth and Family. It was apparent to me how vulnerable you were when under the cloak of anonymity someone decided they would make an accusation which as it transpired didn’t have any foundation at all. You were basically in a position where you really had to gather evidence in your defence to this unknown accuser and as I say that prompted me to very hastily sign up to the NZPF legal cover”. (Transcript p.85)

Professional Sources of Legal Knowledge

Principal 6’s rating of the sources of legal knowledge which had been useful to him in the administrative decisions he had taken as a principal probably reflect his isolation. Apart from NZEI field officers it seems that his main source of legal knowledge has come from publications.

Table 4.12. Principal 6’s Rating of Professional Sources of Legal Knowledge

Very useful	Useful	Of some use	Of no use
	Employment contract documents	College Advisory services	College of Education advisory services
	MOE publications	Education media	ERO publications
	NZEI field officers	ERO officers	Hard copies of Govt legislation
	NZEI publications	In-service courses.	NZPLC legal website
	NZPF publications	Mass media	University courses
	STA publications	MOE Gazette notices	Uncertain
		MOE Leadspace website	
		MOE officers	
		NZPF helpdesk	
		Other principals	
		Principal Associations	
		Professional periodicals	
		STA advisors	
		University courses.	

Legal Risk Management Policies and Practices

Principal 6 was able to dictate a comprehensive list of legal risk management policies and procedures that were in place in his school. (See Questionnaire Summary of Responses Appendix I) He had let his personal public liability insurance lapse and was uncertain if his school was adequately covered. When asked how he determined what policies and procedures to put in place he said that he used the ERO self review form sent to schools annually to provide a ‘sort of check list’. He also used Ministry

circulars and gazette notices, Ministry initiatives like the EOTC risk management information, the 'odd seminar or two' and increasingly the Ministry's Leadspace website.

"Increasingly that's the place I go to on a reasonably regular basis and just check that I've got what's required." (Transcript p.92)

When asked how he reconciled his policies and procedures with the relevant legislation Principal 6 said that he did not go directly to the legislation because he considered it far too complex, but trusted that the information and advice from the ministry, including their interpretation of the legislation, was correct. He then added, 'So I would rely on them to interpret what I needed to have in the school'.

To ensure the appropriateness of his policies and procedures Principal 6 had developed a triennial programme of self-review.

"So you look at those policies and procedures and you make sure that they are still appropriate and update them as necessary. Often things might come up in the intervening time but yeah just to ensure they're still relevant with what's going on in the school." (Transcript p.92)

Determining When Issues Need Professional Legal Advice

Principal 6 had found himself in situations where he felt he needed to seek advice and support. Like most of the other respondents he estimated that he spent less than ten percent of his working week on legally-related matters. He indicated that this work was more stressful than other administrative tasks and was becoming even more so. When asked what he thought the signs that an issue might develop into a legal problem were he stated that 'a bit of emotion on the part of an employee, parent or student signals you that this might not be dealt with on a low level of intervention and that it would be prudent to get some legal advice and be prepared for it escalating as a problem'. (Transcript p.93)

NZEI field officers then NZPF advisors and other principals had been the most significant sources of legal advice for Principal 6. When asked when he would seek

more than one source of advice he replied that it was interesting how varied the advice from different sources could be.

“One instance I can think of with an employee who was under a considerable amount of stress and I consulted, and it was interesting the variety of advice I got. I got an NZEI field officer, I got New Zealand Principals’ Federation, and local principal association people as well. And it was very interesting when I cross feed that advice what different tacks people took on it.” (Transcript p.93)

On employment issues he considered the NZEI to be the most useful with STA in his experience being ‘very employer orientated’ and less likely to give such a ‘balanced view’. He used ‘wise colleagues in the area or further a field’ for student issues, but he did not think he would use a lawyer because he was not a paid up member of the NZPF legal scheme.

Ideas for Making the Present Situation More Effective

Principal 6 thought that the Internet was being increasingly used and that the Ministry of Education’s Leadspace website was increasingly the first ‘port of call’, if principals needed information.

“Probably one way of improving principal’s knowledge of school related law would be, in plain English, to give us some web based reference source so we could have almost a flow chart for common situations we face in schools. Like some of the early ones we saw in the questionnaire. It would be very useful if you could hop onto education- related law.co.nz or whatever and pop into a particular situation.” (Transcript p.94)

He suggested that the site might contain understandable interpretations of how the law related to ‘our situation’ with a link to a ‘question and answer type advisory service that we could do online anonymously’. (Transcript p.94)

Chapter Five: Discussion of the Data - Emerging Themes

This chapter presents and discusses the data collected in relation to the research questions that were detailed in Chapter One and outlines the emerging themes. It will be recalled that the aim of the study was to determine if there are grounds to conclude that the overseas experience with regard to the legal literacy of school principals is mirrored here in New Zealand. The research questions used in pursuit of this aim were:

1. What levels of legal literacy are evident amongst a cross section of New Zealand principals?
2. Where do these principals gain their knowledge of school-related law from?
3. What legal risk management policies and practices have these principals implemented and to what extent have they been able to determine or test their effectiveness in meeting the school's legal obligations and in providing protection from litigation?
4. How far are these principals able to determine when issues they are dealing with need professional legal advice?
5. What suggestions did the principals have for improving the current situation?

5.1 Research Question 1: What levels of legal literacy are evident amongst a cross section of New Zealand Principals?

The review of literature reported in Chapter One indicates that concern exists in both the United States and Australia regarding the level of legal literacy held by principals that impacts on schools. The knowledge principals have of the areas of law associated with their schools was thus a central concern of this study. Accordingly items in the Principals' Questionnaire and questions in the Principals' Interviews were designed to collect data that would indicate the extent of the respondents' knowledge of school-related law.

Knowledge of School-related Law

Part B of the Principals' Questionnaire dealt with the issue of the principals' familiarity with school related law and asked principals to rate six statements against a 5 point scale. (See Table 5.1.)

Only Principal 1, the youngest and least experienced participant both in terms of teaching service and time as a school principal, 'agreed' or 'strongly agreed' with all the statements listed. The others were perhaps more introspective and reluctant to overrate themselves. This was especially so for the remainder of the rural and isolated principals who were largely 'uncertain' or 'disagreed' that their knowledge of school related law and the Principles of Natural Justice, or their ability to recognise a legal problem was sufficient for their work as school principals. Only when it came to recognising where to seek professional advice and support did this group as a whole 'agree' that they knew what to do. The two experienced urban principals also seemed uncertain of their knowledge of school law and whether or not it was sufficient for their work but gave themselves a higher rating when it came to their understanding of the Principles of Natural Justice and for recognising legal problems.

Table 5.1. The Principals' Rating of Their Knowledge of School-related Law.

	Urban		Rural		Isolated	
	P3	P4	P1	P2	P5	P6
(a) I am familiar with the purpose and contents of most legislation affecting schools.	3	2*	2	4	3	4
(b) My knowledge of school related law is sufficient for my work as a school principal.	3	3	1	5	3	4
(c) I have a good understanding of the principles of natural justice.	2	2	1	4	3	3
(d) My Knowledge of school related law is sufficient enough for me to recognise legal problems when they arise.	2	2	2	3	3	4
(e) I am confident that I am able to determine when an issue needs professional legal advice.	2	3	2	3	2	3
(f) If advice and support on legal issues is needed, I know where to get it.	2	2	1	2	2	2

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

* Principal 4 circled the word 'purpose' indicating that she agreed that she was familiar with the purpose of the legislation but not necessarily with the contents

The principals were also asked to rate their familiarity with the 39 individual statutes, orders, guidelines and regulations which according to ERO (2004) and Walsh (1997)

affect the work of principals in state primary schools to a greater or lesser degree. Here a pattern emerged which seemed unrelated to experience, geographical location and school type. All principals claimed a 'very good working knowledge' with up to four pieces of legislation – typically the National Curriculum Statements or a combination of the National Curriculum Statements, the National Administration and Education Guidelines and the collective contracts for all staff. This is not unsurprising given that this legislation has been at the forefront of principals' work in recent years and arguably contains the bulk of what principals would need to know to manage their schools. They also claimed some familiarity with a number of other high profile pieces of legislation – the Smoke-free Environments Act, the Protected Disclosures Act, the Privacy and the Fencing of Swimming pools Act. In addition to this each principal claimed some familiarity with a number of statutes that seemed to be unique to them or perhaps shared by another but with no discernable pattern of use amongst the group as a whole. This may have been due to their individual experiences and uses of the law. For example Principal 2 claimed that she had worked with animal welfare legislation reflecting her school's extensive use of animals as part of its environmental learning programme.

Surprisingly only two principals claimed some familiarity with the Education Act 1989 which is the source of a principal's legal authority. One would have reasonably expected some familiarity with this legislation but apart from the experienced urban principals most rated it as 'aware of its purpose but only in a general sense'. Overall the majority of the legislation listed was rated as 'aware of its purpose but only in a general sense' to 'unaware of its existence'.

Part B of the Principals' Interviews contained items designed to collect data that would give an indication of the respondents' knowledge of school-related law particularly as it related to governance and management, employment, student management, Educational negligence and duty of care and criminal law. Each item was presented in the form of a critical incident or vignette sourced from the New Zealand Principals' Leadership Centre's legal website. The respondents were asked to comment on what they would do in each case and their responses matched to a legal opinion provided by the website.

Vignette 1 – Governance

Your recently elected Board Chairperson sent you a fax about the level of bullying in the school. He has been given the same name of one boy in particular. He wants to come into the school this afternoon to interview Sebastian Forbes-Hamilton and will give you a summary of his investigation and recommendations. What should you do? (NZPLC, 2005)

All the respondents correctly stated that it was the principal's role to investigate the bullying and most were able to identify it as a management/governance issue. None were able to state the Education Act 1989 as the source of their legal authority, although Principal 5 quoted the Privacy Act.

Vignette 2 – Management

A father of two students at your school dropped into the school office and requested a copy of all their school reports for the previous two years. Having never met the father before you were suspicious and rang the girls' mother (custodial parent). She confirmed he was the father but had been estranged from her and the girls for the last 10 years. She requested that the reports not be given to the father. You interviewed the girls who were of the same view. What is your position? (NZPLC, 2005)

There was some confusion surrounding this rather complex issue. Most principals vaguely identified it as being associated with court imposed restraints on custodial access. Principal 5 stated that she would not give the father access to the reports unless he provided 'special permission' from the custodial parent. Other principals stated that they would give the father access to the reports provided there were no court imposed restraints against access or, as Principal 4 noted, documentation that removed the father's entitlement to the reports. Principal 6 stated that it was his 'gut reaction' to release the reports unless he received an 'impassioned plea' that might lead to litigation, in which case he would seek further advice.

In the end few based their decision to release or not to release on the issue at the heart of the case. Most assumed that if access to the children was restricted then so was information about the child. However the issue of custody and contact is quite

separate from the ability to withhold information. Rather the central issue surrounds the age of the children and their ability to make an independent and mature decision. The correct response would have been to have released the reports unless, as Principal 3 stated, 'the children were old enough to justify their reasons for withholding the information'. Even then the ombudsman has ruled that the school should provide a generalised letter indicating the progress of the children, a point missed by all the principals.

Vignette 3 – Employment Law

You as Principal have just conducted an appraisal of a teacher recently appointed to your school. You were dismayed and horrified at the poor planning and lack of classroom management. The teacher came with glowing references and appraisals from two previous schools. The teacher thinks you have it in for her and that you are totally off base with your appraisal. What should you do? (NZPLC, 2005)

Most of the principals identified this primarily as an issue of teacher incompetency and went about outlining ways that they would deal with it. Principal 6, for example, said that in the first instance he would consult the collective contract and be guided by the teacher competency provisions, carefully documenting each stage and ensuring the teacher knew and was aware of what was happening. This was very good advice and matched part of the recommendation provided by the NZPLC legal website (NZPLC, 2005). Others said that they would use the school's appraisal system to measure the teacher's performance and then provide some support and guidance if necessary. This was despite the fact that an appraisal had already identified areas of serious concern.

Only Principal 3 identified the central issue of the case; that is, finding a way that would enable the school to review the teacher's appraisal while safeguarding the principal and the school from accusations of unfair treatment and bias. He listed two parts of the three part course of action suggested by the website; that an impartial and expert second opinion be sought on the teacher's performance to safeguard against any accusations of bias, and, that with the teacher's consent, former references and appraisals be discreetly revisited to test whether the concerns now appearing were ever the subject of appraisals at other schools. The NZPLC website also advises that

if the competency process is initiated then legal advice should be sought, the provisions of the collective contract followed, including advising the teacher of their right to representation, and a support and guidance programme put in place that will help them reach the required standard. (NZPLC, 2005)

Vignette 4 – Student Management

A teacher aide has written a formal letter of complaint to you alleging a year 6 student suffering from Oppositional Defiant Disorder (ODD) has just bitten and scratched her for the third time this year. She demands the student be removed or she will take a personal grievance against the school. The parents of the student claim the teacher aide is inflexible, insensitive, uncommitted to inclusive education and the school is not doing all it can to meet their son's 'special needs'. What should you do? (NZPLC, 2005)

Principal 3 and Principal 6 identified the main issue in this case; that is, the right of the child to an education against the right of staff and other pupils to a safe emotional and physical environment. The other respondents focussed on the need to protect their staff, or the need to provide for the child with special needs, but not both. Nor were they able to describe the actions they would take to resolve the situation in a way that would enable them to meet their legal obligations towards the child and the staff member. Only Principal 3 was aware that there was a process schools needed to go through to cover themselves.

In dealing with this issue the NZPLC website suggests obtaining legal advice at an early stage and using a three pronged approach to assess the situation. Firstly, the school needs to consider if it has done all it can within its resources to meet the student's needs in terms of resourcing, equipment and staffing, provision of programming to meet academic, social and behavioural needs, and reactive strategies to gain rapid and safe control of situations that may pose risk to others. Secondly, the school needs to assess the health and safety risks to other students and staff. Thirdly, if there is likelihood that even with the interventions in place that serious harm will occur then serious consideration has to be given to the standdown and suspension provisions in Section 14 (1) of the Education Act 198. (NZPLC, 2005)

Vignette 5 – Educational Negligence and Duty of Care

A ten year old boy from your school is severely injured when he went down a plastic water slide at a camp site. It was during school time and organised by school staff. The camp owners had placed a chain across the bottom of the slide which was intended to act as a safety device to stop unauthorised persons using the slide. There was no locking control on the water tap at the top and the chain was not necessarily visible from the top of the slide. The use of the slide resulted in injuries estimated to cost over \$100,000. Who was responsible? (NZPLC, 2005)

It seems that most principals have an awareness of the importance of the duty of care. Four principals stated that they thought the camp was responsible for the boy's injuries and two were unsure. Five of the six principals stated or implied that schools needed to take reasonable steps to ensure pupil safety and to run their own checks over and above those carried out by the camp. Principal 5 was able to identify the camp as being liable but made no statement as to what a school's obligations might have been. Principal 1's statement raised the issue of the principals' understanding of 'reasonable steps'. His definition included advising the pupils of the danger and making the area 'out of bounds'. The NZPLC website advises schools to 'seek remedial action' which in this case would probably have meant insisting that the hazard was removed or physically isolated.

Vignette 6 Criminal Law

Mrs Hardcastle has been a junior teacher for 17 years and runs a good, orderly class. A parent rang you recently complaining that Mrs Hardcastle sometimes shakes and squeezes her son when he is naughty. When you speak to Mrs Hardcastle she says she has been doing it for years, saying 'No-one has ever complained about it before and it's not as if I'm hitting the child'. Apparently Sebastian Forbes-Hamilton is quite a handful. What should you do? (NZPLC, 2005)

All principals identified this behaviour as unacceptable and that it must stop. Most also suggested that some form of professional development be given the teacher to

help her find alternative methods of behaviour management. However only Principal 3 and Principal 6 stated that the action was illegal or that legal action could be taken against the teacher.

The Principles of Natural Justice

Part B of the Principals' Interview also dealt with the respondents' understanding of the Principles of Natural Justice. Natural justice is served when procedural fairness is applied to decisions being made that could affect a person's rights, obligations or interests. Ignorance or failure to comply can result in a judicial review by the High Court with the possibility of the decision being declared void. Boards of Trustees and principals are subject to these principles particularly in matters of discipline. (NZPLC website 2005)

According to Cuncannon and Dorking (2002) there are three basic requirements for procedural fairness to happen. (1) The party must be given notice of the problem and the process by which it will be resolved. (2) The party must be given the opportunity to be heard and respond to contradictory information and, (3); the decision-maker must act partially, honestly and without bias. Related to this is the requirement for an authority to act legally, to make a reasoned and reasonable decision and to make sure, for the sake of transparency that the reasons for a decision are made known.

Only Principal 3 was able to give a comprehensive definition of the Principles of Natural Justice and the terms 'legality' 'reasonableness' and 'transparency'. Principal 5 admitted that she did not know how to answer the question. Principal 6 said that while the term was familiar to him he was reluctant to give a definition because his understanding of them was limited. The remaining principals each stumbled through a definition stating vaguely that the principles were about being 'fair' and 'listening to both sides', while they were only able to provide a skimpy summary of one or perhaps two of the related terms.

Discussion

As we have seen there is a considerable volume of legislative, common and criminal law that face those working in schools. However only one principal, the youngest and

least experienced, thought that he was familiar with the purpose and contents of most legislation affecting schools and that his knowledge of school related law was sufficient for his work as a school principal. Irrespective of their experience, school size, type and geographical location the remainder were much less confident.

This is understandable perhaps when it seen that most principals have worked intensively with only three or four pieces of legislation. Indeed apart from a number of high profile pieces of legislation such as the Smoke-free Environments Act most of the 39 individual pieces of legislation presented to the principals were rated as 'aware of its purpose but only in a general sense'.

Their reticence to overrate themselves was also backed up by the analysis of the responses to the six 'critical incidences'. Overall the principals were able to make a reasonable fist of the more straightforward scenarios but when it came to the more complex issues it was obvious that even the more experienced needed professional advice. Only Principal 3 was able to consistently identify the central issue of each case and provide a reasonable remedy. This was not surprising given his involvement with the NZPLC legal website. However even he was not averse to admitting that he often needed to get help from further a-field.

More worrying perhaps was the group's limited understanding of the Principles of Natural Justice. Again only Principal 3 was able to give a comprehensive definition of this most important term. Without a good working understanding of procedural fairness it is highly likely that principals will get themselves into trouble very quickly when problems arise. On a more positive note, they all claimed that they knew where to get advice and support on legal issues if needed, although only half were confident that they were able to determine when an issue needed professional advice.

The situation outlined here is similar to that reported by Stewart (1996) in his study of Queensland school principals. He found that most have minimal levels of knowledge in the areas of the law that they are required to manage. It also mirrors the findings of other Australian researchers and 'innumerable' American studies that conclude that 'ignorance of school law prevails' (Stewart 1996:114).

In an effort to help explain why this might be the discussion now turns to the question of where the respondents gained their knowledge of school-related law from.

5.2 Research Question 2: Where do principals gain their knowledge of school-related law from?

A number of sources have the potential to inform a principal's knowledge of school-related law. These include:

- The principal's pre-service and in-service academic education and training.
- Other educational or administrative appointments.
- The type and location of the schools the principal had taught in and administered.
- Personal experience of legal issues.
- Other colleagues and principals.
- Professional sources of legal knowledge such as school advisory services, NZEI officers and Ministry of Education handbooks and circulars.

Questions in both the questionnaire and the interview were designed to elicit information to help find out where the respondents in this study gained their knowledge from.

5.2.1 Pre-service and In-service Academic Education and Training

Pre-service Education and Training

Only one principal had gained a university degree as a result of pre-service education and training. Four others came out with either a Teaching Diploma or a Trained Teachers' Certificate and one did not list any qualification at all. According to the principals none of their pre-service courses touched on school law related issues and all but one rated their course as 'no use' in preparing them for the legal aspects of their jobs as school principals. Principal 1, the youngest and most recent graduate, assessed his course as 'of some use' but noted 'only as it related to some basic compliance issues'.

Table 5.2. Qualifications gained as a result of the participants' pre-service education and training

Principal 1	Principal 2	Principal 3	Principal 4	Principal 5	Principal 6
Dip Teach	Dip Teach	TTC		Dip Teach	B.A Dip Ed.

In-service Qualifications Gained Prior to the Participants becoming Principals

Three principals added to their pre-service qualifications by gaining a bachelor’s degree, one completed a postgraduate paper in Geography and another gained two university papers, one of which was in school organisation and management. Not surprisingly this principal was the only one who noted that his courses had touched on issues relating to school law. He categorised them as ‘a mixture of legal issues and other matters’ and rated them as ‘of some use.’ The participants were asked to rate the overall usefulness of their in-service education in preparing them for the legal aspects of the job as a principal prior to becoming a principal. All participants rated it as ‘of no use’.

Table 5.3. Qualifications gained as a result of the participants’ In-service education and training prior to becoming a principal

P1	P2	P3	P4	P5	P6
Two university papers - Curriculum Theory Policy & Practice School Org & Management	B.Ed	B.Ed Dip Teach	B.A Dip Ed.	Nil	University Paper in Geographic Education

Involvement in the First Principals’ Induction Programme

The First Principals’ Induction programme, funded by the Ministry of Education and delivered by the University of Auckland Principals’ Centre, first ran in 2002. It aims to develop ‘the knowledge, skills and other competencies required by first-time principals to be effective in their roles and to provide them with support during the first year of their appointments.’ (Eddy and Bennison, 2004:5)

Of the six principals in this study Principal 1 and Principal 2 had been involved as participants in First Principals and two as workshop facilitators. Of the two participants only Principal 1 claimed to have had attended any law related courses. These were categorised as ‘a mixture of legal issues and other matters’ and rated as ‘of some use’. Principal 4 had been involved in First Principals for three years as a workshop facilitator. When asked if this involvement had had any effect on her thinking about school related law she replied ‘in a small way because one of them is on preparing for an ERO review.’

Qualifications Gained by the Participants While Working as Principals and Current Academic Study.

Three principals listed qualifications they had gained during their time as principals and only one was currently engaged in study. He was working towards a Bachelor of Education degree (B.Ed). This principal indicated that parts of his course related to issues surrounding school law, some of which were ‘a mixture of legal and other matters’ and some which were ‘entirely dedicated to legal issues’. He went on to rate these parts of his course as ‘useful’ in preparing him for the legal aspects of his job as a principal. Of the qualifications gained by the other principals none were listed as touching on issues of school related law.

Table 5.4. Qualifications gained while working as principals.

P1	
P2	Certificate in School Marketing
P3	ASTU in various areas – reading, music
P4	
P5	
P6	Diploma of Educational Management (extramural)

Law related in-service workshops and seminars

All principals indicated that they had attended in-service workshops and seminars that had touched on school law related issues. In most cases they consisted of short introductory awareness raising presentations with a mixture of legal issues, although Principal 2 had attended a school law seminar run by the New Zealand Law Society which included the presentation of a school law manual to each participant. Other listed events included sessions on financial reporting requirements, a Principal Association meeting with a lawyer as guest speaker, School Trustees Association training workshops for board members on legal issues and Patrick Walsh led seminars on school law. Each principal was asked to rate the events they had attended. Two principals rated them as ‘very useful’, one principal as ‘useful’ and three as ‘of some use’.

The overall rating of in-service preparation

When it came to the overall usefulness of their in-service education in preparing them for the legal aspects of their work as principals, Principal 1 rated it as ‘useful’. Principal 5 as ‘of no use’ and the remainder as ‘of some use’. (See Table 5.5)

Table 5.5. Ratings of in-service education for preparing principals for the legal aspects of the job.

	P1	P2	P3	P4	P5	P6
Very useful						
Useful	•					
Of some use		•	•	•		•
Of no use					•	
Uncertain						

5.2.2 Other Administrative Appointments

The Principals' questionnaire sought to determine whether any of the respondents had previous administrative experiences that might have informed their principalships. Principal 1 had spent two years as the assistant manager of a hardware store and Principal 4 had been seconded to the Education Review Office (ERO) for two terms as a school review officer. Of the two, Principal 4's ERO experience could well have been expected to have been of value especially in regard to her knowledge of school law. When asked in her interview she replied that it had been useful 'to some extent'.

5.2.3 The Influence of School Type, Decile Rating and Geographical Location

All principals thought that the type of school, its decile rating and or its geographical location would have an influence on the legal knowledge of principals. They contended that the socio-economic make up of a school, indicted by its decile rating, would have an effect on the sorts of legal issues a principal would face and therefore on the sorts of legal knowledge developed. Principal 1 made the point that working with professional or semi-professional board members and parents would influence the sorts of experiences a principal would face. Another contended that her parents being 'good average kiwis' would give her less legal problems than parents from 'posh nosh' schools, while another stated that his colleagues in Decile 1 schools were more 'tied up with social issues and involvement with organisations like CYFS and the Police'.

Some principals thought that size and location of a school would have an influence. Principal 3, who had worked his way through the system from small rural schools and had 'progressed to more demanding large urban schools', contended that a principal's career path would have an influence on knowledge of school related law. Those promoted to principalship from senior positions in large schools without the

experience of smaller rural schools would miss out on a background of what he termed 'incidental stuff'. To him working in rural schools gave a 'different flavour' to things. Principal 4, who had also worked rurally, claimed that it was harder to learn about legal matters in a rural school. This was because a rural principal needed to 'learn everything' and so the development of legal knowledge became restricted to learning what they had to. However, she did concede that isolation was relative with some urban principals isolating themselves from the advice and help of others. Of the two principals from isolated schools Principal 5 thought that size and location did not matter, although she admitted that because her experience was limited to isolated areas she probably could not comment. The other, Principal 6, claimed that isolation made getting legal advice a 'little more difficult.'

5.2.4 The Influence of Personal Experience

In the Principals' Questionnaire only three of the six principals indicated that they had personally experienced situations which they considered had had serious legal implications. (See Table 5.6)

Table 5.6. Personal experience of serious legal issues

Area of the Law	P1	P2	P3	P4	P5	P6
Governance	•					
Management						
Employment						•
Student management				•		•
Laws relating to negligence and duty of care						
Criminal law						

However all principals stated that they had experienced situations that had added to their knowledge of school related law and most were able to quote one or two incidents that had been a learning situation for them. Some seem to have had a relatively uneventful time. Principal 5 for example could only say that her 'previous experience' on a school board had been of assistance to her when she had become a principal. Others had had to deal with some serious issues. Principal 1 had 'learnt quite a lot' about the role, rights and responsibilities and legal standing of board members from an incident where a board member had acted outside the authority of the board. Principal 6 had hastily signed up for NZPF legal cover after having to defend himself against a 'malicious accusation', while Principal 2 stated, that for her, the imprisonment of a close and trusted teaching colleague for the sexual abuse of

several pupils while she had been the deputy principal of a large intermediate school had been 'horrific'.

This was quite an illuminating case. Despite the fact that the management of the school knew that the staff member was taking children away on camp in his own time and had misgivings no advice had been sought as to what the school should do. Nor were there any guidelines in the school to guide the staff in such situations. Common sense might have suggested that risk management procedures be initiated after the event to prevent a reoccurrence but curiously this was not done. Nor had Principal 2 enacted any policy when appointed to her present position. Could this principal and her colleagues have been so traumatised at the time that they just wanted to put it behind them?

Principal 3 claimed that legal knowledge mostly comes from personal experience specific to the individual and cited his personal experience dealing with a custody issue, but then went on to state that 80% of his legal knowledge had come from his work with the development and maintenance of a legal website. It would seem that this work had acted as a useful training ground for him. Another experienced principal, Principal 4, contended that the 'most extreme learning is when something comes and hits you in the face ...and you've got to learn and have to find out', but went on to argue that personal experience was not enough and that principals needed 'to go out and seek knowledge to some extent'. Principal 6 was of the same mind, stating that there was no point having a huge body of knowledge that might never be used. Rather when something came up it was important to call upon people who could assist as needed.

5.2.5 The Influence of Colleagues and Other Principals

All the principals stated that they relied on other principals when dealing with legal issues. This ranged from using other principals 'a lot' to using them 'heavily'. For Principal 2, relatively new to the job, her first port of call was the person who carried out her annual appraisal. She also stated that she contacted other principals in her cluster group even before the STA or NZEI. Principal 1, another inexperienced principal, claimed that he was frequently ringing others and another, Principal 5, claimed that she talked to other principals 'a lot' especially ones who had been in the same situation. The experienced Principal 3 relied heavily on others and because of his experience and association with a legal website was frequently consulted by other

principals himself. He was also mindful of the importance of his local cluster group and the informal but very significant discussion and information sharing on issues including those relating to legal matters and the formulation of policy. Principal 4 said she consulted other principals 'a lot' but only those she considered as more experienced and with 'hopefully more knowledge'. Both principals were aware of the danger of rumour and 'bush lawyer' talk amongst principals and were quick to point out that they also consulted other sources such as the STA handbook or the Principals Federation 'who have access to the right knowledge and the right processes'. Principal 6, the most isolated of all the principals in the study, contended that isolation does not serve principals in his situation well. He argued that they are spread thinly and tended to be less experienced. Moreover local networks are weak with less regular meetings. He tended to talk to colleagues in larger town schools or use the NZPF helpline.

5.2.6 Professional Sources of Legal Knowledge

Part C of the Principal's Questionnaire asked the respondents to rate as 'very useful', 'useful', 'of some use', 'of no use' or as 'uncertain' a list of possible sources of legal knowledge. They were then asked to add to the list if possible.

What seems to be apparent in analysing the principals' responses to the various sources listed is that there are broad areas of agreement as to what is useful or otherwise. All respondents rated NZEI field officers as 'very useful' or 'useful'. NZEI handbooks, publications and circulars, STA advisors, STA handbooks, publications and circulars, other principals, principal associations and MOE handbooks, publications and circulars were rated between 'very useful' and 'of some use' by all respondents.

In-service seminars and workshops were rated as 'very useful' to 'of some use' by all principals except principal 5 who was 'uncertain'. Employment contract documents, MOE Gazette notices, NZPF helpdesk and circulars, College of Education Advisors, and MOE officers were all rated between 'very useful' and 'of some use' by all principals except for Principal 2 who rated them as 'of no use'. ERO officers and ERO publications, the education media and the mass media received ratings between 'of some use' to 'of no use', while five of the six respondents rated university courses

as 'of no use'. Of the two principals who were part of the First Principals Induction programme one rated it as 'useful' while the other as 'of no use'.

5.2.7 The Barriers to the Development of legal Knowledge

Two barriers to the development of principals' knowledge of school-related law were identified by the principals involved. The first was the perception held by some that the area of school related law is so vast that it would be impossible to know everything or to 'have it on tap'. The general consensus among these principals was that there is no need to know the 'ins and outs' of the law but instead to be able to recognise when something was a problem and to know when to get the experts in. Principal 3 thought that some training to point principals to sources of information and to have immediate access to these resources was important.

The second barrier was the perception that principals are bombarded with so much information that they tend to deal with legal issues only when they have to. As Principal 4 put it 'unless it hits you in the face and it all gets very scary for a while principals put it to one side and hope they will not have to face it'. She went on to contend that it was important to have procedures in place to cover the more day to day sorts of legal issues like the rules surrounding attendance registers. Principal 2 said that she spent so much time dealing with the day to day issues she did not have time to read all the information expected of her. Principal 6, a rural teaching principal, commented that principals in his situation only deal with the most pressing issues. This was especially so for those who chose to take less administration time if there were learning needs in the school. For him, unless there was 'something large' to deal with, legal knowledge was not needed.

Discussion

It was evident from the data collected that most of the principals in the study had little if any formal exposure to school-related law in their pre-service education and training. Ratings of their in-service education fared a little better but courses attended, which seemed organised on an ad hoc basis, were few and far between and generally limited to short introductory awareness raising presentations. Even the First Principals Induction Programme seemed casual in its coverage of legal issues, with only one of the two participants claiming to have attended any law related courses.

The situation mirrors Stewart's (1996) description of the Queensland setting where less than 40% of principals had attended law related in-service courses and even fewer (16%) had law related subjects in their academic qualifications.

All the principals thought that the type of school, its decile rating or its geographical rating would have an influence on the legal knowledge of principals and gave a range of opinions as to why this would be. This is probably true, however they do not seem to have added significantly to these principals' knowledge, especially if the level of legal knowledge across the group is indeed as it seems. Most had a limited knowledge of school related-law particularly as it related to the less straight forward issues, and a vague understanding of the Principles of Natural Justice. While Principal 3, the most consistent in addressing the issues in the critical incidents, had had a long and varied career, he attributed most of his knowledge to his work with the NZPLC legal website.

Nor could personal experience of legal issues be put down as a major source of this group's knowledge of school law. Only half of the group had been involved in one or perhaps two major issues. Even then it could be argued that any knowledge they had acquired would only relate to the few issues that they had had to deal with. Moreover the experience of a difficult issue like sexual abuse case experienced by Principal 2 did not necessarily mean that any constructive learning had taken place. At the time of the interview, for example, Principal 2 was still unsure about some legal issues surrounding the case despite all she had been through. Principal 4 was probably right when she maintained that personal experience was not enough and the principals needed 'to go out and seek knowledge to some extent'. The research literature supports a similar view. Hughes and Bush (1991) maintain that to manage schools on the basis of personally accumulated experience is to deny the wisdom of others' experiences. What principals learn in this situation becomes contingent upon the opportunities and challenges they meet in their particular school. (Southward, 1995) Sarason (1992) argues that principals are increasingly involved in a range of specialist services which go beyond the areas of personal knowledge and expertise, while Sergiovanni and Starratt (1993) contend that appropriately selected theory has the potential to provide principals with a surer view of a situation than that gained solely through school-based incidents.

All the principals in the study said that they relied on other principals a lot when dealing with legal issues. Indeed some said that other principals were their first port of call before they contacted professional legal advice such as the NZEI or STA. Principal 3 outlined the significant contribution his cluster group had made when legal issues arose and policy needed to be written. Principal 6 on the other hand said that principals in his situation were not served well by their isolation. Local networks were weak and he tended to consult with colleagues in larger town schools.

However the ability or otherwise to easily network with other principals could well be academic if the level of legal knowledge in the study group is representative of the country as a whole. Stewart (1996) reported in his study that what knowledge principals do have is often distorted, inaccurate or based on misinformation. Moreover he found that principals had a tendency to harbour 'unreasonable doomsday perceptions concerning their personal liability for all legal matters that arise in a school.' (Stewart, 1996:126) Tronc (2004) claims that this leads to 'law suit paranoia' where 'bush lawyer' misinformation, passed along the education grapevine has led principals to undertake what he describes as unprofessional and immoral actions in the name of legal risk management. While there was no evidence of 'doomsday perceptions' among this group of principals two of them recognised the danger of misinformation and were quick to point out that they consulted other sources 'who have access to the right knowledge and processes.'

When asked to comment on the barriers to their knowledge of school-related law two were identified by the respondents. One was the perception that principals are bombarded with so much information and are so busy with day to day issues they tend to deal with legal issues only when they have to. Stewart (1996) noted this as a problem in the Australian context. Indeed, he reports that, were it not for the demands imposed on them by regulatory requirements, most principals would continue to treat school law as a low priority area - an issue that we shall discuss in the next section.

Another perception held by the respondents was that because the area of school law is so vast it is impossible to know everything. Nor is it desirable in their view to know all 'the ins and outs' of the law. Instead it is more practical to be able to recognise when a problem is emerging and to get the experts in.

Stewart (1996) agrees to a certain extent and makes two important recommendations. Firstly, he states that while law degrees are unnecessary, principals should be

conversant with sufficient law to recognise when a problem needs professional legal advice. Secondly they need to know enough about the law and grievance procedures to implement legal risk management policies and practices in their schools. The next section will investigate this issue followed by a look at how the principals in this study determined when they needed to seek professional advice and support.

5.3 Research Question 3: What legal risk management policies and practices have these principals implemented and to what extent have they been able to determine or test their effectiveness in meeting the school’s legal obligations and in providing protection from litigation?

Public Liability Cover

In a society that is said to be increasingly willing to resort to litigation (Walsh, 1997:2) it is not unreasonable to expect that school principals would seek to protect themselves by taking out some form of personal insurance. Indeed the New Zealand Principals Federation provides for this by sponsoring a public liability scheme for primary school principals. It was surprising then to find that only Principal 4 had current personal public liability insurance and that another had let his lapse. While they all indicated that their schools were adequately covered (except for Principal 6 who was ‘unsure’) they themselves were not - a problem if they were ever to find themselves in conflict with their boards.

Legal Risk Management Policies and Practices

All principals were able to list a comprehensive array of legal risk management policies and procedures developed by their schools (see Table 5.7).

Table 5.7. A Sample of the Legal Risk Management Policies and Procedures Developed by the Respondent’s Schools.

Student Management and Well-being	P1	P2	P3	P4	P5	P6
Anti bullying			•	•	•	•
Behaviour management	•	•	•	•	•	•
Cross cultural awareness	•		•	•		
Custody and access	•	•	•	•	•	•
Discipline	•	•	•	•	•	•
Drug and alcohol			•	•	•	•
Education outside the classroom risk management	•	•	•	•	•	•
Guidance & counselling				•	•	•

Out of school care and supervision		•	•	•	•	
Play ground supervision	•	•	•	•	•	•
Sexual abuse & neglect	•	•	•	•	•	•
Special Needs	•		•	•		•
Visitor management		•	•	•	•	•
Staff Management and Well-being						
Anti stress				•	•	•
Appointments	•	•	•	•	•	•
Counselling				•		•
Equal Employment Opportunities (EEO)	•	•	•	•	•	•
Good employer	•		•	•	•	•
Performance management supervision and appraisal	•	•	•	•	•	•
Police vetting	•		•	•	•	•
Protected disclosures	•	•	•	•	•	•
Sexual harassment	•		•	•	•	•
Teacher registration	•	•		•	•	•
Resource Management						
Copyright	•			•	•	
Financial management	•	•	•	•	•	•
Hazard management	•	•	•	•	•	•
ICT acceptable use	•	•	•	•	•	•
General						
Complaints	•	•	•	•	•	•
Emergency procedures	•	•	•	•	•	•
Health and safety	•	•	•	•	•	•
Privacy of information	•	•	•	•	•	•

Asked how they determined what policies and procedures to put in place most principals indicated that this process was driven more by external influences than by perceived need emanating from within the school or from its community. Only Principal 4 claimed that her school had intentionally set out to draft a suite of policies and procedures that they thought they needed rather than as an ad hoc response to an external directive. Other principals readily admitted that they depended on the Ministry of Education and other agencies for direction. Principal 1 said that a lot of what he did was for compliance reasons and that ‘having a look at what other schools are doing’ largely determined what policies he had put in place. Principal 2 admitted that she was ‘a little lost as to what legally a school was required to have’ and relied on ‘someone telling me from above’ (Transcript p.17). Principal 3 also stated that a ‘large number’ of his policies were determined by Ministry directive, while Principal 5 was guided by the Ministry and her local principals’ association. Principal 6 said that he used the ERO self review form sent to schools annually to provide a ‘sort of check list’ and relied on the Ministry to interpret what he needed in the school. Other sources of influence cited by the principals included the School Trustees Association, rural advisors, Ministry circulars, and the Ministry of Education’s Leadspace website.

Even organisations like the Accident Compensation Commission and district councils appear to have had some influence on policy formulation.

To be fair, school-based need was used to some extent. Principal 3 cited a need to formulate policy when a custody and guardianship issue arose, while Principal 5 said that she put in place the 'required policies' and any others that 'you know might be necessary to make sure that everybody is safe'. Principal 2, who was probably the most willing to admit to her perceived shortcomings, added that she tended to react to incidents and formulate policy after the event.

Checks on the Legality of School Policies and Practices

Of the six principals four claimed in the Principals' Questionnaire that their schools checked the legality of their policies and procedures. Three of the four indicated that they used NZEI and STA field officers although a number of other sources were also listed. When asked to indicate which source they would use in the first instance, two stated that it would depend on the policy, one listed the NZPF and NZEI on employment matters and another stated that he would consult sample policies first, then the policies of other schools and then hard copies of the legislation involved.

However, when it came to the interviews, a different story emerged. Only Principal 4 said that her school checked the legality of their policies and procedures, and that was done by 'cross checking them with legislation'. In contrast Principal 2 and Principal 4 did not carry out any checks but relied instead on policy templates and background information and guidelines from the STA, the NZEI and the Ministry. Principal 6 too said that he trusted that the information and advice from the Ministry, including their interpretation of the legislation, was correct. For him the legislation was far too complex to be used directly. Similarly Principal 5 'relied on the recommendations of the Ministry and the principals' association', while Principal 1 admitted that 'often you don't really know' and then added that 'over a period of time you put your stamp on what you believe is valid.' (Transcript p.12)

Discussion

Stewart (1996) recommends that principals develop an understanding of school-related law sufficient enough to enable them to implement preventative legal risk

management policies and practices in their schools. This has the dual aim of protecting the school from the risk of legal claim and helping to ensure that legal obligations are complied with. For New Zealand principals the process of formulating policies and procedures has been a significant part of their work since the 'Tomorrow's Schools' reforms of 1989 and they were all able to produce a comprehensive portfolio implemented by their schools. However it seems for most that much of this process had been driven by external directive and was predominantly one of compliance. Indeed at least one principal admitted that often she did not bother to consult her policy folder at all.

Nor had most checked the legality of their policies and procedures trusting instead that policy templates and background information from the Ministry of Education and STA were correct.

If this is the case then there is cause for concern. As was pointed out earlier, maintaining an effective school requires more than conforming to a range of specified requirements but involves ways of thinking and working which may be unique to the local context. Risk management policies and procedures may be of little value if the underlying principles by which they were conceived are not clearly understood. (David Stewart, cited in Walsh, 1999)

Flockton (2003) agrees arguing that 'the law as it is stated is not necessarily the same thing as the sometimes curious and often spurious interpretations and embellishments that are packaged for school consumption by those who would have others believe them.' (Flockton, 2003:7) Flockton contends that principals should learn to work more closely to the seminal sources of the law. In his view the very efficacy of the self-managing school relies on the board and principal knowing what is really required of their school, as opposed to what someone from somewhere might tell them is required.

5.4 Research Question 4: How far are these principals able to determine when issues they are dealing with need professional legal advice?

In the Principal Interviews five principals claimed that they could tell if a situation was going to develop into a legal problem and the sixth thought she would 'probably quite quickly get the idea'. This was different to the claims made in the questionnaire

where only three of the respondents indicated that they were confident that they could determine when an issue needed professional advice (See table 5.9)

Table 5.9. The Principals' Rating of Their Ability to Seek Professional Advice and Support.

	Urban		Rural		Isolated	
	P3	P4	P1	P2	P5	P6
(e) I am confident that I am able to determine when an issue needs professional legal advice.	2	3	2	3	2	3
(f) If advice and support on legal issues is needed, I know where to get it.	2	2	1	2	2	2

Rating scale 1 = strongly agree, 2 = agree, 3 = uncertain, 4 = disagree, 5 = strongly disagree.

Putting that aside it, seems that the level of emotion generated by an issue was a very important factor for most principals when determining whether to seek legal advice or not. Principal 2 said that the problem was 'on to the next level' when people were getting angry and threatening, while Principal 6 stated that 'a bit of emotion' signalled that an issue might need to be dealt with at a higher level and that some legal advice might be prudent. Principal 4 also said that she gauged the severity of a problem by the level of unhappiness of the parents and Principal 1 by determining the 'level of resolve' of a complainant. For him the decision to seek advice often depended on whether the complainants were happy or not with the outcome of any discussion they had had.

However comments were made that suggested that the processing of some principals was not limited to sensitivity and intuition alone. Principal 4 for example seemed aware of the role by legal risk management policies and procedures as a means identifying and limiting potential difficulties, stating that the systems in her school would show up issues like teacher incompetency. After initially admitting that it was 'hard to know' and then that he 'didn't know' Principal 1 later stated that when an issue 'was beyond your field or sphere of professional expertise or knowledge you'd get help'. (P.13 Trans)

Principal 3 also alluded to knowledge and experience as being a factor in his decision to seek legal advice. He said that talk of lawyers, the involvement of outside agencies, incidents involving injuries, and situations that seem 'intricate', all signalled potential problems. However his main contention was that professional advice was needed when a complaint or situation was raising issues that 'good common sense'

did not give the answers to, when the principal did not feel comfortable about a situation or when he needed more information.

Ancillary to the main question were two others. 'From whom would you seek help and support?' and 'when would you seek more than one source of advice?'

The principals listed a number of sources but common to all was the significant support given by the NZEI followed closely by the STA. Some principals had 'first port of call' preferences for other groups. Principal 4 for example chose to use the NZPF in the first instance while Principal 3 said that depending on the problem he might consult the NZPLC legal website or other colleagues first.

Nor were the principals averse to using more than one source if they thought the advice was not 'authoritative' or 'definitive' enough. Principal 1 was more likely to view the advice of government agencies like CYFS or the Justice Department as 'quite definitive' as opposed to 'asking colleagues or someone quietly on the side'. Principal 4 went further afield when conflicting advice was received and gave the example of NZEI giving one piece of advice and the STA another, while Principal 6 commented on the variety of advice he had got from different sources and the 'different tacks' they often took. He preferred the NZEI because, in his opinion, the STA was 'very employer orientated' and less likely to give a 'balanced view'.

Discussion

It was considered important for the purposes of the study to identify how the respondents recognised that a legal problem was developing in their school and that they needed professional legal advice. Stewart (1996) argues that principals need to be conversant with sufficient law to recognise whether a problem which has arisen is one for which professional advice should be sought or not.

This seems all the more important in the light of this study's earlier findings (See Section 5.2) that the respondents taking part had little, if any, formal preparation to guide them in the legal risk management of their schools or that their in-service training and experiences on the job had significantly added to their knowledge of school-related law.

In the study two principals claimed that they sought advice when an issue went beyond their level of expertise or knowledge but most seemed to rely on the levels of emotion generated by an issue or, as one principal put it, on the 'complainant's level

of resolve'. This is worrying because it suggests that they are in fact unable to recognise a legal problem or potential legal problem until after the event. Like the principals in Stewart's (1996) study these principals seem to draw on reactive rather than preventative processes in dealing with legal issues.

Fortunately advice and support was readily available to all the principals. Nor were the principals adverse to using more than one source if they thought the advice was not 'authoritative' or 'definitive' enough. Although just how the principals judged whether a piece of advice was authoritative or definitive enough is not clear. One principal said he was more likely to view the advice of those in authority as 'more definitive' than other colleagues. This assumption, too, can be quite dangerous. As pointed out in earlier in this discussion principals and boards need to know what is really required of their school, as opposed to what is sometimes packaged up for them. (Flockton, 2003)

A repeating theme throughout this study has been the confidence shown by the principals in the two main organisations providing support for principals. While each principal had his or her preference for which one they would contact in times of need, the study highlights the continuing importance of the NZEI and STA in the professional lives of the principals. However even here there are some concerns. Two principals mentioned that they had received conflicting advice from the NZEI and the STA.

5.5 Research Question 5: What suggestions did the principals have for improving the current situation?

The principals made a number of suggestions to help improve knowledge of school related law. Some thought that a comprehensive legal reference source be made available electronically, either as enhanced versions of websites already available or on CDROM similar to the NZEI principals' Kit and the 'Successful Practice in New Zealand Schools (SPINZ)' material, or just simply as draft policies sent to school on disk. Principal 6 argued that any web based resource should give advice in plain English and include flow chart type information for common situations faced in schools with links to advisory services. Principal 3 was keen to see school law issues placed before principals on an ongoing basis, including courses run by local principal associations, legal information provided by the Ministry of Education in plain English and layman's terms, school law as part of new principal induction programmes, and

the sharing of information through the development of cluster groups. While the cluster group concept would involve monthly face-to-face meetings it also involved a great deal of emailing seeking other principals' views on many current needs based issues. He gave a recent example of using the network to seek information and feedback when formulating a policy on using parent cars for school trips and claimed that principals can 'come unstuck' if they do not communicate to others about their legal problems. He went on to say in his concluding remarks in question 2 that he thought the NZPLC legal website was a good start in providing principals with legal information but added that, like Leadspace, people had to have time to use it. He ended by saying that all that could be done was to highlight the fact that the website was available for use.

It is interesting to note that generally, although not exclusively, the female principals seemed to advocate a more 'face to face' approach. Principal 2 for example stated that receiving booklets and brochures were of little help because of the language used and because she never had time to read them. She did have time however for a chance to sit and talk about legal issues with NZEI and STA representatives. While Principal 4 thought that the NZPLC and the Leadspace website were good sources of legal information she also thought it important to make time to talk about 'what if scenarios', and Principal 5 suggested that the NZEI run courses on legal issues common to schools. Perhaps the final word should go to Principal 2 who was of the opinion that principals did not need a lot of legal knowledge as long as they know where to go when they need help. She argued that 'you can only hold so much knowledge in your head' and concluded by stating that the big message should be 'don't be afraid to ring and ask. That's what NZEI and STA are there for.' (p.19)

Discussion

The suggestions for improving principals' knowledge of school-related law fell into two categories. The first, that a comprehensive legal reference source presented in plain English, containing situations common to schools and with links to advisory services be made available electronically either as enhanced versions of websites already available or on CDROM similar to the NZEI Principals' Kit. Since the NZPLC legal website already exists and is providing a similar service then it makes sense for it to be further developed and actively promoted to principals. Moreover such an

initiative would lie comfortably with the Ministry's promotion of web-based services to schools, be cost effective, easily accessible and easily updatable.

The second set of suggestions included the idea that legal issues be placed before principals on a regular basis using a mix of formal face to face courses on legal issues and informal chances to talk about 'what if scenarios' and common issues. It was suggested that they could be run by local principal associations or the NZEI and STA. While this option would be more costly and less easily delivered it would provide the human face that some of the principals preferred. In this writer's opinion a combination of both would be eminently sensible.

Chapter Six: Conclusions and Implications

6.1 The Research Findings

The purpose of this chapter is to outline the findings reached in relation to the problem under investigation and to examine the implications of these for research and practice. Listed below are the main findings of the five research questions reported in Chapter Five?

Research question 1: What levels of legal literacy are evident amongst a cross section of New Zealand principals?

Most respondents were not confident that their knowledge of school-related law was sufficient for their work as school principals. Generally they had a vague understanding of the Principles of Natural Justice and limited levels of knowledge of school-related law.

Research Question 2: Where do these principals gain their knowledge of school-related law from?

The respondents had little, if any, formal preparation to guide them in the legal risk management of their schools. In-service courses seemed organised on an ad hoc basis, were few and far between and generally limited to short introductory and awareness raising presentations.

The principals' service history and their experiences of legal issues did not seem to have significantly added to their knowledge of school-related law, suggesting that these sorts of experiences cannot be relied on to provide principals with an adequate knowledge of school-related law.

All principals relied on other principals a lot when dealing with legal issues. Cluster groups provided a significant forum for discussing legal issues and helping with policy writing but isolated principals were not served well in this sense.

The principals held perceptions which led them to treat school law as a low priority area, and to deal with legal issues only when they had to. Nor did they see a comprehensive knowledge of school-related law as desirable. Instead they considered it more practical to be able to recognise when a problem was emerging and get the experts in.

Research Question 3: What legal risk management policies and practices have these principals implemented and to what extent have they been able to determine or test their effectiveness in meeting the school's legal obligations and in providing protection from litigation?

All principals were able to produce a comprehensive portfolio of legal risk management policies and procedures implemented by their schools. However a good proportion of this seems to have been driven by external directive and the process of policy writing which is predominantly one of compliance.

Most principals had not checked the legality of their policies and procedures trusting instead that policy templates and background information from the Ministry of Education and STA were correct.

Only one principal had current personal public liability insurance.

Research Question 4: How far are these principals able to determine when issues they are dealing with need professional legal advice?

Most principals seem to rely on the levels of emotion generated by an issue when determining whether and when to seek legal advice. This suggests that at times they would find it difficult to recognise that an issue needed professional legal advice before it became a problem.

All principals knew where to get advice and support on legal issues. The study highlighted the continuing importance of the NZEI, the STA and the NZPF in the professional lives of the principals. However there were some concerns about the

conflicting advice some principals had received and just how they determined when to accept advice or seek another source.

Research Question 5: What suggestions did the principals have for improving the current situation?

The principals suggested that a comprehensive legal website linked to advisory services combined with regular in-service courses and forums dedicated to common legal issues would help to improve the situation.

6.2 Conclusions

It will be recalled that the aim of this study was to determine if there are grounds to conclude that overseas experience with regard to legal literacy amongst school principals is mirrored here in New Zealand. This follows Stewart's (1996) study which found that principals in Queensland have, in general, a minimal knowledge of the laws they are required to manage. Stewart concluded that principals needed to develop an understanding of areas of the law that impact on schools sufficient enough to enable them to implement preventative legal risk management policies and practices, and, that they needed to be conversant with sufficient law to recognise when a problem needed professional legal. (Stewart, 1996)

In a nutshell the study set out to ask; when it comes to school-related law, do principals in New Zealand know what they need to know? The findings of the study suggest that most have a limited knowledge of school-related law and a poor understanding of the Principles of Natural Justice. If legal literacy means that they had sufficient knowledge to recognise a legal problem and to recognise the occasions for seeking professional advice then for many it would seem that they do not know what they need to know.

6.3 Implications for Research and Practice

Implications for Research

This was a small scale exploratory study involving six primary school principals with the aim of developing some insights into an area of principals' work that has yet to receive much attention (Rishworth and Walsh 1999). As a pilot study it does not

claim to be representative or that it has generated enough evidence to enable any generalisations to be made. However it is likely that the findings apply to the wider population of principals in New Zealand and therefore more comprehensive research is probably necessary. The following avenues of research come to mind:

- A nation wide questionnaire to establish levels of legal literacy amongst the wider population of school principals.
- Field-based research in schools in order to observe more closely the processes principals use to manage legal problems on a day-to-day basis including their use of the regulatory frameworks such as the National Education Guidelines and the Employment contract documents.
- A literature review of what other jurisdictions are providing in terms of pre-service legal education to determine what legal education, if any, might be appropriate for beginning teachers.
- An evaluation of the First Principals Induction Programme and its effectiveness in preparing newly appointed principals for the legal aspects of their work.
- A survey of what educational institutions in New Zealand and around the world are offering established practitioners in school-related law and how these programmes are promoted and made accessible to the profession.
- An evaluation of the way advice and support is offered to principals and how it might be enhanced by the use of information and communication technologies.

Implications for Practice

If principals are to be legally literate then there are some important implications for the principals themselves, for their employing boards and for the various agencies involved in schooling. Clearly there is a need for principals' perceptions to change and for them to recognise that they do need some knowledge of school-related law even if it is just enough to know when an issue needs professional legal advice. Just as important is the ability to source information when making decisions about legal issues and when formulating and reviewing legal risk management practices in their schools.

Principals should be encouraged to go and source their own professional learning in this area but school boards, local principal associations, the NZEI, NZPF and STA, and the Ministry of Education also have an important role to play in providing educational opportunities and support for newly appointed and established principals.

This study therefore recommends the following actions:

- The 'beefing up' of induction programmes for newly appointed principals to include compulsory and in-depth courses in legal literacy.
- Regular, intentional and in-depth in-service education in school-related law and procedural fairness.
- Further investment in the NZPLC website to provide principals with a comprehensive legal reference point.

References

- Arksey, H. and Knight, P. (1999) 'Approaches to interviewing and References'. In *Interviewing for social scientists: An introductory resource with examples*. Thousand Oaks, California: Sage, pp.74-88.
- Bailey, K.D. (1987) "Methods of social research (3rd ed.)" New York: The Free Press.
- Broussard, J and Blackmon, R. (1979). 'Principals, Courts, and First Amendment Rights.' Paper presented at the Annual Meeting of the Association for Education in Journalism (62nd, Houston, Texas, August 5-8 1979).
- Cuncannon, F and Dorking, B. (2002). 'Principles for Principals: A guide to avoid costly litigation. Part One: Illegality and Unreasonableness'. In *New Zealand Principal* March 2002 pp 5 -6.
- Cuncannon, F and Dorking, B (2002). 'Principles for Principals: A guide to avoid costly litigation. Part Two: Natural Justice'. *New Zealand Principal* June 2002 pp 15 – 16.
- Davidson, D. and Gooden, J. (2001). 'Are We Preparing Beginning Principals for the Special Education Challenges They Will Encounter?' *ERS Spectrum* Vol. 19 No.4 Fall 2001 pp 42-49.
- Denscombe, M. (2nd Ed, 2003). "The Good Research Guide for Small Scale Social Research Projects.' Maidenhead: Open University Press, pp 6 – 40, 236- 283.
- de Vaus, D.A. (2002). Finding a Sample. *Survey in social research* (5th Ed.) NSW, Australia: Allen & Unwin, pp.69 -93.
- Eddy, D. and Bennison, B. (2004) 'Innovation in Head teacher Induction. Case Study 1: First-Time Principals Programme, New Zealand.' Report for the National College of School Leadership, Nottingham, U.K.
- Available from: <http://www.ncsl.org.uk/researchassociates>

Education Review Office (2003). 'Schools and the Law: Reporting to ERO' Wellington, pp 1-22.

Education Review Office. 'Handbook of Contractual Obligations and Undertakings' Available from <http://www.ero.govt.nz/handbks/schools/sources.htm>

Fischer, L. and Sorenson, G. (1991). 'School Law for Counselors Psychologists and Social Workers.' (2nd Ed.) New York: Longman. pp. xix-xxi.

Flockton, L. (2003). 'Planning and Reporting. Some Problems. Some Solutions.' *New Zealand Principal*, Vol.18, No. 4 November 2003.

Hillman, S. (1988) 'School Administrators' Legal Knowledge: Information Sources and Perceived Needs' Paper presented at the Annual Meeting of the American Education Research Association (New Orleans, LA, April 5-9, 1988).

Hughes, M. and Bush, T. (1991) 'Theory and research as catalyst for change.' In W Walker, R Farquhar and M Hughes, (eds.), *Advancing Education: School Leadership in Action*. London: The Falmer Press.

Kallio, B. and Valadez, L. (2002) 'Sources and Effectiveness of Legal Training for Educational Administrators' In '*Balancing Rights: Education Law in a Brave New World*' Papers of the Education Law Association (ELA) Annual Conference (48th, New Orleans, LA, November 14-16, 2002).

Massey University Human Ethics Committee. (2002) 'Code of Ethical Conduct for Research, Teaching and Evaluations Involving Human Participants' Available from: <http://www.massey.ac.nz/~muhec/downloads.html>

New Zealand Association for Research in Education. (2002). 'NZARE Ethical Guidelines.' Available from http://www.childforum.com/code_of_ethics.html

Oppenheim, A.N. (1992) "Questionnaire design, interviewing and attitude measurement." London: Pinter Publishers.

Punch, M. (1994). 'Politics and Ethics in Qualitative Research' In Denzin, N and Lincoln, Y (eds.). *Handbook of qualitative research* Thousand Oaks, California: Sage, pp.83 -97.

Sarason, S. (1992) 'The Culture of the School and the Problem of Change' (2nd ed.). Boston: Allyn and Bacon.

Scott, D. and Usher. R. (1999) 'Interview Methods'. In *Researching Education. Data, Methods and Theory in Educational Enquiry.* London: Continuum, Chapter 9, pp 108-116.

Sergiovanni, T. and Starratt, R. (1993) 'Supervision: A Redefinition.' (5th ed.). New York: McGraw-Hill.

Southworth, G. (1995). 'Head-teacher Development'. In *Looking into Primary Headship*, London: The Falmer Press, Chapter 7, pp. 203-213.

Sturman, A. (1999). 'Case Study Methods.' In Keeves, J and Lakomski, G (Ed) *Issues in Educational Research.* Oxford: Pergamon, Chapter 9, pp 103 – 111.

Tronc, K. (2004). 'Schools and the Law' *The Practising Administrator* Vol. 26, No. 2, 2004. p. 36.

Rishworth, P and Walsh. P (1999). 'New Zealand Law Society' Seminar, *Education Law*. New Zealand Law Society.

Rishworth, P., Walsh. P and Hannan. J. (2001). New Zealand Law Society Seminar *Recent Developments in School Law* New Zealand Law Society.

Stewart. D, (1996) "Principals' Knowledge of Law Affecting Schools" *In Australia and New Zealand Journal of Law Education* Vol. 1, No. 1, 1996. pp 111 – 129.

Sungaila, H. (1988). 'Litigation in Education.' Sydney: Gavemer Publishing.

Walsh, P. (1997). 'Educational Management and the Law. A practical guide for managers involved in pre-school, primary, secondary and tertiary education in New Zealand'. Auckland: Longman.

Walsh, P. and Bartley, J. (1999). 'Schools Go To Court: Education Case Law for New Zealand Schools'. Auckland: Longman.

Wellington, J. (2000). 'The researcher's role and responsibility.' In *Educational research: Contemporary issues and practical approaches*, Chapter 4, London: Continuum. pp. 41 -67.

Whitty, G., Power, S. and Haplin, T. (1998). *Devolution and choice in education, The school, the state and the market*. Buckingham, UK: Open University Press, pp. 15 - 30, 32 – 47.

Yin, R. (1994). 'Case Study Research. Design and Methods.' (2nd Ed) Thousand Oaks: Sage Publications pp 1-15

Zehr, M. (1999) 'Threat of Lawsuits a Burden on Principals, Poll Says.' In *Education Week* Vol.19, Issue 2 1999 p.3. Available from: <http://80-web14.epnet.com>

List of Appendices

Appendix A:	Letter of approval from the Massey University Human Ethics Committee.....	128
Appendix B:	Statement advertising the study to potential respondents.....	129
Appendix C:	Information Sheet for Respondents	130
Appendix D:	Consent Form	134
Appendix E:	The Principals' Questionnaire	135
Appendix F:	The Principals' Interview	146
Appendix G:	Legal opinion used to formulate the vignettes in the Principals' Interview.....	150
Appendix H:	Questionnaire Summary of Responses	158
Appendix I:	Interview Transcripts (Annotated).....	171

Appendix A: Letter of approval from the Massey University Human Ethics Committee.



Massey University

20 May 2005

David Wardle
250 Grey Street
PALMERSTON NORTH

OFFICE OF THE ASSISTANT
TO THE VICE-CHANCELLOR
(ETHICS & EQUITY)
Private Bag 11 222
Palmerston North
New Zealand
T 64 6 350 5573
F 64 6 350 5622
humanethics@massey.ac.nz
www.massey.ac.nz

Dear David

Re: School related law; Do principals know what they need to know?

Thank you for the Low Risk Notification that was received on 20 May 2005.

Your project has been recorded on the Low Risk Database which is reported in the Massey University Human Ethics Committee Annual Report.

Please notify me if situations subsequently occur which cause you to reconsider your initial ethical analysis that it is safe to proceed without approval by a campus human ethics committee.

Please ensure that the following statement is used on Information Sheets:

"This project has been evaluated by peer review and judged to be low risk. Consequently, it has not been reviewed by one of the University's Human Ethics Committees. The researcher(s) named above are responsible for the ethical conduct of this research.

If you have any concerns about the conduct of this research that you wish to raise with someone other than the researcher(s), please contact Professor Sylvia Rumball, Assistant to the Vice-Chancellor (Ethics & Equity), telephone 06 350 5249, email humanethicspn@massey.ac.nz".

Please note that if a sponsoring organisation, funding authority, or a journal in which you wish to publish requires evidence of committee approval (with an approval number), you will have to provide a full application to a Campus Human Ethics committee. You should also note that such an approval can only be provided prior to the commencement of the research.

Yours sincerely

Professor Sylvia V Rumball, Chair
Assistant to the Vice-Chancellor (Ethics & Equity)

cc Professor John Codd
Dept of Social & Policy Studies
In Education, PN900

Prof Wayne Edwards
HoD, Dept of Social & Policy Studies
In Education, PN900

Ms Caroline Teague
Graduate School of Education
PN900

Appendix B: Statement advertising the study to potential respondents

School Related Law: Do principals know what they need to know?

Permission was be obtained from the principals' association chairperson in the district in which the study was carried out for the following statement to be placed on the association's email tree for circulation to all members.

Request for Research Study Participants

David Wardle, an M.Ed admin student from Massey University is seeking participants for his study 'School Related Law: Do principals know what they need to know?'

David's interest in this topic comes from twenty years experience in education, mostly in rural primary and area schools as a teacher and teaching principal in Otago. His research project is a small scale study which aims to explore what knowledge, understandings, views and perceptions six primary school principals have of school related law. He is looking for volunteers from large and small schools, urban, rural and isolated schools, experienced principals and first timers. If you are interested he can be contacted at dwardle@ihug.co.nz or at (027) 428 9279.

Appendix C: Information Sheet for Respondents

Information Sheet for Study Participants

Dear Colleague,

I am working on a research project which is part of the requirements for an M.Ed Admin at Massey University. The University has given its approval for me to carry out this research. My supervisor is Professor John Codd who is available at J.A.Codd@massey.ac.nz or at (06) 356 9099. Extn 8965.

Title of the Research Project

School Related Law: Do principals know what they need to know?

My interest in this topic comes from twenty years experience in education, mostly in rural primary and area schools as a teacher, senior teacher, deputy principal, and latterly, as a teaching principal. Over that time I have become increasingly aware of the importance and place of the law as it relates to the administration of schools. You will probably know that during the last decade or so there has been an increase in the involvement of schools with the law to the point that it is now evident that you are involved with a large body of statute law. Paralleling this has been the growth in the creation of governmental agencies with jurisdiction in schools, a greater awareness of parent and student rights, a more litigious attitude in society, and a growing demand for greater accountability in the public sector generally.

Commentators now argue that the importance of the law in education has developed to the point where legal literacy for principals is a core professional requirement. If school principals are to make good decisions, design and implement effective legal risk management policies and practices, or seek professional advice when legal problems arise, then it is argued that they must have legal literacy sufficient for the purpose.

Overseas research suggests that most school principals in places like Australia and the United States have a minimal knowledge of the laws they are required to manage,

and are largely unaware of their legal obligations and duties. In New Zealand work to establish the level of legal literacy among principals has not yet been attempted. Instead it has been assumed that the situation here is similar to that in Australia. However the rapid rise in litigation involving schools here in recent years, with the associated costs in financial and personal terms, means that this sort of research is probably over due.

The Aims of the Research

This project is a small-scale exploratory study involving you and five other New Zealand primary school principals. Its aim is to determine what knowledge and understandings, views and perceptions you and your colleagues have of school related law. In particular it will attempt answer the following questions:

6. What levels of legal literacy are evident amongst a cross section of New Zealand principals?
7. What is the evidence to support the contention that the sources of legal literacy amongst New Zealand primary school principals are similar to those of their counter parts in other jurisdictions?
8. What legal risk management policies and practices have these principals implemented and to what extent have they been able to determine or test their effectiveness in meeting the school's legal obligations and in providing protection from litigation?
9. How far are these principals able to determine when issues they are dealing with need professional legal advice?

Furthermore, as a pilot study, it should be useful in providing an indication as to whether more comprehensive research is needed.

What you are asked to do

If you choose to participate this study will involve you in the following ways:

- The completion of a consent form attached to this information sheet.

- The completion of a questionnaire.
- The participation in a semi-structured interview that may last up to one hour. With your permission the interview will be tape recorded and a transcript of the tape made. The transcript will be checked with you for accuracy.
- Involvement in a brief follow-up visit, if necessary, to clarify points and receive feedback from you.

At the completion of the project the material will be used to write a master's project paper and be submitted to the University for assessment.

Assurances to you, as a participant

1. Your participation in the research will be kept confidential.
 - Your name, your school and your school district will be kept confidential.
 - You will be given a pseudonym will be used instead of your name in all documents and when materials such as tapes are labelled.
 - Draft documentation will be checked to remove any references that might lead to your identification.
 - Data gathered will be kept in a safe place.
2. The audiotapes and transcripts will be available to me, my project supervisor and the project examiners. These people are required to maintain the confidentiality of the participants.
3. At the end of the project the tape recordings will be returned to you or destroyed. The transcripts and other collected data will be destroyed within six months of the completion of the study.
4. You may withdraw from the study at any time without any adverse implication or recriminations of any sort.
5. You may refuse to answer any particular questions.

6. At any time during the interview you may ask me to turn off the audio recorder and /or delete a statement from the recording.
7. Transcripts of the interview will be returned to you so that its accuracy can be checked and any sensitive information you may wish to withdraw deleted.
8. You will be given access to a summary of the findings when it is concluded.
9. You may contact me at any time during the research to discuss any aspects of the study.

Please note: There may be questions in the study that could cause some embarrassment if they were to reveal to the researcher a perceived deficiency in an aspect of your knowledge of school law. Please take this into consideration when deciding to take part.

Thank you for reading the information sheet.

Yours sincerely,

David Wardle
250 Grey Street,
Palmerston North.
(027) 428 9279
dwardle@ihug.co.nz

This project has been evaluated by peer review and judged to be low risk. Consequently, it has not been reviewed by one of the University's Human Ethics Committees. The researcher named above is responsible for the ethical conduct of this research.

If you have any concerns about the conduct of this research that you wish to raise with someone other than the researcher, please contact Professor Sylvia Rumball, Assistant to the Vice-Chancellor (Ethics & Equity), telephone (06) 350 5249

Email humanethicspn@massey.ac.nz.

Appendix D: Consent Form

School Related Law: Do principals know what they need to know?

PARTICIPANT CONSENT FORM

This consent form will be held for a period of five (5) years

I have read the Information Sheet and have had the details of the study explained to me. My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I agree to participate in this study under the conditions set out in the Information Sheet.

I agree/do not agree to the interview being audio taped.

I wish/do not wish to have my tapes returned to me.

I understand that all data will be kept in a safe place and will be destroyed within six months of the completion of the study.

Signature:

.....

Date:

.....

Full Name - printed

.....

Appendix E: The Principals' Questionnaire

School Related Law: Do principals know what they need to know?

Principal's Questionnaire

Part A

Teaching Service History, Pre-Service and In-Service Training and Education, Academic Qualifications

1. Please list your teaching service history. (From first school to present school.)

	School size e.g. U 2 or roll numbers	School Decile Rating (if known)	School type Contributing Full primary Intermediate	Geographical Location Urban Rural Isolated	Position held Teacher Senior Tchr. DP/AP Principal	Time at the school
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

2. Have you had any appointments in education other than in schools, e.g., E.R.O, M.O.E, or N.Z.E.I?

Yes	
No	

If 'yes' please provide particulars:

Position:

Number of Years:

3. Have you had any administrative appointments in fields other than education?

Yes	
No	

If 'yes' please provide particulars:

Position:

Number of Years:

4. What qualifications did you gain as a result of your pre-service education and training?
(Please list)

5. Did any of these courses touch on issues relating to school- related law?

Yes	
No	
Unsure	

If 'no' or 'unsure' go to question 8

6. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

Brief and introductory. Awareness raising only	
A mixture of legal issues and other matters.	
Entirely dedicated to legal issues	
Comprehensive and detailed.	
Full papers	

7. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as a principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

8. Overall how would you rate the usefulness of your pre-service education and training in preparing you for the legal aspects of you job as a principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

9. What qualifications have you gained in-service prior to becoming a principal?
(Please list)

10. Did any of these courses touch on issues relating to school- related law?

Yes	
No	
Unsure	

If 'no' or 'unsure' go to question 13

11. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

Brief and introductory. Awareness raising only	
A mixture of legal issues and other matters.	
Entirely dedicated to legal issues	
Comprehensive and detailed.	
Full papers	

12. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

13. Overall how would you rate the usefulness of your in-service education prior to becoming a principal in preparing you for the legal aspects of you job as a principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

14. Have you been involved in the First Principals' Induction Programme?

Yes	
No	

If 'no' go to question 18

15. Did you attend any courses during the First Principals programme specifically designed to cover legal issues affecting education?

Yes	
No	

If 'no' go to question 18

16. How would you describe the law related courses in the First Principals programme?
(Tick all relevant categories)

Brief and introductory. Awareness raising only	
A mixture of legal issues and other matters.	
Of short duration 1 – 5 hours.	
Of longer duration - several sessions.	
Entirely dedicated to legal issues.	
Comprehensive and detailed.	

17. How would you rate theses courses in preparing you for the legal aspects of you job as a principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

18. Please list, if any, the qualifications you have gained while working as a principal.

19. Did any of these courses touch on issues relating to school- related law?

Yes	
No	
Unsure	

If 'no' or 'unsure' go to question 22

20. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

Brief and introductory. Awareness raising only	
A mixture of legal issues and other matters.	
Entirely dedicated to legal issues	
Comprehensive and detailed.	
Full papers	

21. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as a principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

22. Are you currently working towards an academic qualification?

Yes	
No	

If 'no' go to question 27.

23. If 'yes' please describe the qualification.

24. Is any part of your course related to issues surrounding school law?

Yes	
No	
Unsure	

If 'no' or 'unsure' go to question 27

25. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

Brief and introductory. Awareness raising only	
A mixture of legal issues and other matters.	
Entirely dedicated to legal issues	
Comprehensive and detailed.	
Full papers	

26. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

27. As a principal have you been involved in any **in-service** workshops and seminars which have touched on legal issues?

Yes	
No	

If 'no' go to question 30.

If 'yes' please list if you are able.

28. How would you describe the workshops and seminars? (Tick all relevant categories)

Brief and introductory. Awareness raising only.	
A mixture of legal issues and other matters.	
Of short duration 1 – 5 hours.	
Of longer duration - several sessions.	
Entirely dedicated to legal issues.	
Comprehensive and detailed.	

29. How would you rate the usefulness of the workshops and seminars in assisting you with the legal aspects of you job as a principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

30. Overall how would you rate the usefulness of your in-service education as a principal in preparing you for the legal aspects of you job as a principal?

Very useful	
Useful	
Of some use	
Of no use	
Uncertain	

Please proceed to Part B

Part B

Knowledge of School Related Law

31. Listed below is a comprehensive sample of statutes, orders, guidelines and regulations affecting schools. Please rate your familiarity with these pieces of legislation using the scale provided.

1 = A very good working knowledge of the legislation.

2 = Familiar with its purpose and contents and have used parts of it, either directly or indirectly in your work.

3 = Aware of its purpose but only in a general sense.

4 = Aware of the legislation but uncertain of its purpose or how it affects schools.

5 = Unaware of its existence.

	Statutes and Regulations Affecting Schools	Rating
1.	Education Act 1964	
2.	Education Act 1989 and (21) Amendments	
3.	Education (School Attendance) Regulations 1951	
4.	Education Staffing Orders	
5.	National Education Guidelines	
6.	National Administration Guidelines	
7.	National Curriculum Statements for New Zealand Schools	
8.	Animals Welfare Act 1999	
9.	Bill of Rights Act 1990	
10.	Building Act 1991	
11.	Building Regulations 1992	
12.	Children, Young Persons and Their Families Act 1989	
13.	Civil Defence Act 1983	
14.	Code of Ethical Conduct for the Care and Use of Animals in School Programmes.	
15.	Collective Agreements for All Staff	
16.	Consumer Guarantees Act 1994	
17.	Copyright Act 1994	
18.	Disabled Persons Community Welfare Act 1975	
19.	Employment Relations Act 2000	
20.	Fencing of Swimming Pools Act 1987	
21.	Fire Safety and Evacuations of Buildings Regulations 1992	
22.	Food and Hygiene Regulations 1974	
23.	Guardianship Act 1964	
24.	Health and Safety Code of Practice for State Primary, Composite and Secondary Schools.	
25.	Health and Safety in Employment Act 1992	
26.	Human Rights Act 1993	
27.	Local Government Official Information and Meetings Act 1987	
28.	Official Information Act 1982	
29.	Ombudsman Act 1975	
30.	Privacy Act 1993	
31.	Protected Disclosures Act 2000	
32.	Public Finance Act 1989	
33.	Residential Tenancies Act 1986	
34.	Resource Management Act 1991	
35.	Smoke-free Environments Act 1990	
36.	Smoke-free Environments Amendment Act 1993	
37.	State Sector Act 1988	
38.	State Sector Amendment Act 1989 and Amendments	
39.	Traffic Regulations Act 1976	

32. For each statement below please rate the response using the following scale:

- 1 = strongly agree
- 2 = agree
- 3 = uncertain
- 4 = disagree
- 5 = strongly disagree

- (a) I am familiar with the purpose and contents of most legislation affecting schools.
- (b) My knowledge of school related law is sufficient for my work as a school principal.
- (c) I have a good understanding of the principles of natural justice.
- (d) My knowledge of school law is sufficient enough for me to recognise legal problems when they arise.
- (e) I am confident that I am able to determine when an issue needs Professional legal advice.
- (f) If advice and support on legal issues is needed. I know where to get it.

Please proceed to Part C

Part C
Sources of Legal Knowledge

33. Please rate the sources of legal knowledge which have been useful in the administrative decisions you have taken as a school principal in relation to legal matters.

- 1 = Very useful
- 2 = Useful
- 3 = Of some use
- 4 = Of no use
- 5 = Uncertain

In-service seminars and workshops	
University courses	
First Principals Induction Programme	
Principal mentors (First Principals Induction Programme)	
Other principals	
Principal Associations	
College of Education School advisory services	
M.O.E officers	
M.O.E handbooks, publications, directives and circulars	
M.O.E Leadspace website	
M.O.E Education Gazette notices	
N.Z.P.F helpdesk	
N.Z.P.F circulars	
N.Z Principal and Leadership Centre Legal website	
N.Z.E.I Field officers	
N.Z.E.I handbooks, publications and circulars	
S.T.A advisors	
S.T.A handbooks, publications and circulars	
E.R.O officers	
E.R.O publications	
Hardcopies of Govt legislation	
Employment Contract Documents	
Professional periodicals N.Z.P.F Principal Magazine, N.Z.E.I Ruru	
Education media – e.g. Eduvac,	
Mass media	

Please list any other sources of legal knowledge that have been of significance to you.

34. Have you had any personal experience of situations which have had serious legal implications?

Yes	
No	

If 'no' go to question 36.

35. If 'yes' which of the following areas did they relate to? (Please tick)

Governance	<input type="checkbox"/>
Management	<input type="checkbox"/>
Employment	<input type="checkbox"/>
Student management	<input type="checkbox"/>
Laws relating to negligence and duty of care	<input type="checkbox"/>
Criminal law	<input type="checkbox"/>

Part D
Legal Risk Management Policies and Practices

36. Do you have personal public liability insurance?

Yes	
No	

37. Is your school adequately covered by public liability insurance?

Yes	
No	

38. Does your school check the legality of its policies and practices?

Yes	
No	

If 'no' go to question 41.

39. If 'yes' please indicate the source(s) used to check the legality of your policies and procedures. (Please tick)

Lawyers	
Other principals	
Other schools' policies and procedures	
College of Education School advisory services	
M.O.E officers	
M.O.E handbooks, publications, directives and circulars	
M.O.E Leadspace website	
N.Z.E.I Field officers	
N.Z.E.I handbooks, publications and circulars	
S.T.A advisors	
S.T.A handbooks, publications and circulars	
N.Z Principal and Leadership Centre Legal website	
E.R.O officers	
E.R.O publications	
Sample policies from M.O.E, S.T.A, N.Z.E.I etc.	
Hardcopies of Govt legislation	
Employment Contract Documents	

Please list any other source(s) that have been of significance to you.

40. Which of the above would you go to in the first instance?

41. Please list the legal risk management practices put in place by your school.

42. Have you ever been placed in a situation involving legal issues where you felt you needed to seek advice and support?

Yes	
No	

If 'no' go to question 46.

43. If 'yes' please indicate the source(s) of advice and support that have been of significance to you. (Please tick)

Lawyers	
Other principals	
N.Z.E.I field officers	
S.T.A advisors	
N.Z.P.F advisors	
M.O.E officers	

Please list any other sources of advice and support that have been of significance to you.

44. Which of the above would you go to in the first instance?

45. How useful was the advice and support gained from these sources? (Please rate them using the scale provided)

- 1 = Very useful
- 2 = Useful,
- 3 = Of some use
- 4 = Of no use
- 5 = Uncertain

Lawyers	
Other principals	
N.Z.E.I field officers	
S.T.A advisors	
N.Z.P.F advisors	
M.O.E officers	
Other (Please specify)	

46. What percentage of your working week do you spend on legally-related matters?

- (a) Less than 10%
- (b) 10 % to 20%
- (c) 20% to 30%
- (d) 30% to 40%
- (e) over 50%

47. The comment is often heard that school staff are facing increased levels of stress. Do you consider that legal matters associated with school administration:

(a) cause you stress?	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	Uncertain	<input type="checkbox"/>

(b) cause you more stress than other administrative tasks?	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	Uncertain	<input type="checkbox"/>

(c) are more stressful than in previous years?	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	Uncertain	<input type="checkbox"/>

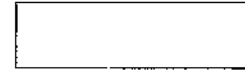
Please feel free to add any comments you wish about the issues raised in this questionnaire.

Thank you for taking the time to complete the questionnaire

Appendix F: The Principals' Interview

School Related Law: Do principals know what they need to know?

Interview Questions



Part A: Teacher Service, Qualifications, Pre-Service and In-Service Education

1. The questionnaire posed questions about your pre-service and in-service education and training with regard to school related law. Could you comment on the role of personal experience in helping develop your knowledge of school related law?
2. To what extent do you think the type of school, its decile rating, its geographical location has on the development of your experiences and knowledge of school-related law?
3. To what extent have you relied on the experience or comments of colleagues and other principals to gain an understanding of what you should do in situations involving legal issues?
4. Please comment on the barriers to the development of your knowledge of school related law.
5. Thinking about the sorts of legal issues you could become involved in what concerns or scares you the most?

Part B Knowledge of school related law.

(i) Knowledge of Law Related to Governance and Management, Employment, Student Management, and Educational Negligence and Duty of Care.

The next set of questions deals with your knowledge of law as it relates to governance and management, employment issues, student management and educational negligence and duty of care. The questions are framed as critical incidences; some based on cases heard in New

Zealand courts. You are asked to comment on the courses of action you might choose to take and, if possible, why.

Section I Governance

Your recently elected Board Chairperson sent you a fax about the level of bullying in the school. He has been given the name of one boy in particular. He wants to come into the school this afternoon to interview Sebastian Forbes-Hamilton and will give you a summary of his investigation and recommendations. What should you do?

Source: www.nzplc.massey.ac.nz/legal/default.asp

Section II Management

A father of two students at your school dropped into the school office and requested a copy of all their school reports for the previous two years. Having never met the father before you were suspicious and rang the girls' mother (custodial parent). She confirmed he was the father but had been estranged from her and the girls for the last 10 years. She requested that the reports not be given to the father. You interviewed the girls who were of the same view. What is your position?

Source: www.nzplc.massey.ac.nz/legal/default.asp

Section III Employment Law

You as Principal have just conducted an appraisal of a teacher recently appointed to your school. You were dismayed and horrified at the poor planning and lack of classroom management. The teacher came with glowing references and appraisals from two previous schools. The teacher thinks you have it in for her and that you are totally off base with your appraisal. What should you do?

Source: www.nzplc.massey.ac.nz/legal/default.asp

Section IV Student Management

A teacher aide has written a formal letter of complaint to you alleging a year 6 student suffering from Oppositional Defiant Disorder (ODD) has just bitten and scratched her for the third time this year. She demands the student be removed or she will take a personal grievance against the school. The parents of the student claim the teacher aide is inflexible,

insensitive, uncommitted to inclusive education and the school is not doing all it can to meet their son's 'special needs'. What should you do?

Source: www.nzplc.massey.ac.nz/legal/default.asp

Section V Educational Negligence and Duty of Care

A ten year old boy from your school is severely injured when he went down a plastic water slide at a camp site. It was during school time and organised by school staff. The camp owners had placed a chain across the bottom of the slide which was intended to act as a safety device that is to stop unauthorised persons using the slide. There was no locking control on the water tap at the top and the chain was not necessarily visible from the top of the slide. The use of the slide resulted in injuries estimated to cost over \$100,000. Who was responsible?

Source: www.nzplc.massey.ac.nz/legal/default.asp

Section VI Criminal Law

Mrs Hardcastle has been a junior teacher for 17 years and runs a good, orderly class. A parent rang you recently complaining that Mrs Hardcastle sometimes shakes and squeezes her son when he is naughty. When you speak to Mrs Hardcastle she says she has been doing it for years, saying 'No-one has ever complained about it before and it's not as if I'm hitting the child'. Apparently Sebastian Forbes-Hamilton is quite a handful. What should you do?

Source: www.nzplc.massey.ac.nz/legal/default.asp

(ii) Knowledge of the Principles of Natural Justice

- (1) What is your understanding of the principles of natural justice?
- (2) In considering the incidents above what would you need to do ensure that the principles of natural justice are upheld?
- (3) What do understand by the terms 'legality' 'reasonableness' and 'transparency' in relation to the principles of natural justice?

Part C: Questions Relating to Legal Risk Management Policies and Procedures

- (1) How do you determine what legal risk management policies and procedures to put in place?
- (2) How do you reconcile your policies and procedures with the relevant legislation or government guidelines?
- (3) How do you ensure the appropriateness of your policies and procedures?
- (4) What are the general signs that a situation you are dealing with might develop into a legal problem?
- (5) When would you seek more than one source of advice?
- (6) If a problem was to present itself tomorrow who would you seek help and support from and why?

PART D: Questions Relating to Principal's Ideas for Making the Present Situation More Effective.

- (1) Given that principals are busy people with a lot of issues other than school law to think about what suggestions do you have for improving principals' knowledge of school related law?
- (2) Have you any other comments to make?

Appendix G: Legal opinion used to formulate the vignettes in the Interviews

Vignette 1 - Governance

BOT - GOVERNANCE v MANAGEMENT

Your recently elected Board Chairperson sent you a fax about the level of bullying in the school. He has been given the same name of one boy in particular. He wants to come into the school this afternoon to interview Sebastian Forbess-Hamilton and will give you a summary of his investigation and recommendations. Should you allow this?

Points to consider.

The case centres on a governance/management issue. The question needs to be asked, is it appropriate for a trustee to directly intervene in a disciplinary matter within the school?

It would be advisable in this situation to remind the Chairperson that the Principal is responsible for the day-to-day management of the school (section 75 Education Act 1989) and it is for him/her to investigate this matter. Any trustee is, of course, free to raise the matter with the Principal or at a Board meeting.

Concerns about bullying relate to the general discipline of the school and it is in this area (governance) that trustees have a specific role to play. It is also common practice for parents to raise concerns with individual teachers or the Principal before going to the Board of Trustees. The solution often lies there.

Author - *Gubb and Partners* - 2003

Source: www.nzplc@massey.ac.nz/legal/default.asp Accessed 2.5.2005

Vignette 2 - Management

CUSTODY AND ISSUING SCHOOL REPORTS

A father of two students at your school (girls 14 years and 17 years) dropped into the school office, and requested a copy of all their school reports for the previous two years. Having never met the father before you were suspicious and rang the girl's mother (custodial parent). She confirmed he was the father but had been estranged from her and the girls for the last 10 years. She requested that the reports not be given to the father. You interviewed the girls who were of the same view. What is your position?

The increasing breakdown of families has meant that the above situation is increasingly placing pressure on schools that became the meat in an unpalatable sandwich. These cases involve a conflict of important legal principles contained in various statutes.

In the first instance the father of the girls is a 'legal guardian' and so under the Guardianship Act 1968 is entitled to exercise his guardianship rights which include access to reports and information about their progress at school. The school is also obliged under the Education Act 1989 to provide this information to legal guardians whether or not they are separated or divorced.

Section 9 (2) (a) of the Official Information Act (The Act) affords protection to the privacy interests of individuals. This is claimed by some students in the above circumstances to deny a non-custodial parent access to their reports.

The Ombudsman has given consideration to such cases. In essence the Ombudsman looks at a range of factors in determining whether reports should be released to non-custodial parents. They are:

§ The wish and intention of the children themselves. The older they are adds weight to the independence and maturity of their decision to request nonforwarding of reports to the non-custodial parent.

§ The right of the child to have their privacy interests protected in terms of Section 9(2)(a) of the Act

§ If there are any countervailing public interest considerations in terms of section 9(1) of the Act favouring disclosure

§ In assessing interest in disclosing, section 77 of the Education Act 1989 is considered. This requires the principal to report matters to parents that are preventing or slowing the student's progress through the school or harming the student's relationships with teachers or peers.

In this case as in most others school reports report on 'general progress' including academic results. They are not reporting specific identifiable problems. In this sense section 77 does not require full disclosure of school reports.

In most of the cases the Ombudsman resolves in favour of the students with the added suggestion that instead of a full report being sent to the non-custodial parent, a letter is sent stating the child is progressing satisfactorily and there are no outstanding matters of concern to report.

The above case indicates that after reviewing all the factors the Ombudsman would consider the reports ought not to be sent to the non-custodial parent but rather a generalised letter indicating all is well.

Author- *Gubb and Partners* – 2003

Source: www.nzplc@massey.ac.nz/legal/default.asp Accessed 2.5.2005

Vignette 3 – Employment Law

APPRAISAL OF A NEW TEACHER

You as Principal have just conducted an appraisal of a teacher recently appointed to your school. You were dismayed and horrified at the poor planning and lack of classroom management. The teacher came with glowing references and appraisals from two previous schools. The teacher thinks you have it in for her and that you are totally off base with your appraisal. What should you do?

This problem occurs more frequently than it should given that we have a nationally prescribed 'performance management system' (PMS) and the standards set out for 'various categories' of teacher competency are fairly clear.

Despite the above it is still notoriously difficult to assess objectively and uniformly a teacher's performance. It is for this reason the competency process is so complex and protracted. The starting point for the problem above is the Education Act 1989. Section 76, clearly states that the principal is the 'chief executive'.

The principals employment contract and job description reflect this position where it requires the principal to fulfil the role of 'professional leader' of the school and chief adviser to the Board. '

In determining the professional competence of a teacher the Board will be strongly guided by its chief advising, the principal. This is particularly so when the other Trustees have little or no knowledge of the competencies required of teachers or how to assess them. The principal will be required to exercise his or her professional judgement and then advise the Board in their capacity as employer.

It is important to note that although the (PMS) is standardised each school or employer is at liberty to develop its own performance indicators and provide its own adaptations. It is to be noted also that each school has its own employer distinct from any other board. In these circumstances the teacher's previous references and appraisals cannot prevent the principal or Board from expressing dissatisfaction and ultimately beginning competency proceedings.

A teacher in these circumstances might be forgiven for thinking the principal had it in for them. It would also be tempting to claim bias and predetermination against the principal. A useful safeguard against this is to obtain an expert independent second opinion on the teacher's performance. It would need to be a person agreeable to both parties who was completely impartial and had strong credentials and experience to make the assessment.

It would also be useful with the teacher's consent to revisit her former references and appraisals. This should not be done in a way that is confrontational or to lay bare your concerns to the former employers. It should simply be used as a discreet way to test whether the concerns you have were ever the subject of review or appraisal at the other schools.

If the competency process is initiated it is important to get legal advice, follow the provisions of the collective contract, including advising the teacher of their right to representation and putting in place a "support and guidance programme" that will help them reach the required standards in your school.

Author - *Gubb and Partners* - 2003

Source: www.nzplc@massey.ac.nz/legal/default.asp Accessed 2.5.2005

Vignette 4 – Student Management

ASSAULT BY A SPECIAL NEEDS CHILD

A teacher aide has written a formal letter of complaint to you alleging a year 6 student suffering from Oppositional Defiant Disorder (ODD) has just bitten and scratched her for the third time this year. She demands the student be removed or she will take a personal grievance against the school. The parents of the student claim the teacher aide is inflexible, insensitive, uncommitted to inclusive education and the school is not doing all it can to meet their son's 'special needs'. What should you do?

The problem above is the subject of much debate both at individual school level and at a national level. The deinstitutionalisation of students with 'special needs' in favour of mainstreaming within state schools has been an accepted part of our educational landscape for at least two decades. Schools on the whole have developed 'inclusive policies' and have attempted with limited resources to meet the requirements of special needs students.

Section 8 of the Education Act 1989 makes it clear that people who have special educational needs have the same rights to enrol and receive education at state schools as people who do not. The Ministry of Education also provides a 'special education grant' (SEG) to schools in order to help students with special needs. In addition to this schools have access to a resource teacher for students with learning and behavioural needs (RTLB). School managers often criticise this funding and these services as being inadequate. The legal issue here, however is that special needs students have a right to enrol at a school and to receive an education that takes into account their needs.

This legal obligation, however often sits uncomfortably with the legal requirement to provide a safe physical and emotional environment for staff and students. National Administration Guideline 5 states that each Board of Trustees provide a safe physical and emotional environment for students. It throws its net wider to include other legislation that Boards must comply within full that may be developed to ensure the safety of students and employees. This would include obligations under the Health and Safety in Employment Act 1992, the Human Rights Act 1993, The State Sector Act 1987 and The New Zealand Bill of Rights Act 1990. It is clear that although a student with 'special needs' has a right to

enrol, be educated and be free from discrimination a student's special needs may also manifest itself in behaviour that puts the health and safety of others at risk. In these circumstances it is useful to develop a tiered approach.

Step One

Has the school done all it can within its resources to meet the student's special needs?

In answering this question it maybe useful to use the multi-element intervention plan promoted by Group Special Education. It includes four components:

1 Ecological Strategies

This could include general interactions and adjustments to the student's environment including:

- The students' seating
- The school timetable
- Curriculum goals
- Staffing
- Resources and equipment available

2 Positive Programming

This aims to remove the need for inappropriate behaviour by teaching positive skills to improve the student's quality of life and self esteem.

These could include:

- Social skills
- Recreational skills
- Ways to deal with unpleasant emotions such as anger or embarrassment
- Improved compliance
- Academic skills and work habits

3 Direct Treatment Strategies

Carefully planned reinforcement programmes focused on reducing inappropriate behaviour quickly.

4 Reactive Strategies

These aim to gain rapid and safe control of a situation. They do not aim to teach the student but to keep them and others safe and return the situation to normal as quickly as possible so the regular programme can continue.

David Flemming of the Human Rights Commission has usefully translated the following into obligations faced by principals and Boards under the Health and Safety In Employment Act Hazardous Behaviour, Streets Staff and Perplexed Trustees: Balancing Health and Safety requirements and The Right to Education (September 2002; ANZELA Seminar, Auckland).

- (a) Immediate minimisation of the potential for the behaviour to cause harm and in some cases isolate the student i.e. time out, closely monitored.
- (b) Minimisation of the hazardous behaviour itself.
- (c) Addressing both the context within which the student is schooled and the students as to eliminate the behaviour over time.

Step Two

It is important to assess the health and safety risks to other students and in this case to the teacher aide. This would include asking:

1. Has the teacher or other students suffered physical, emotional or psychological harm?
2. Is the harm suffered a significant hazard that would warrant the immediate intervention of the measures required under the Health and Safety in Employment Act?
3. Is the behaviour complained of seriously compromising the school's obligation to provide a safe working environment for staff and students?
4. Does the harm constitute an 'unjustified disadvantage in the work place' or if the teacher resigns could it reasonably give rise to a claim for constructive dismissal?
5. Is there a reasonable likelihood that even with interventions in place the student will cause harm to others?

Step Three

If the answers to the above are in the affirmative then serious consideration has to be given to a standdown or suspension of the student. Section 14(1) of the Education Act 1989 permits the principal to standdown or suspend if he or she is satisfied on reasonable grounds that:

- a. The student's gross misconduct or continual disobedience is a harmful or dangerous example to others at the school; or
- b. Because of the student's behaviour it is likely that the student or other students at the school will be seriously harmed if the student is not stood down or suspended for an unspecified period.

The following factors should be kept in mind before exercising the power to stand down or suspend.

- The student's behaviour must reach the statutory threshold of 'gross misconduct' i.e. not just 'misconduct' but behaviour that is striking and reprehensible to a high degree
- There must be a likelihood of harm not just a mere possibility.
- Section 14(1) (b) "*sole focus is the harm that might be caused to other students*" Potential harm to staff is not a relevant consideration for this section.
- A suspension is regarded as an act of last resort when all other strategies have been tried but failed.
- In exercising the standdown or suspension option the intention of the Act is to minimise the disruption to the students learning and where appropriate bring them back to school as soon as possible. In this sense the conditions and time limits of a suspension if it is lifted should take account of this aim and be proportionate to the nature of the offending.

The above factor is important as Flemming notes "*Greater interruption to a students education than is in fact necessary to achieve a lawful objective such as ensuring the safety of others may give rise to a complaint of unlawful discrimination, if the reasons for that interruption relate to a prohibited ground such as disability.*"

It is strongly advised in the problem above that the principal go through the three steps. It is also important that the school obtain legal advice at an early stage.

Author - *Gubb and Partners* - 2003

www.nzplc@massey.ac.nz/legal~default.asp Accessed 2.5.2005

Vignette 5 – Educational Negligence and Duty of Care

NEW ZEALAND POLICE vs. CHRISTIAN YOUTH CAMP (August 2000)

Preface

The case discussed below has important implications for schools who take their students on camps, outdoor education and school trips. The judge makes it clear that under certain circumstances a school could be liable under the Health and Safety in Employment Act for injuries to students.

Background Facts

The Facts of this case were that a 10 year old school boy Newman was severely injured when he went down a plastic water slide at a camp site in Ngaruawahai. It was during school time and organised by school staff.

The camp personnel had placed a chain across the bottom of the slide which was intended to act as a safety device, that is to stop unauthorised persons using the slide. In fact the chain became the hazard itself. The judge noted that there was no locking control on the water tap at the top and that the chain would not necessarily be visible from the top of the slide. The student used the slide.

The victim impact report stated that Nemani suffered the following injuries as a result of hitting the chain; concussion, chipped lower tooth, a bitten tongue, a badly bruised jaw, disalignment of the vertebrae (neck) and a large haematoma to the head. The total direct and indirect costs resulting from the injury were estimated to be over \$100,000.

Issues

The Judge in this case had to determine a number of key issues. Firstly, was there such a breach of safety standards that it would attract liability under the Health and Safety In Employment Act (The Act). Secondly, whether the Christian Youth Camp was solely liable or whether some responsibility and liability could be apportioned to the supervising school staff. Lastly if liability could be found what fine ought to be imposed and whether any or all of it ought to be given to the victim.

Decision

The judge held that there was a breach of safety standards sufficient to attract liability under the Act. He stated:

The harm was serious. In my view this was an accident waiting to happen. Hindsight is a great thing, but it is obvious now, particularly when this has happened before with this slide and this chain, that it was almost inevitable that sometime something like this was going to happen and in hindsight putting that chain where it was, was just asking for trouble.'

The judge noted that under S 16(2) which was an amendment to the Act places an obligation on those who control a place of work to take all practicable steps to ensure no hazard harms people outside the framework of employees including those who are in the place with the express or implied consent of the person who controls the place of work, and, who have paid to undertake an activity there and there is some follow on provisions.

The Court held that the Christian Camp was solely liable for the accident, the judge noting 'There were adequate numbers of adults in relation to the ratio of children' and 'The defendant I think properly does not seek to switch blame to the school supervising persons...'

The judge believed that the fine imposed should be at the upper end noting:

'It was a dangerous trap. Others could have been caught in it; one other person we know was. For that reason my view is that the fine reflecting the culpability here should be towards the top end of that.'

The fine imposed was \$30,000 which the judge indicated should be put into a trust for the benefit of the boy.

Implications for Schools

This case raises a number of serious implications for schools. Firstly in this case, although the Christian Camp did not seek to join the school as a second defendant, that will not always be the case. Clearly if a school takes a group of students to a paid activity e.g. zoo, swimming pool, they still owe a duty of care to students and must in addition to what is already provided ensure their own safety standards are adhered to. Failure to do this may result in personal injury to the students and action being taken against those who control the place of work and the supervising school.

Secondly, if a claim is made against a school under this Act the school must notify the Ministry of Education immediately. The Ministry will cover the school from liability as long as it has acted in good faith' and notified them of the cause of action against them.

The third point is that the court here was willing to impose a substantial fine. Although the level of the fine was consistent with the facts schools ought to avoid attracting liability under this Act. The actual fine maybe picked up by someone else, but there are other equally important considerations for schools including negative publicity, lost reputation, emotional stress, anxiousness by the parent community over safety standards in the school, reluctance by staff to take classes on trips and lost time in court for school management.

Lastly, I think it is important that when schools visit work sites controlled by others, that if teachers believe there are safety issues they should clearly point these out and seek remedial action before engaging in the activity. The bottom line is wherever the students happen to be schools are responsible for their safety and must take all reasonable steps to safeguard it.

Author - Patrick Walsh

President Australia New Zealand Education Law Association Deputy Principal, De La Salle College - 2003

Source: www.nzplc@massey.ac.nz/legal/default.asp Accessed 2.5.2005

Vignette 6 – Criminal Law

TEACHER ASSAULT

Points to Ponder

Mrs Hardcastle has been a junior teacher for 17 years and runs a good, orderly class. A parent rang you recently complaining that Mrs Hardcastle sometimes shakes and squeezes her son when he is naughty. When you speak to Mrs Hardcastle she says she has been doing it for years, saying 'No-one has ever complained about it before and it's not as if I'm hitting the child'. Apparently Sebastian Forbes-Hamilton is quite a handful. What should you do?

Points to consider

Many Principals are faced with this difficult issue. The answer is quite clear. Section 139A of the Education Act 1989 prohibits anyone employed by a Board of Trustees controlling students from using force by way of correction or punishment (unless a guardian or parent of the student).

The shaking or squeezing of a student amounts to 'force' for the purposes of correction or punishment. The teacher in the above case study is clearly in breach of the law and may be charged with assault or face disciplinary action. The teacher involved should be reminded of the law and its consequences for breaking it. Counselling should also be offered to her as well as suggestions for alternative methods for student management. This may take the form of professional development.

Author - Gubb and Partners - 2003

Source: www.nzplc@massey.ac.nz/legal/default.asp

DISCLAIMER

The information contained on this website is not intended to be fully comprehensive or a substitute for legal advice. It provides general information which may be subject to specific exceptions or may not apply to particular factual circumstances. Professional advice should be sought before applying the information to particular circumstances. Although all due care has been taken in preparing this information, no liability is accepted for any errors.

Appendix H: Questionnaire Summary of Responses

School Related Law: Do principals know what they need to know?

Principal's Questionnaire Summary of Responses

Part A

Teaching Service History, Pre-Service and In-Service Training and Education, Academic Qualifications

1. Please list your teaching service history.

	Sex	Current school size & decile rating	Current school type & location	Service as Scale A teacher	Service as senior teacher AP/DP	Service as Principal	Total Education Service
Principal 1	M	U 3 Decile 9	Rural Full Primary	3.5 yrs	Nil	3 yrs	6.5 yrs
Principal 2	F	U 2 Decile 8	Rural Full Primary	10 yrs	16 yrs	2 yrs	28 yrs
Principal 3	M	U5 Decile 6	Urban Contributing	7 yrs	3.5 yrs	22.5 yrs	33 yrs
Principal 4	F	U 5 Decile 7	Urban Contributing	17 yrs	5 yrs	10 yrs	32 yrs
Principal 5	F	U 3 Decile 7	Isolated Full Primary	12 yrs	Nil	5.5 yrs	17.5 yrs
Principal 6	M	U 3 Decile 8	Rural * Full Primary	5 yrs	7 yrs	12 yrs	24 yrs

* Please note: Principal 6 had been in his current school for 2 months. For 12 years he had served as the teaching principal of an isolated rural school.

2. Have you had any appointments in education other than in schools, e.g., E.R.O, M.O.E, or N.Z.E.I?

Principal 1	Principal 2	Principal 3	Principal 4	Principal 5	Principal 6
No	No	No	Yes ERO 2 Terms	No	No

3. Have you had any administrative appointments in fields other than education?

Principal 1	Principal 2	Principal 3	Principal 4	Principal 5	Principal 6
Yes	No	No	No	No	No
Assist Manager Mitre 10 store 2 years					

4. What qualifications did you gain as a result of your pre-service education and training?
(Please list)

Principal 1	Principal 2	Principal 3	Principal 4	Principal 5	Principal 6
Dip Teach	Dip Teach	TTC		Dip Teach	B.A Dip Ed.

5. Did any of these courses touch on issues relating to school- related law?

P1	P2	P3	P4	P5	P6
No	No	No	No	No	No

6. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

	P1	P2	P3	P4	P5	P6
Brief and introductory. Awareness raising only	n/a	n/a	n/a	n/a	n/a	n/a
A mixture of legal issues and other matters.	n/a	n/a	n/a	n/a	n/a	n/a
Entirely dedicated to legal issues	n/a	n/a	n/a	n/a	n/a	n/a
Comprehensive and detailed.	n/a	n/a	n/a	n/a	n/a	n/a
Full papers	n/a	n/a	n/a	n/a	n/a	n/a

7. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as a principal?

	P1	P2	P3	P4	P5	P6
Very useful	n/a	n/a	n/a	n/a	n/a	n/a
Useful	n/a	n/a	n/a	n/a	n/a	n/a
Of some use	n/a	n/a	n/a	n/a	n/a	n/a
Of no use	n/a	n/a	n/a	n/a	n/a	n/a
Uncertain	n/a	n/a	n/a	n/a	n/a	n/a

8. Overall how would you rate the usefulness of your pre-service education and training in preparing you for the legal aspects of your job as a principal?

	P1	P2	P3	P4	P5	P6
Very useful						
Useful						
Of some use	•					
Of no use		•	•	•	•	•
Uncertain						

Comment

Principal 1: Only as it related to some basic compliance issues

9. What qualifications have you gained in-service prior to becoming a principal?
(Please list)

P1	P2	P3	P4	P5	P6
First Principals Induction. Two Massey papers - Curriculum Theory Policy & Practice School Org & Management	B.Ed	B.Ed Dip Teach	B.A Dip Ed.	Nil	Paper in Geographic Education (Massey University)

10. Did any of these courses touch on issues relating to school- related law?

P1	P2	P3	P4	P5	P6
Yes	No	No	No	n/a	No

11. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

	P1	P2	P3	P4	P5	P6
Brief and introductory. Awareness raising only		n/a	n/a	n/a	n/a	n/a
A mixture of legal issues and other matters.	•	n/a	n/a	n/a	n/a	n/a
Entirely dedicated to legal issues		n/a	n/a	n/a	n/a	n/a
Comprehensive and detailed.		n/a	n/a	n/a	n/a	n/a
Full papers		n/a	n/a	n/a	n/a	n/a

12. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as principal?

	P1	P2	P3	P4	P5	P6
Very useful		n/a	n/a	n/a	n/a	n/a
Useful		n/a	n/a	n/a	n/a	n/a
Of some use	•	n/a	n/a	n/a	n/a	n/a
Of no use		n/a	n/a	n/a	n/a	n/a
Uncertain		n/a	n/a	n/a	n/a	n/a

13. Overall how would you rate the usefulness of your in-service education prior to becoming a principal in preparing you for the legal aspects of you job as a principal?

	P1	P2	P3	P4	P5	P6
Very useful						
Useful						
Of some use						
Of no use	•	•	•	•	•	•
Uncertain						

14. Have you been involved in the First Principals' Induction Programme?

P1	P2	P3	P4	P5	P6
Yes	Yes	No	Yes *	No	Yes*

Comment: * Principal 4 – for three years as a facilitator

* Principal 6 – as a presenter in 2003

15. Did you attend any courses during the First Principals programme specifically designed to cover legal issues affecting education?

P1	P2	P3	P4	P5	P6
Yes	No	n/a	No	n/a	No

16. How would you describe the law related courses in the First Principals programme?
(Tick all relevant categories)

	P1	P2	P3	P4	P5	P6
Brief and introductory. Awareness raising only		n/a	n/a	n/a	n/a	n/a
A mixture of legal issues and other matters.	•	n/a	n/a	n/a	n/a	n/a
Of short duration 1 -5 hours		n/a	n/a	n/a	n/a	n/a
Of longer duration – several hours		n/a	n/a	n/a	n/a	n/a
Entirely dedicated to legal issues		n/a	n/a	n/a	n/a	n/a
Comprehensive and detailed.		n/a	n/a	n/a	n/a	n/a
Full papers		n/a	n/a	n/a	n/a	n/a

17. How would you rate these courses in preparing you for the legal aspects of your job as a principal?

	P1	P2	P3	P4	P5	P6
Very useful		n/a	n/a	n/a	n/a	n/a
Useful		n/a	n/a	n/a	n/a	n/a
Of some use	•	n/a	n/a	n/a	n/a	n/a
Of no use		n/a	n/a	n/a	n/a	n/a
Uncertain		n/a	n/a	n/a	n/a	n/a

18. Please list, if any, the qualifications you have gained while working as a principal.

P1	
P2	Certificate in School Marketing
P3	ASTU in various areas – reading, music
P4	
P5	
P6	Dip. Ed. Man (Christchurch College of Education – extramural)

19. Did any of these courses touch on issues relating to school-related law?

P1	P2	P3	P4	P5	P6
	No	No	No	No	No

20. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

	P1	P2	P3	P4	P5	P6
Brief and introductory. Awareness raising only	n/a	n/a	n/a	n/a	n/a	n/a
A mixture of legal issues and other matters.	n/a	n/a	n/a	n/a	n/a	n/a
Entirely dedicated to legal issues	n/a	n/a	n/a	n/a	n/a	n/a
Comprehensive and detailed.	n/a	n/a	n/a	n/a	n/a	n/a
Full papers	n/a	n/a	n/a	n/a	n/a	n/a

21. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as a principal?

	P1	P2	P3	P4	P5	P6
Very useful	n/a	n/a	n/a	n/a	n/a	n/a
Useful	n/a	n/a	n/a	n/a	n/a	n/a
Of some use	n/a	n/a	n/a	n/a	n/a	n/a
Of no use	n/a	n/a	n/a	n/a	n/a	n/a
Uncertain	n/a	n/a	n/a	n/a	n/a	n/a

22. Are you currently working towards an academic qualification?

P1	P2	P3	P4	P5	P6
Yes	No	No	No	No	No

23. If 'yes' please describe the qualification.

P1	P2	P3	P4	P5	P6
B.Ed	n/a	n/a	n/a	n/a	n/a

24. Is any part of your course related to issues surrounding school law?

P1	P2	P3	P4	P5	P6
Yes	n/a	n/a	n/a	n/a	n/a

25. If 'yes' how would you describe these parts of your course? (Tick all relevant categories)

	P1	P2	P3	P4	P5	P6
Brief and introductory. Awareness raising only		n/a	n/a	n/a	n/a	n/a
A mixture of legal issues and other matters.	•	n/a	n/a	n/a	n/a	n/a
Entirely dedicated to legal issues	•	n/a	n/a	n/a	n/a	n/a
Comprehensive and detailed.		n/a	n/a	n/a	n/a	n/a
Full papers		n/a	n/a	n/a	n/a	n/a

Comment: Principal 1 - Depends on paper

26. How would you rate the usefulness of these parts of your course in preparing you for the legal aspects of your job as principal?

	P1	P2	P3	P4	P5	P6
Very useful		n/a	n/a	n/a	n/a	n/a
Useful	•	n/a	n/a	n/a	n/a	n/a
Of some use		n/a	n/a	n/a	n/a	n/a
Of no use		n/a	n/a	n/a	n/a	n/a
Uncertain		n/a	n/a	n/a	n/a	n/a

Comment: Principal 1 – This is really for teaching but has relevance for my principal role.

27. As a principal have you been involved in any **in-service** workshops and seminars which have touched on legal issues?

P1	P2	P3	P4	P5	P6
Yes	Yes	Yes	Yes	Yes	Yes

If 'yes' please list if you are able.

P1	Mostly to do with financial reporting requirements.
P2	Law seminar – NZ Law Society
P3	
P4	Patrick Walsh
P5	A Principals' Assn. seminar on legal issues
P6	Principals' Assn invited speaker (lawyer) STA board of trustees training on legal issues

28. How would you describe the workshops and seminars? (Tick all relevant categories)

	P1	P2	P3	P4	P5	P6
Brief and introductory. Awareness raising only		•	•			•
A mixture of legal issues and other matters.			•		•	•
Of short duration 1 -5 hours	•	•		•	•	•
Of longer duration – several hours						
Entirely dedicated to legal issues		•				
Comprehensive and detailed.						
Full papers						

29. How would you rate the usefulness of the workshops and seminars in assisting you with the legal aspects of you job as a principal?

	P1	P2	P3	P4	P5	P6
Very useful	•			•		
Useful					•	
Of some use		•	•			•
Of no use						
Uncertain						

Comment: Principal 2 – have a manual to refer to.

30. Overall how would you rate the usefulness of your in-service education as a principal in preparing you for the legal aspects of you job as a principal?

	P1	P2	P3	P4	P5	P6
Very useful						
Useful	•					
Of some use		•	•	•		•
Of no use					•	
Uncertain						

Please proceed to Part B

Part B

Knowledge of School Related Law

31. Listed below is a comprehensive sample of statutes, orders, guidelines and regulations affecting schools. Please rate your familiarity with these pieces of legislation using the scale provided.

1 = A very good working knowledge of the legislation.

2 = Familiar with its purpose and contents and have used parts of it, either directly or indirectly in your work.

3 = Aware of its purpose but only in a general sense.

4 = Aware of the legislation but uncertain of its purpose or how it affects schools.

5 = Unaware of its existence.

	Statutes and Regulations Affecting Schools	Rating					
		P1	P2	P3	P4	P5	P6
1.	Education Act 1964	3	3	3	2	3	3
2.	Education Act 1989 and (21) Amendments	3	3	2	2	3	3
3.	Education (School Attendance) Regulations 1951	1	5	3	2	3	3
4.	Education Staffing Orders	3	5	5	3	4	3
5.	National Education Guidelines	2	2	2	1	2	1
6.	National Administration Guidelines	2	2	2	1	2	1
7.	National Curriculum Statements for New Zealand Schools	1	1	1	1	2	1
8.	Animals Welfare Act 1999	3	2	3	2	3	4
9.	Bill of Rights Act 1990	5	4	3	3	3	4
10.	Building Act 1991	3	3	3	3	3	2
11.	Building Regulations 1992	3	3	3	3	3	3
12.	Children, Young Persons and Their Families Act 1989	4	4	3	2	3	3
13.	Civil Defence Act 1983	3	4	3	2	3	3
14.	Code of Ethical Conduct for the Care and Use of Animals in School Programmes.	4	2	3	3	3	3
15.	Collective Agreements for All Staff	2	2	1	2	2	2
16.	Consumer Guarantees Act 1994	4	4	2	3	3	4
17.	Copyright Act 1994	3	3	2	2	3	3
18.	Disabled Persons Community Welfare Act 1975	4	4	5	3	3	5
19.	Employment Relations Act 2000	2	4	3	3	3	3
20.	Fencing of Swimming Pools Act 1987	1	3	2	3	2	2
21.	Fire Safety and Evacuations of Buildings Regulations 1992	3	3	2	2	3	2
22.	Food and Hygiene Regulations 1974	4	3	3	2	3	2
23.	Guardianship Act 1964	5	5	5	3	4	4
24.	Health and Safety Code of Practice for State Primary, Composite and Secondary Schools.	4	3	2	3	3	2
25.	Health and Safety in Employment Act 1992	3	3	2	2	3	2
26.	Human Rights Act 1993	3	3	3	2	3	2
27.	Local Government Official Information and Meetings Act 1987	2	5	3	2	3	2
28.	Official Information Act 1982	4	5	3	2	2	3
29.	Ombudsman Act 1975	5	5	3	4	2	5
30.	Privacy Act 1993	2/1	2	2	3	2	3
31.	Protected Disclosures Act 2000	2	5	2	3	2	2
32.	Public Finance Act 1989	2	5	5	4	3	2
33.	Residential Tenancies Act 1986	4	5	4	4	3	4
34.	Resource Management Act 1991	5	4	3	3	4	4
35.	Smoke-free Environments Act 1990	2	2	2	2	2	2
36.	Smoke-free Environments Amendment Act 1993	2	2	2	2	2	2
37.	State Sector Act 1988	5	5	3	3/4	3	4
38.	State Sector Amendment Act 1989 and Amendments	5	5	3	3	3	4
39.	Traffic Regulations Act 1976	4	5	5	4	3	5

Comment: Principal 6 – Row 14 ‘apart from when ERO brings it to our attention’.

32. For each statement below please rate the response using the following scale:

- 1 = strongly agree
 2 = agree
 3 = uncertain
 4 = disagree
 5 = strongly disagree

(a) I am familiar with the purpose and contents of most legislation affecting schools.

P1	P2	P3	P4	P5	P6
2	4	3	2	3	4

Comment: Principal 4 For question 32 (a) this principal circled the word 'purpose'.

(b) My knowledge of school related law is sufficient for my work as a school principal.

1	5	3	3	3	4
---	---	---	---	---	---

(c) I have a good understanding of the principles of natural justice.

1	4	2	2	3	3
---	---	---	---	---	---

(d) My knowledge of school law is sufficient enough for me to recognise legal problems when they arise.

2	3	2	2	3	4
---	---	---	---	---	---

(e) I am confident that I am able to determine when an issue needs professional legal advice.

2	3	2	3	2	3
---	---	---	---	---	---

(f) If advice and support on legal issues is needed. I know where to get it.

1	2	2	2	2	2
---	---	---	---	---	---

Part C

Sources of Legal Knowledge

33. Please rate the sources of legal knowledge which have been useful in the administrative decisions you have taken as a school principal in relation to legal matters.

1 = Very useful, 2 = Useful, 3 = Of some use, 4 = Of no use, 5 = Uncertain

	P1	P2	P3	P4	P5	P6
In-service seminars and workshops	2	3	5	1	2	3
University courses	3	4	4		4	4
First Principals Induction Programme	2	4	n/a			
Principal mentors (First Principals Induction Programme)	4	3	n/a	2		
Other principals	1	2	3	1	2	3
Principal Associations	1	2	3	1	2	3
College of Education School advisory services	3	3	3	2	2	4
M.O.E officers	2	4	2	2	3	3
M.O.E handbooks, publications, directives and circulars	1	3	3	2	2	2
M.O.E Leadspace website	4	4	3	3	3	3
M.O.E Education Gazette notices	2	4	2	2	2	3
N.Z.P.F helpdesk	3	4	3	1	3	3
N.Z.P.F circulars	3	4	3	1	2	2
N.Z Principal and Leadership Centre Legal website	5	4	1	1	3	4
N.Z.E.I Field officers	1	2	1	1	2	2
N.Z.E.I handbooks, publications and circulars	1	2	2	2	3	2
S.T.A advisors	3	2	1	1	2	3
S.T.A handbooks, publications and circulars	3	2	2	2	2	2
E.R.O officers	3	4	4	4	4	3
E.R.O publications	5	4	3	3	4	4
Hardcopies of Govt legislation	1	4	3	3	4	4
Employment Contract Documents	1	4	1	1	2	2
Professional periodicals N.Z.P.F Principal Magazine, N.Z.E.I Ruru	3	4	3	2	5	3
Education media – e.g. Eduvac.	3	4	3	3	4	3
Mass media	5	4	3	4	4	3

Comment: Principal 4 crossed out First Principals Induction Programme and inserted PPLC in the fourth row 'Principal mentors'

Please list any other sources of legal knowledge that have been of significance to you.

P1	Contact with other colleagues
P2	
P3	
P4	
P5	
P6	

34. Have you had any personal experience of situations which have had serious legal implications?

P1	P2	P3	P4	P5	P6
Yes	No	No	Yes	No	Yes

35. If 'yes' which of the following areas did they relate to? (Please tick)

	P1	P2	P3	P4	P5	P6
Governance	•	n/a	n/a		n/a	
Management		n/a	n/a		n/a	
Employment		n/a	n/a		n/a	•
Student management		n/a	n/a	•	n/a	•
Laws relating to negligence and duty of care		n/a	n/a		n/a	
Criminal law		n/a	n/a		n/a	

Part D

Legal Risk Management Policies and Practices

36. Do you have personal public liability insurance?

P1	P2	P3	P4	P5	P6
No	No	No	Yes	No	No*

Comment: * Principal 6 "Have let it lapse."

37. Is your school adequately covered by public liability insurance?

P1	P2	P3	P4	P5	P6
Yes	Yes	Yes	Yes	Yes	Not sure*

Comment: * Principal 6 'Uncertain new school.'

38. Does your school check the legality of its policies and practices?

P1	P2	P3	P4	P5	P6
Yes	No	No	Yes	Yes	Not sure*

Comment: * Principal 6 "Uncertain new school."

39. If 'yes' please indicate the source(s) used to check the legality of your policies and procedures. (Please tick)

	P1	P2	P3	P4	P5	P6
Lawyers		n/a	n/a		•	
Other principals		n/a	n/a		•	•
Other schools' policies and procedures	•	n/a	n/a			
College of Education School advisory services	•	n/a	n/a		•	
M.O.E officers		n/a	n/a	•		•
M.O.E handbooks, publications, directives and circulars	•	n/a	n/a			•
M.O.E Leadspace website		n/a	n/a			•
N.Z.E.I Field officers		n/a	n/a	•	•	•
N.Z.E.I handbooks, publications and circulars		n/a	n/a			
S.T.A advisors		n/a	n/a	•	•	•
S.T.A handbooks, publications and circulars		n/a	n/a	•		•
N.Z Principal and Leadership Centre Legal website		n/a	n/a		•	•
E.R.O officers	•	n/a	n/a			•
E.R.O publications		n/a	n/a			
Sample policies from M.O.E, S.T.A, N.Z.E.I etc.	•	n/a	n/a			
Hardcopies of Govt legislation	•	n/a	n/a			
Employment Contract Documents	•	n/a	n/a			•

Please list any other source(s) that have been of significance to you.

P1	
P2	
P3	
P4	
P5	
P6	NZPF helpline

40. Which of the above would you go to in the first instance?

P1	Sample policies, then other schools, then hard copies of legislation
P2	
P3	
P4	Depends. Use most appropriate. Cross check
P5	Would depend on the problem
P6	NZPF, NZEI on employment matters

41. Please list the legal risk management practices put in place by your school.

Sample of Legal Risk Management Policies and Procedures

Student Management and Well-being	P1	P2	P3	P4	P5	P6
Anti bullying			•	•	•	•
Sexual abuse & neglect	•	•	•	•	•	•
Guidance & counselling				•	•	•
Behaviour management	•	•	•	•	•	•
Discipline	•	•	•	•	•	•
Play ground supervision	•	•	•	•	•	•
Out of school care and supervision		•	•	•	•	
Custody and access	•	•	•	•	•	•
EOTC risk management	•	•	•	•	•	•
Drug and Alcohol			•	•	•	•
Special Needs	•		•	•		•
Cross cultural awareness	•		•	•		
Visitor management		•	•	•	•	•
Staff Management and Well-being						
Anti stress				•	•	•
Counselling				•		•
EEO	•	•	•	•	•	•
Appointments	•	•	•	•	•	•
Good employer	•		•	•	•	•
Performance management supervision and appraisal	•	•	•	•	•	•
Sexual harassment	•		•	•	•	•
Police Vetting	•		•	•	•	•
Teacher registration	•	•		•	•	•
Protected Disclosures	•	•	•	•	•	•
Resource Management						
Financial management	•	•	•	•	•	•
Copyright	•			•	•	
Hazard management	•	•	•	•	•	•
ICT acceptable use	•	•	•	•	•	•
General						
Health and Safety	•	•	•	•	•	•
Emergency procedures	•	•	•	•	•	•
Complaints	•	•	•	•	•	•
Privacy of information	•	•	•	•	•	•

42. Have you ever been placed in a situation involving legal issues where you felt you needed to seek advice and support?

P1	P2	P3	P4	P5	P6
Yes	Yes	Yes	Yes	Yes	Yes

43. If 'yes' please indicate the source(s) of advice and support that have been of significance to you. (Please tick)

	P1	P2	P3	P4	P5	P6
Lawyers	•					
Other principals	•		•	•	•	
N.Z.E.I field officers	•	•	•	•	•	•
S.T.A advisors		•	•	•	•	
N.Z.P.F advisors				•	•	•
M.O.E officers				•		

Please list any other sources of advice and support that have been of significance to you.

P1	
P2	
P3	
P4	
P5	
P6	

44. Which of the above would you go to in the first instance?

P1	NZEI
P2	STA, NZEI
P3	Industrial – STA then NZEI. Others NZPF, STA, MOE
P4	NZPF and other experienced principals
P5	Depends on problem. Staff related NZEI or STA. Pupil related NZPF other principals.
P6	NZEI

45. How useful was the advice and support gained from these sources? (Please rate them using the scale provided)

- 1 = Very useful
- 2 = Useful,
- 3 = Of some use
- 4 = Of no use
- 5 = Uncertain

	P1	P2	P3	P4	P5	P6
Lawyers	2					5
Other principals	1		3	1		2
N.Z.E.I field officers	1	1	2	1	1	1
S.T.A advisors		1	2	1	1	3
N.Z.P.F advisors				1		2
M.O.E officers				1		3
Other (Please specify)						

46. What percentage of your working week do you spend on legally-related matters?

- (a) Less than 10%
- (b) 10 % to 20%
- (c) 20% to 30%
- (d) 30% to 40%
- (e) over 50%

	P1	P2	P3	P4	P5	P6
(a) Less than 10%		•	•	•	•	•
(b) 10 % to 20%						
(c) 20% to 30%	•					
(d) 30% to 40%						
(e) over 50%						

47. The comment is often heard that school staff are facing increased levels of stress. Do you consider that legal matters associated with school administration:

(a) cause you stress?

- Yes
- No
- Uncertain

	P1	P2	P3	P4	P5	P6
Yes	•	•		•		•
No						
Uncertain			•		•	

Comment: Principal 3 – can cause stress at times.
Principal 4 - some

(b) cause you more stress than other administrative tasks?

- Yes
- No
- Uncertain

	P1	P2	P3	P4	P5	P6
Yes		•				•
No	•		•	•		
Uncertain						

(c) are more stressful than in previous years?

- Yes
- No
- Uncertain

	P1	P2	P3	P4	P5	P6
Yes		•	•	•	•	•
No						
Uncertain	•					

Please feel free to add any comments you wish about the issues raised in this questionnaire.

P1	The question of how law relates to school administration is very broad. In most cases there is a legal obligation to carry out tasks in a certain way and to certain guidelines. I work on the assumption that most things in schools are related to state sector, public finance or the Education Act.
P2	
P3	
P4	
P5	
P6	

Thank you for taking the time to complete the questionnaire

Part A: Teacher Service, Qualifications, Pre-Service and In-Service Education

1. The questionnaire posed questions about your pre-service and in-service education and training with regard to school related law. Could you comment on the role of personal experience in helping develop your knowledge of school related law?

Principal:

I guess when you have been involved with something, that's when you realise something is needed. Before that you don't. Things like school camps will bring out the need to do that. To have things like EOTC guidelines and policies. I was once involved where a child had been abused so that certainly made me look at school policies on abuse and disclosure. So I guess... I haven't really had much personal experience. I guess it's like a lot of policies you have in the school until you have a need for it you don't do a lot about it often. And when the need comes up you think 'oh heck'. It shouldn't always be like that, but it jolts your mind to do something. I was certainly involved with a teacher being gaoled over abuse allegations and that certainly bought us to a halt and I had to find out about that.

2. To what extent do you think the type of school, its decile rating, its geographical location has on the development of your experiences and knowledge of school-related law?

Principal: I have never taught out in the sticks. But I guess most of us rely on NZEI and STA who are

Being involved with an issue helps to highlight the need for guidelines and policies to be put in place. Two incidences given – the safety issues surrounding school camps and an allegation of child abuse where a teacher was gaoled led the principal to look at school policies.

only a phone call away. I don't know about geographical location so much, but I do think decile rating and social location and the social type of your school would effect how much law related work you would have. That probably comes up somewhere else in the interview. But low decile or where you have a tendency to have a lot more transient type unstable relationships you are certainly going to. That's only a generalisation but I think it is going to be true with more custody type arrangements, with more children who are not getting along at school for what ever reason. I definitely think that if you are in a low socioeconomic area you will be dealing with it a lot more.

Interviewer: What about at the other end of the decile rating?

Principal: It's a bit like where we are here. I mean generally speaking because our parents are very supportive of the school things can go wrong at our school that the parents can accept as part of the kids developing, kids growing up and they have a trust in the school that you are actually doing everything you can to protect the child. So they probably don't come down on us very hard or they have that trust of teachers and of school and we're very lucky in that. And also I think probably at a higher decile school you have got parents who are, it's probably not very nice to say, but they are more intelligent or realistic about wanting their kids treated ... they don't make a big issue about things much. But it's not really law related I suppose. I guess you could get the other extreme where you are at a posh-nosh place where perhaps their parents would be picky. We're probably good average ordinary kiwis who just get

Decile rating, social type and social location would affect the sorts of issues, and the volume of issues a principal would have to deal with.

Generalised that low decile schools would have more issues relating to the transience of children, unstable family relationships, custodial and behavioural issues.

Doesn't know about isolation and hasn't had experience teaching 'in the sticks' But help form STA and NZEI only a phone call away.

Contended that in her own school, a decile 9, with 'good average kiwis' parents are more 'intelligent and realistic' and thus more supportive and trusting of the school and its ability to keep children safe. Inferred that this would mean less legal issues 'Posh-nosh' schools may have picky parents. ' and more legal issues.

on with everyday life.

3. *To what extent have you relied on the experience or comments of colleagues and other principals to gain an understanding of what you should do in situations involving legal issues?*

Principal: Oh I certainly turn to other principals, and I think we're probably very lucky here having such a strong (place name) cluster because I have principals around me who I rely on and sometimes I ring them before I even think of ringing STA or NZEI. And certainly the principal who does my appraisal I ring her a lot and I share a lot of worries and concerns. She's probably the first person that I ask actually.

4. *Please comment on the barriers to the development of your knowledge of school related law.*

Principal: Well one of the barriers for me is that I don't really know where to start and I guess another barrier is that quite often we operate on a need to know situation and whether there is an expert out there to deal with it. I mean I don't need to know all the ins and outs of the law providing I can communicate well with NZEI and STA and my colleagues down the road. And its sometimes it's too big to know it all. Why do I need to personally know all the ins and outs of it? I just get the experts in. And I guess its sometimes knowing when you have overstepped the mark and being aware that you probably need to get that knowledge or talk to someone early in the piece rather than leaving it until its too late or try to handle it too much yourself. But I don't need to know all the details because there

Relies on advice from members of her school cluster group. Rings them in the first instance before STA or NZEI. First person she turns to is the principal who does her annual appraisal.

'Sometimes too big to know it all' and "Don't know where to start." No need to know all the 'ins and outs' provided advice can be obtained from NZEI, STA or other colleagues. Need to be able to recognise when something is a problem and knowing when to get the experts in and getting advise early 'rather than leaving it too late or handling it yourself.'

are NZEI and STA and those people are there to help. You don't quite know when you have overstepped the mark and it's getting advice early. And being able to see if a problem might arise.

5. Thinking about the sorts of legal issues you could become involved in what concerns or scares you the most?

Principal: The media. Because little things can just get blown up so much out of proportion and once they hit the front page it can do so much damage. The media scares me. I had a teacher once and these girls came and complained to me because he had wanted to know what was up their jerseys. He told them to lift up their jerseys because he wanted to have a look. And what the girls actually had when I found out was that they had a walkman in class and they had the cords going down into their jerseys and the teacher had said lift up your jerseys because I want to have a look at what's underneath. But if that comment had hit headlines before you even know you're crucified and you're on the back foot trying to sort it out. It's the media that really scares me more than anything. And the other thing that scares me is that so many cases get publicity so many years down the track and you think you know if someone came to me and accused me of something that had happened on a camp ten years ago could I really remember the details? You go through so many camps and so many...and now it's all these cases that have been brought up way after they have happened. I mean either people have got jolly good memories or my memory is shocking, but I often think 'Wow how do they remember the details?' Although they do say that something bad does stick in your mind and you do remember it. But little

The news media and the way 'little things can be blown up so much out of proportion' 'before you even know you're crucified and you're on the back foot trying to sort it out.' Being accused of historic abuse also worried this principal despite being adamant that she had done nothing to warrant any accusations. The media attention surrounding historic abuse cases and the damage it can cause for schools was also a major worry. She illustrated her concern with an example of a teaching colleague gaoled for the sexual abuse of pupils over a twenty year period and the media attention surrounding the case. When asked if the experienced had prompted her to implement procedures to guard against the possibility of this happening in her current school she replied no. When asked to explain why she replied that the school she was working in at the time had not implemented any procedures following the event and justified her position by asking if a school had the right to control the out of school activities of a teacher who had made private arrangements with parents to take their children on camping trips.

things you do that can be bought up later to haunt you ten year later are a bit scary.

Not that I've done anything but what do you do? I'm sure we haven't done anything and perhaps if we'd had we would have remembered it. But some of these things take so long to come out. How can people remember? The media really scare me but I don't know if that relates to your question. I mean look at what the media has done sometimes with ERO reports. They pick one little bit and it's in the headlines and boy the damage it can do. And I often think that before you know it there's so much damage done. I look at the school where a teacher was gaoled. He got eight or nine years gaol and the day he was arrested the principal rang me because this teacher who had been interfering with boys for over twenty years... fantastic teacher. My son was in his class. (Name) went away with him one holiday and the first thing I did was go home to (name) and said... but over a period of twenty years he had been taking kids on weekend trips. Never in school time and always with permission of parents who thought he was God. He was an amazing teacher. Parents thought he was God. So he would get the kids. Parents would let their kids go. The principal and I had several conversations about this saying 'Look I don't like this ...its not on.' That he's doing it. And the principal had talks with him ... and 'No I've got the parents permission and it's in my holiday time.' The Saturday he got arrested, and its still as vivid in my mind as anything, so perhaps these things do stick in your mind and when I say I couldn't remember back...the principal rang me about three o'clock in the afternoon and he said 'You said it would happen.' And I said 'What?' He said (name) just been arrested and he ... there was name

suppression for about two or three months... school broke up on the Wednesday and he was arrested on the Saturday with some kids. So over that Christmas time he had name suppression but everyone in town knew....So we were called into the school we had several meetings. The ministry people arrived and of course TV cameras were camped at the gate and it was like ... it was quite scary that whole media frenzy to print something... everyone in town knew who it was although... I never said anything to (name) until the night that we knew it was going to be on the news a couple of months later and (name) was around home with three or four of his mates and they all had been in (name) class and I said you guys better watch the news tonight because there's something on ... so here it came up at six o'clock.... teacher arrested... well these guys said 'You're joking... not old (name). They couldn't believe it. But he was very specific when we looked back to see who he targeted. Mostly boys with solo mothers and ...but that whole media thing was just so scary.. I mean that situation was different... because he was found guilty and gaoled ... and then I really struggled. I struggled for months... and I still haven't...this was about what seven, six years ago. I still haven't decided in my mind whether I hate the guy because he was a really good friend of mine, whether I believe it's a disease a sickness or he's just broken the law. I know he's broken the law but I still in my mind don't know whether I'm sympathetic with him because there is something wrong with him, whether I'm angry with him because he has put us all through so much, or whether he's just a criminal and he's broken the law and I should hate him. It's quite interesting really. But that media frenzy is quite scary. Although it's different because

he was guilty and I knew he was guilty and I guess we'd been waiting for it to happen. So that's what concerns me the most. The media. Not the dealing with it. And that I've got the help and dealing with it early enough not to avoid stepping over any lines.

Not having any repercussions

Interviewer: Obviously at that stage the school didn't have a procedure for dealing with that sort of thing, some sort of guideline that said that teachers were not allowed to take children home or on camp. So have you got one in the school now?

Principal: Have we got one here? No. That actually says... but how many schools have? Do schools actually have policies that say in your holiday time you cannot take kids away on camp. Do schools have that? I don't know.

Interviewer: This incident has obviously been a major thing in your life and yet you haven't enacted anything in your school. Why do you think that is?

Principal: I don't know whether the school can control what people can do in their holiday time anyway and I have never made enquiries and perhaps I should've. I don't know if I've got the right to say in your out of school time you cannot take away on holiday who you choose to take away. Because regardless of whether they are from this school or not... I don't know... and I don't know why I haven't and I guess it's because I haven't really thought why I haven't done anything about it. I am pretty positive that the school didn't do anything about it in terms of having a policy. I was there two ... after he went. I don't think they ever

thought right we better have a policy here that says out of school time you cannot and I don't know if many schools have. That is the difficulty. Can you actually control what people do out of school time. I guess yes if it concerns pupils from your school. Although nothing ever went through the school. He arranged with parents to take these kids away so was it anything to do with the school? Twenty years it went on for now that's a long time without kids dobbing him in... without parents having concerns... an amazing long time and when the court case happened they had cases from twenty years ago. Now that... yeah I mean does a school have the right to dictate what teachers do on their holiday?

Interviewer: I'll stop you there. It's interesting. I could carry on listening to that because it is an interesting example of something happening... an experiential thing happening but nothing....

Principal: Nothing happened to change any procedures yet it was horrific. Now this guy who... every year at the end of the year we would have at least thirty parents come in and request their kids go into his class. He was God.

Part B Knowledge of school related law.

(i) Knowledge of Law Related to Governance and Management, Employment, Student Management, and Educational Negligence and Duty of Care.

The next set of questions deals with your knowledge of law as it relates to governance and management, employment issues, student management and educational negligence and duty of care. The questions are framed as critical incidences; some based on cases heard in New Zealand courts. You are asked to comment on the courses of action you might choose to take and, if possible, why.

Section I Governance

Your recently elected Board Chairperson sent you a fax about the level of bullying in the school. He has been given the same name of one boy in particular. He wants to come into the school this afternoon to interview Sebastian Forbes-Hamilton and will give you a summary of his investigation and recommendations. What should you do?

Principal: The first one. I would certainly want to see the boy before the chairman did. I would be saying to the chairman 'No I will interview if you give me the details' and then discussing the results with the chairman and at that stage we need a meeting with the parents I would do that before it went to the board. I would rather be meeting with the boy, meeting with the boys parents before the board got involved.

Section II Management

A father of two students at your school dropped into the school office and requested a copy of all their school reports for the previous two years. Having never met the father before you were suspicious and

This principal claims the right to interview the boy but it is unclear what role the board chairman would play during the next part of the investigation. She makes the point that she would want to set up a meeting with the boy and his parents before the board became involved but seems to imply that the board chair person would be involved in this.

rang the girls' mother (custodial parent). She confirmed he was the father but had been estranged from her and the girls for the last 10 years. She requested that the reports not be given to the father. You interviewed the girls who were of the same view. What is your position?

Principal: Oh dear yes. These ones scare me a little bit. In dealing with that you still have to know the legality of the separation and the custody agreement and I mean he may have every right to those reports and if its just the mother saying... then sorry I would be asking the mother to supply me with copies of any legal custody agreement. I wouldn't just take the mother's word for it. I think I would be ringing up STA and getting a little bit of back ground information. Certainly I wouldn't be handing it over to the father. I would say that I needed a couple of days...I need to get this clear in my head. And he might not like that but... the mother would need to show me because he could be entitled to it.

Section III Employment Law

You as Principal have just conducted an appraisal of a teacher recently appointed to your school. You were dismayed and horrified at the poor planning and lack of classroom management. The teacher came with glowing references and appraisals from two previous schools. The teacher thinks you have it in for her and that you are totally off base with your appraisal. What should you do?

Principal: Well I have had this type of incident happening. It's quite interesting. I think that if your appraisal system is linked up with the performance

In this principal's opinion the father would be given the reports unless the school was to receive copies from the mother of any 'legal custody agreements' that removed the father's entitlement. The principal would not restrict access 'if it's just the mother saying...' However the father would need to wait while the principal checked the legal situation with the STA. No consideration was given to the privacy issues raised by the pupils' objection the release of the reports to the father.

This principal would use the professional standards to measure the teacher's performance. She would set up an appraisal in negotiation with the teacher 'to collect

standards that the ministry has set out and that you have indicators that say this is the standard I should see, then you should ask the teacher to show you the evidence. If you can't see the evidence or the teacher can't show you the evidence for something you're looking for well then there's something wrong. So as long as the appraisal does match up with the teaching standards and you've worked out together what you are looking for and you say that I coming into your room to look at planning, then you can't have it in for them if you're asking to see what's been set down as an indicator of the planning. It's all about collecting evidence rather than going in and accusing someone and saying the planning is shocking... I mean it's because the evidence says it's shocking.

Section IV Student Management

A teacher aide has written a formal letter of complaint to you alleging a year 6 student suffering from Oppositional Defiant Disorder (ODD) has just bitten and scratched her for the third time this year. She demands the student be removed or she will take a personal grievance against the school. The parents of the student claim the teacher aide is inflexible, insensitive, uncommitted to inclusive education and the school is not doing all it can to meet their son's 'special needs'. What should you do?

Principal: This is one were I would be going to STA straight away because I don't know if the teacher aide could take a personal grievance or not. Yes I mean if the kid has bitten her for the third time something definite has to be done but if it's a special needs child... I've never been a believer in zero

evidence' to determine whether there was a problem or not. She did not state what she would do if she found a problem.

This principal claimed she would seek advice from the STA in the first instance. She was unsure if the teacher aide had grounds for a personal grievance or not but thought something needed to be done. Some vague references were made regarding the need to adapt things for special needs children. She would try and give the teacher aide a break by rearranging the timetable (although she acknowledged that this would be very

tolerance. You get some people who say oh we have zero tolerance if kids do something wrong they're out. But with special needs and main streaming you have to do things to adapt things to meet their needs and quite often parents and teachers aides don't see that. They think 'kid misbehaves kid out or punished' and it doesn't always work out like that. I would want to meet with the parents of the child. I would be finding out from STA whether she did have a personal grievance. I would try to give the teacher aide a bit of a break if I could rearrange the timetable. But in our situation with only one teacher aide... if this happened I'd be stumped... there would need to be a consequence for the child and the teacher aide could go on a little bit of staff development just to realise that working with these children is difficult and we cannot always apply black and white rules. So I think something should be done.

Section V Educational Negligence and Duty of Care

A ten year old boy from your school is severely injured when he went down a plastic water slide at a camp site. It was during school time and organised by school staff. The camp owners had placed a chain across the bottom of the slide which was intended to act as a safety device that is to stop unauthorised persons using the slide. There was no locking control on the water tap at the top and the chain was not necessarily visible from the top of the slide. The use of the slide resulted in injuries estimated to cost over \$100,000. Who was responsible?

Principal: This is one that actually does scare me a little bit. Camps and accidents and the whole

difficult with only one teacher aide) and give the person some professional development.

After debating with herself this principal finally stated that she did not know who was responsible for the boy's injuries. Initially she believed that the camp was

related... So the chain was placed across the bottom to act as a safety device to stop unauthorised persons. So was this child using this at an unauthorised time?

Interviewer: No... it was during school time and organised by school staff so I ...

Principal: But they weren't supposed to be using the water ... not that that really matters. The water slide...if it had this... or if someone didn't take the chain off it... Anyhow they've gone down it and they've got hooked up in this chain and had injuries. I believe the camp is responsible. I don't know whether the child was supposed to be on the slide at the time. Not that that really alters things, he still has been hurt, but if he was there at an unauthorised time then I guess the child has to take some responsibility. But he is probably not old enough. Which will probably mean that he was unsupervised if he was there at an unauthorised time. So it comes back to the school. I don't know what I would do. I would be ringing up STA and NZEI because... I mean it's like when you go to camp and you do all your RAM sheets and you're not going to stop accidents but you've got to show you've done your best to identify the hot spots and know what you're going to do about it if it happens. And many camps these days have their own RAMS sheets that should identify hot spots and tell us what they're going to do about them. If this kid was there when he shouldn't have been I guess it's different than if... I don't know and I don't know who is responsible.

Interviewer: Well according to the website it was the camp. So you got it right first time.

responsible. At one stage she thought that the boy had some responsibility if he had used the slide without permission, but then discounted that due to his age. She vaguely mentions the need for schools to 'show you've done your best to identify the hot spots and know what you're going to do if it happens.' and identifies the responsibility of camps to have their own RAM sheets. 'I don't know what I would do. I would be ringing up STA or NZEI because...'

Section VI Criminal Law

Mrs Hardcastle has been a junior teacher for 17 years and runs a good, orderly class. A parent rang you recently complaining that Mrs Hardcastle sometimes shakes and squeezes her son when he is naughty. When you speak to Mrs Hardcastle she says she has been doing it for years, saying 'No-one has ever complained about it before and it's not as if I'm hitting the child'. Apparently Sebastian Forbes-Hamilton is quite a handful. What should you do?

Principal: Well, I mean at the end of the day if you have done it for years or not you're not allowed to. So the bottom line is that the teacher will have to be told or this person has to know that ok sorry you can't do it now. I guess it's how grumpy the parents are as to how far it's going to go and I think I would be sitting down with the parents and talking to them and maybe having the teacher to sit and talk to them and say well we may have done it is the past but it has to stop. I'm sure we've all been guilty in the past of grabbing the odd child by the arm or moving them bodily when we shouldn't have. And it did happen in the past but we can't do it now. And I'm also very aware of how frustrating some children are for teachers and how you might feel like giving them a shake but, you know, at the end of the day it can't happen. I would be saying to the teacher 'Look sorry this is... that's it. You cannot do that again.' If they have a problem with that then maybe they need to speak to an NZEI officer or get some counselling. I would be suggesting that they did so that they could get it out of their system and go on some course, teacher effectiveness training or something that they could do that would teach them other ways of

This principal states that the teacher's behaviour must stop, even though she states 'we've all been guilty in the past of grabbing the odd child by the arm or moving them bodily when we shouldn't have.' The principal does not state a reason for stopping, e.g., the teacher is in breach of the law and could be charged with assault, but does suggest counselling or teacher effectiveness training during which the teacher would receive training in alternate methods of 'discipline'.

disciplining kids.

(ii) Knowledge of the Principles of Natural Justice

(1) What is your understanding of the principles of natural justice?

Principal: No I don't understand... I mean... natural justice... You've got to listen to both sides always and that's part of natural justice. No leader can jump up and down on the side of one person until they've heard the other side of something and if you're not going to listen to both sides then you can't be fair can you? If you are only going to listen to your teachers and never listen to the kids at your school. So it's being a good listener and listening to both sides. Most of the time in the situations you deal with there's a little bit of fault on both sides. But I don't know the principles of natural justice

Interviewer: I won't ask you question 2. I think that you have covered that in question 1.

(2) In considering the incidents above what would you need to do ensure that the principles of natural justice are upheld?

(3) What do understand by the terms 'legality' 'reasonableness' and 'transparency' in relation to the principles of natural justice?

Principal: Well transparency is being open and being upfront with people and telling what you're dealing with from the start and not trying to set one person up against the other or hiding anything. The reasonableness is just listening to and knowing that there are two sides to every story whether you may come out in favour of one side but you need to

Initially this principal said that she did not understand the principles of natural justice, and then stated that part of natural justice was to always listen to both sides. 'If you're not going to listen to both sides then you can't be fair can you?' Being a good listener and listening to both sides. She concluded that she did not know the principles of natural justice.

The principal considered that 'transparency' meant being upfront with people, 'telling what you're dealing with from the start and not trying to set one person up against the other or hiding anything.' 'Reasonableness' is listening to and knowing that there are two sides of the story. 'Legality' 'there are some legal things like you cannot hit children that are there and those things you can't avoid.'

listen to both to get to that. And legality... I guess at the end of the day there are some legal things like you cannot hit children that are there and those things you can't avoid so whether I think its right to hit I can't. So after listening to her and Mrs Hardcastle at the end of the day you still can't hit kids.

Part C: Questions Relating to Legal Risk

Management Policies and Procedures

(1) How do you determine what legal risk management policies and procedures to put in place?

Principal: Yes, it's what comes first the policy or something that happens. And we do tend to react to an incident. You know someone falls off a trampoline and breaks their leg so you go out there and look at where you shift it to or how you make it safer. But we do that through the whole of our life don't we. Fix up roads when someone's been killed or we rush out and realign the roads so that tends to be how we've worked. And I don't know really, I suppose I should, what policies you actually have to have. Because there have been changes in what the ministry has been saying because some schools are saying they only have five policies, they all have procedures. So I'm a little bit lost myself as to what legally we have to have

Interviewer: So to what extent do you rely on people coming in like ERO telling you what you need as opposed to policies and procedures you recognise you need to have yourself?

Principal: I think I do rely on someone telling me from above because at the end of the day that's how

This principal stated that she tended to react to incidents and formulate policy after the event. She also said she was 'a little bit lost as to what legally' a school is required to have. We asked about the extent to which outside agencies like ERO telling schools what policies they needed as opposed to policies schools themselves recognised they needed she replied that she relied on 'someone telling me from above' but then said that we should not be operating that way.'

you are going to be judged by people in authority...and just being given a tick or cross by ERO is meeting their requirements. But I'm reluctant. We should not be operating like that.

(2) How do you reconcile your policies and procedures with the relevant legislation or government guidelines?

Principal: I guess the only thing I take any notice of when we're doing policies and procedures is the NEGs and NAGs and that sort of thing. I haven't really looked at any other legislation. For most people the NEGs and NAGs are the sort of guiding things. I think the ministry should do more. I mean we have just done one for the publication of children's work on our website. They actually did have a template that you could download and just fill in your name and alter to your school and they've now got a policy for the clustering of release time and you can go to the NZEI website and download a template. So whether that's going to become more of a thing to do, which I think is a good idea because why should each school should try to madly write and they should have done that right from the beginning.

(3) How do you ensure the appropriateness of your policies and procedures?

Principal: We don't check their legal status but we certainly send new policies and procedures out into the community for consultation. But then the parents don't know and that's not checking. It's only checking to see if they're appropriate to the parents in our community. The board of trustees reviews them and looks at them And we're still guilty... I mean just because you've got a policy doesn't mean

This principal said she consulted the National Education Guidelines (NEGs) and the National Administration Guidelines (NAGs) but did not look at any other legislation. She also used Ministry of Education and NZEI policy templates where available and considered that the provision of such templates was a good idea and that they should have been provided from the beginning.

This principal stated that her board did not check the legal status of policies and procedures but that they did send them out for community consultation. Then she stated that even with policies it 'doesn't mean you're going to run to the book and do exactly what's in the policy anyway... or you should but you can't always do that.'

you're going to run to the book and do exactly what's in the policy anyway ... or you should do but you can't always do that.

(4) What are the general signs that a situation you are dealing with might develop into a legal problem?

Principal: I guess the tension levels and if people are getting angry. If people are comfortable and talking then you know you're dealing with a different level than if people are angry and threatening and as soon as people are becoming agitated and threatening you think 'Oh I'm on to the next level here.'

(5) When would you seek more than one source of advice?

Principal: I would certainly go to STA if it's any board / school management type issues. I would go to NZEI if I was dealing on a personal basis with a staff member or something to do with employment, and to STA if it's to do with a more global picture and probably to do with parents. I mean I think I put a lot of trust in my STA reps and my NZEI reps and I don't know, I might go somewhere else on their advice. I don't know if I'd go to a lawyer. I don't know whether the schools have nominated lawyers or ones that people can ring. I don't even know if we've got a lawyer as such. .

(6) If a problem was to present itself tomorrow who would you seek help and support from and why?

Principal: It would be either NZEI or STA depending on whether it was to do with the board or governance.

This principal said that she thought that a problem was 'on to the next level' when there was tension and if people are getting angry and threatening.

This principal would consult the STA for board and parent issues and the NZEI for employment and staffing. She said she put a lot of trust in the STA and NZEI reps and might go 'somewhere else' on their advice. She was not sure if she would consult a lawyer or that the school had one.

The NZEI or the STA depending on whether it was a board / governance issue or something else.

**PART D: Questions Relating to Principal's Ideas
for Making the Present Situation More Effective.**

(1) Given that principals are busy people with a lot of issues other than school law to think about what suggestions do you have for improving principals' knowledge of school related law?

Principal: I don't think sending brochures and booklets out helps because I can't understand the language and I never have time. I went to that course that seminar that was run by a legal firm and it was sort of high fluting. I've never been offered... NZEI or STA offering me a time when we can sit and chat about legal things and I think if it was on a lower level then I think it would be quite good but I guess... I just ring anyway and I sort it out. So maybe we don't need to have to have a lot of knowledge. As long as you know where to go when you need help do you need to have a lot of knowledge of school related law? You know you can only hold so much knowledge in your head and there are things I need to know providing I know where to get it or get the help. I mean as adults I think we have a common knowledge of things like employment law and the rights of people and the rights of kids and generally just hang on to that common sense. I think the big message is don't be afraid to ring and ask. That's what NZEI and STA are there for.

(2) Have you any other comments to make?

Principal: No.

This principal thought that receiving brochures and booklets was of little help because of the language used and because she never had time to read them. A course run by a legal firm was 'high fluting'. A chance to sit and talk about issues with NZEI or STA reps on a 'lower level' would be quite good in her opinion. She contended that principals do not need a lot of legal knowledge as long as they know where to go when they need help. She argued that 'you can only hold so much knowledge in your head' and adults have a common knowledge of employment law and the rights of people and should 'just hang on to that common sense'. She concluded by stating the big message should be 'don't be afraid to ring and ask. That's what NZEI and STA are there for.'