

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.

**'TO TAKE ALL REASONABLE STEPS'**

**WHAT DOES THIS MEAN FOR  
SCHOOL BOARDS OF  
TRUSTEES?**

**A thesis presented in partial fulfillment  
of the requirements for the degree of  
Master of Education**

**At  
Massey University,  
Palmerston North  
New Zealand**

**Patricia Margaret Niven-Simpson**

**2004**

## ABSTRACT

This thesis explores the meaning of the legal phrase contained in s63 of the Education Act 1989, 'to take all reasonable steps'. It questions how Boards of Trustees in New Zealand schools view it and if and how it influences the ways they control their schools. The restructuring of education resulted from the adoption of neo-liberal economic theory by the Labour government in 1984. These reforms had the effect of devolving power to Boards of Trustees through a charter that acted as an undertaking by boards to implement community derived goals and objectives within a legislative and regulatory framework. The 1989 Act introduced the legal requirement 'to take all reasonable steps' that legislatively describes the wide discretion Boards have to control their schools within the parameters of that framework.

No prior research into this specific legal requirement exists, and therefore this study extends into the domains of reasonableness in law, education and law, aspects of neo-liberal theory, concepts of power and empowerment, decision-making, and compliance. These domains informed the research approach, which explored the narratives of the members of school boards.

The research demonstrates tensions between the intent of the NPM model of self-governing schools and the reality of self-governance for New Zealand schools. The study reveals a generally poor understanding of the legal requirement 'to take all reasonable steps' and the consequently minimal direct impact the requirement had on the ways the participating Boards governed and managed their schools.

Further investigations revealed widely differing opinions over the meaning of this legal requirement and, in particular, the strong influence of government agencies on the ways these Boards attained assurance that their governance and management practices were reasonable. The research demonstrates that alternative influences, such as common sense and altruism were informing Boards' decision-making practices. The research concludes that the complexity of the legal concept of reasonableness and the seeming reluctance of the law to define its meaning in special circumstances limits its effectiveness as a tool for devolving power and discretion to Boards of Trustees.

## ACKNOWLEDGEMENTS

*“What is life...  
but for the getting of wisdom?”<sup>1</sup>*

My first acknowledgement and thanks must go to the school trustees, principals and staff representatives whose cooperation with the research made this thesis possible.

I acknowledge the significant input provided by my two supervisors, Professor John Codd and Dr. Marian Court who so competently and willingly supported the development of this work and who patiently and calmly responded to my many questions, doubts, enthusiasms and frustrations. Thank you Marian and John.

I was privileged to have Dr. Liz Gordon as a consultant and critical friend. Thank you Liz, your valued assistance made this journey enjoyable and colourful.

The Massey librarians deserve an acknowledgement. The service they provide is particularly invaluable for distance students.

I also thank and acknowledge the various friends, acquaintances and contacts who work in the legal field. Their assistance with my persistent questions was an essential part of my learning as I endeavoured to grasp the legal principle of reasonableness and its implications for school Boards of Trustees.

To Diana Hubbard friend and proof reader, my grateful thanks for your proof reading of this work and for your interest and encouragement. Any remaining errors are mine.

Finally, to my beloved husband, best friend and partner on my journey, I truly appreciate the wonderful person you are and everything you have been for me while I have been absorbed in this study.

I acknowledge the contribution made by these persons to the wisdom that I have gained on this journey through the sharing of their scholarship, knowledge, wisdom and companionship.

---

<sup>1</sup> Trapido, Barbara, 1998, (2<sup>nd</sup> ed.) p. 147

## TABLE OF CONTENTS

Title page	
Abstract	ii
Acknowledgements	iii
Table of contents	iv
List of abbreviations	vi
<b>Introduction</b>	<b>2</b>
<b>PART ONE</b>	<b>3</b>
<b>Chapter One</b>	
<b>Historical perspectives</b>	<b>4</b>
1.1 Ideological basis behind the reforms of the late 1980s	4
1.2 The government policy document <i>Tomorrow's Schools</i>	6
1.3 Devolution, decentralisation and issues of power	7
1.4 Contractualism and the notion of charters	13
1.5 Accountability	15
1.6 The legal requirement 'to take all reasonable steps'	17
1.7 Two agencies at the centre of the education reforms	18
1.8 Accountability, compliance and the Education Review Office methodology	20
1.9 Two national issues impinging at local level	30
Conclusion	33
<b>Chapter Two</b>	
<b>Literature review</b>	<b>34</b>
2.1 The objective standard of reasonableness	34
2.2 Education and law	41
2.3 Concepts of power and empowerment	43
2.4 Decision-making	48
2.6 Compliance	52
Conclusion	54
<b>Chapter Three</b>	
<b>The research methodology and the research journey</b>	<b>55</b>
3.1 Research approach	56
3.2 Research design	58
3.3 Research process	62
3.4 Limitations of the study	70
Conclusion	72

<b>PART TWO</b>	<b>73</b>
<b>Chapter Four</b>	
<b>Looking inwards: internal assurance processes</b>	<b>75</b>
4.1 Discretion and taking all reasonable steps	75
4.2 Knowledge about the legal requirement ‘to take all reasonable steps’	78
4.3 Ways of knowing about reasonableness	80
4.4 Decision-making and taking all reasonable steps	81
4.5 What does influence the work of Boards of Trustees?	87
Conclusion	90
<b>Chapter Five</b>	
<b>Looking outwards: External assurance processes</b>	<b>91</b>
5.1 “Default” position	91
5.2 Ministry of Education	93
5.3 Education Review Office	94
5.4 Setting the standard of reasonableness in schools	100
5.5 Conflicting advice	101
5.6 External themes in general	102
Conclusion	103
<b>Chapter six</b>	
<b>Looking between: governance issues</b>	<b>105</b>
6.1 Education reforms	105
6.2 Power and devolution issues	109
6.3 Power, knowledge and external agencies	111
6.4 Power within boards and school communities	112
6.5 Context	120
Conclusion	125
<b>Chapter seven</b>	
<b>Conclusions</b>	<b>126</b>
7.1 Summary	126
7.2 Conclusions drawn from the research	128
<b>Appendices</b>	<b>137</b>
<b>Bibliography</b>	<b>154</b>

## LIST OF ABBREVIATIONS

BAS	Board Assurance Statement and Self-Audit Checklist (ERO)
BOT	Board of Trustees
CEO	Chief Executive Officer
EEO	Equal Employment Opportunities
ERO	Education Review Office
HMCI	Her Majesty's Chief Inspector
HMI	Her Majesty's Inspectorate
MOE	Ministry of Education
NAG	National Administration Guidelines
NEG	National Education Goals
NPM	New Public Management
NZSTA	New Zealand School Trustees Association (may be referred to as STA)
OECD	Organisation for Economic Co-operation and Development
OFSTED	Office for Standards in Education (England and Wales)
PD	Professional Development
RAMS	Risk Analysis Management System
STA	See NZSTA