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'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
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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.

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*“What is life...
but for the getting of wisdom?”¹*

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¹ Trapido, Barbara, 1998, (2nd ed.) p. 147

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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

INTRODUCTION

This thesis examines the legal requirement ‘to take all reasonable steps’, which was introduced into education legislation with the passing into law of the Education Act 1989. This study seeks to determine what this legal requirement means to Boards of Trustees of state and state integrated schools. If, and how, this requirement influences the ways Boards of Trustees administer their schools will also be explored.

The study will focus mainly on the legal requirement as it impinges on the ways Boards of Trustees implement the goals and objectives of their school charters. Section 63, Effect of the School Charter, Education Act 1989 states:

- A school charter has effect as an undertaking by the Board to the Minister to take all reasonable steps (not inconsistent with any enactment, or the general law of New Zealand) to ensure that –
- (a) the school is managed, organised, conducted, and administered for the purposes set out or deemed to be contained in the school charter, and
 - (b) The school, and its students and community, achieve the aims and objectives set out in the school charter.

However, as the legal phrase ‘to take all reasonable steps’ is used on more than forty different occasions in current education legislation, other applications of this phrase are addressed in the research when introduced by the participants.

The organisation of this research falls into two parts. Part One contains historical perspectives, the literature review and the methodology used for the research. Part Two describes the findings and the conclusions of the research.

PART ONE

Part one of this thesis contains three chapters. The first chapter looks at historical perspectives including: the ideology that drove the education reforms of the late 1980s; the key document of *Tomorrow's Schools*; the impact of the New Public Management (NPM), and especially devolution and decentralisation, on education; the education reforms implemented in New Zealand with the introduction of the Education Act 1989; the introduction of the legal requirement 'to take all reasonable steps' into education legislation in 1989; and the changing focus of the Education Review Office (ERO), the government department established as an integral part of those reforms.

The second chapter is a review of the literature that has informed this thesis. This considers diverse themes including: the objective standard of reasonableness; education and the law; NPM theory; concepts of power and empowerment; decision-making; and compliance with legislation. Despite extensive searches, no literature was found that examines the meaning of the legal requirement 'to take all reasonable steps' within the context of education either in New Zealand or elsewhere in the world.

The third chapter describes the methodology employed in undertaking this research. The theory underpinning the study and the methods used to gather and analyse the data are outlined. Ethical considerations and limitations of the study are also addressed and key elements of the actual journey undergone as the research progressed are noted.

CHAPTER ONE

HISTORICAL PERSPECTIVES

Introduction

This chapter outlines the history of key elements of the major educational reforms of the late 1980s and enacted into law through the Education Act 1989. These key elements are: the ideological basis to the education reforms; the foundation document *Tomorrow's Schools*; and the three tenets of NPM of devolution and decentralisation, contractualism and accountability. Other elements discussed in this chapter are: the introduction into education of the legal requirement 'to take all reasonable steps'; the two key agencies at the centre, the Ministry of Education (MOE) and the ERO. The differing methodologies developed and used by the ERO in undertaking its role in schools and the ERO's focus on compliance with schools' legal obligations including the requirement 'to take all reasonable steps' will be explored discussed. Finally, the significance of two national issues, equity and Maori interests, are discussed in relation to Board of Trustees' legal obligations.

1.1 Ideological basis behind the education reforms of the late 1980s

New Zealand, like many other Western societies has felt the impact of the political ideology known variously as New Right, neoliberalism and economic rationalism. Ideas that equate closely with the New Right ideology are NPM, deregulation and monetarism. (For further discussion on these ideas see Bertram 1993, Kelsey 1993 & 1997, King 1987 and Rosenberg 1993). Painter (1988, p.1) describes managerialism as "a generic, purely instrumental activity, embodying a set of principles that can be applied to public business, as well as in private business." NPM has developed from managerialism through the influences of economic theory.

Boston (1991, p.9) provides a useful summary of what he calls the "central features or doctrines of NPM." These features include: an emphasis on management rather than policy; a reliance on outputs and performance targets; devolution of management control with new reporting, monitoring and accountability requirements; contestability in public service provision; an emphasis on corporate plans, mission

statements and performance agreements; financial incentives and finally an emphasis on efficiency, cost-cutting and pared-down management.

The Labour Government, elected in 1984, adopted the NPM ideology and embarked on a radical political regime designed primarily, according to its authors, to engender sustained economic growth. This wide-reaching programme, known internationally as "The New Zealand Experiment" was continued after the Labour Government's re-election in 1987 and then adopted by the National Government which came into power in 1990.

In July 1987, the Labour Government announced a Taskforce to Review Education Administration and required this Taskforce to report to the Ministers of Education, Finance and State Services. This reporting requirement was an early indication that the education reforms would be driven primarily by Treasury and the State Services Commission. The executive summary of the Taskforce's report (known as the Picot Report) states:

Our investigations convinced us that the present administrative structure is overcentralised and made overly complex by having too many decision points. Effective management practices are lacking and the information needed by people in all parts of the system to make informed choices is seldom available. The result is that almost everyone feels powerless to change things they see need changing. To make progress, radical change is now required. (Department of Education, 1988, p.xi)

The Picot Report described in detail how it was proposed to overcome these perceived deficiencies and meet the fundamental goals of efficiency, effectiveness and equity. It was thus a document grounded in the key principles of NPM; a product of that ideology rather than an incremental change based on a rational critique of the current system.

The Minister of Education, following consultation with the public and educationalists affirmed much of the findings of the Picot Report. However, the level of dissatisfaction with the education system reported in the Picot Report (and confirmed by subsequent consultation undertaken on behalf of the Minister of Education) had not been found just six years previously by the OECD review of New Zealand education policy. This OECD review reports that:

To an extent greater than in some other OECD countries the parents, citizens, employees and workers of New Zealand appear to be reasonably well pleased with what is done for them in schools, colleges and universities. (OECD, 1983, p. 10)

The Picot Report ignored the prior societal consensus around the education system, and was driven instead by a set of management theories that were alien to the existing education system but in line with the prevailing political ethos. The Minister of Education praised the report and proceeded to use it to construct the white paper *Tomorrow's Schools*, a neo-liberal blueprint for the education system.

1.2 The government policy document *Tomorrow's Schools*

The document *Tomorrow's Schools* was a statement of the Government's intent for the reform of education administration and it contained nine principal features. The features were: schools to become self-managing within a legislative framework; partnerships between each school and its community; a charter that was to act as a contract; accountability for government funds to be measured by a new agency; freedom for each school to choose its service providers; the establishment of a Ministry of Education, community forums, and a Parent Advocacy Council; and the ability for parents to establish their own schools of no less than 21 children within national guidelines. The New Zealand Qualifications Authority was also established; however, parent forums and the Parent Advocacy Council failed to become established features of the system for administering education.

Tomorrow's Schools contained six main sections that detailed these major changes to the administration of education. The first section provided the detail of how individual institutions would be administered through individual school Boards of Trustees and a charter that would reflect the wishes and desires of the school's community. Boards of Trustees would be accountable for the government funds allocated to their schools and for implementing the goals of the charter. Boards of Trustees would also assume responsibility for all staffing, financial and for some property matters. The second section detailed the agencies that were to be established, including a new Ministry of Education that would provide policy advice to the Minister and to oversee the implementation of government education policy. The Review and

Audit Agency (later renamed the Education Review Office) would assume responsibility for making sure education institutions were accountable for the government funds and for helping these institutions to implement the goals of their charters. The third section made comment on national issues including equity and Maori issues and the fourth section detailed how special teaching groups and resources would be treated. The final two sections addressed practical issues such as enrolment schemes and special character schools and how these changes would be implemented.

The major reforms to the administration of education were brought into being on October 1 1989 and many of the details were written into law through the Education Act 1989. The restructuring of education was achieved through three major tenets of NPM: decentralisation (through self-management by Boards of Trustees), contractualism (through the mechanism of individual school charters), and accountability (through the charters and the work of the Review and Audit Agency). The following section of this chapter explores these three tenets.

1.3 Devolution, decentralisation and issues of power

Decentralisation is a key element of NPM that drove the education reforms. Prior to the education reforms of 1989, the Government controlled education centrally through the Department of Education and regionally through Department of Education offices and Education Boards. At the individual school level, locally elected school committees had responsibility for minor, routine administrative matters such as cleaning and texts. A major change that resulted from 1989 educational reforms saw the decentralisation of responsibility from these government agencies to individual elected school Boards of Trustees. Local decision-making and control of schools was devolved to the parents and school staff through the mechanism of a Board of Trustees. Each Board of Trustees was allocated the responsibility for:

broad policy objectives and the efficient and effective running of the school. The board would be expected to be responsive to community educational needs and to set programmes and courses to meet them, within national guidelines. (Minister of Education, 1988, p. 3)

The principal was to be the professional leader, would be responsible to the Board, and would have day-to-day control of the school within the policy guidelines established by

the Board. In addition to being responsible to the board, the principal was also to be a member of that board and this was seen as a significant feature of the new governance and management structure of schools.

The terms devolution and decentralisation can be viewed as ambiguous. Martin (1991, p. 268, original emphases) defines the government's use of the term 'devolution' as "the *transfer* of power, authority and responsibility from a national to a sub-national level" but stated what it actually implemented was 'decentralisation', "the *delegation* of power and authority to lower levels, with the ultimate responsibility remaining at national level." The New Zealand government maintained ultimate responsibility for education through retaining policy and fiscal control.

The debate continues over the intended and the actual effects of the transfer or delegation of power, authority and responsibility to school Boards of Trustees. As early as 1990 writers such as Codd, Gordon and Harker (1990) and Rae (1990) were discussing and questioning the rationale for such devolution. Codd et al (1990, p. 26) acknowledge that Boards of Trustees are empowered to make decisions in a wide range of administrative areas "including resource allocation, staff appointments, support services and staff development." However, they go on to state that significant control was retained through the Ministry of Education and the Review and Audit Agency (ERO). They conclude their chapter by warning that:

Behind the ideological 'free market' rhetoric of devolution and efficiency, we have a policy that will tighten the state's control over educational expenditure, shift the arena of political contestation towards the periphery of civil society, and exacerbate the problem of 'middle class capture'. It heralds a new era of hegemonic domination in New Zealand schools. (Codd, Gordon and Harker, 1990, p. 32)

Rae (1990) emphasises the importance of building networks within education as a vital aspect of the devolution of responsibility from the centre to the individual school. He comments that state participation in the education process was as vital as the relationship between the professionals and the trustees in restoring 'the health of the state education system under conditions of devolved responsibility' (Rae, 1990, p. 67).

Gordon (1992) discusses devolution in relation to the concepts of 'market' and 'community'. She summarises the 'market' discourse in education as: focusing on the individual as the basis for decision-making; reducing the size of the state; eliminating provider capture; separating the functions of policy and operation; providing choice by funding the student rather than the institution; and maintaining tight state control of resources. Gordon contrasts these elements of the 'market' discourse with the 'community' discourse of: making the community the centre for decision-making; ensuring the efficient provision of education irrespective of size; eliminating middle class dominance of education; endowing parents with the responsibility for policy and operations; devolving funding to schools and parents; and allowing parental demand to drive the supply of resources (Gordon, 1992, p. 192). Conflicts between the concepts of 'market' and 'community' have arisen with the implementation of the educational reforms set in train by the 1988 Picot report. Gordon asks the question whether education could be administered in the proposed manner given the contradictory notions of control relating to the state, the school and its community. This question was answered partially when the charter wording was changed from 'contract' to 'undertaking'. This allowed the state to take back some of the power and control and in this way, re-emphasise the market model. Gordon also argues that the relationship between the state and the community was that of the state acting as the principal and the community as its agent and that this relationship is further evidence of the market model driving educational reform rather than the community model.

Wylie (1995) discusses the impact of decentralisation on schools by addressing the tensions between traditional education principles and the forms of NPM employed in the education reforms of the late 1980s. She identifies tensions between: the market and equity emphases of the reforms; the competing accountabilities of the two stakeholders, the community and government; and the competing philosophies of cooperative, collegial on-site decision-making. Her paper confirms that these predicted tensions have impacted on school Boards and on the way they govern and manage their schools. She concludes that the reality of decentralisation results in the reduction of ethical principles such as collegiality and trust and that this is to the detriment of education in general.

Dale and Robertson (1997) confirm Codd, Gordon and Harker's (1990) concerns that significant control was being retained by government agencies and contribute to the ongoing debate by stating that devolution has resulted in tighter overall control of education by the state and increased costs and responsibility at the local level. Dale and Robertson (1997, p.244) conclude that "devolution has become delegation within our public institutions" and that we are "much further removed from participatory democracy now than we were then."

Robinson, Halliday and Timperley (1995) debate the issue of how schools learn and work their way through the complex problems caused by the continuing education reforms since the inception of the Picot report and *Tomorrow's Schools*. The concept of a 'solution-rich environment' is proposed where "a number of different models for tackling common problems such as collective assessment are widely available to schools, so that their learning task is more one of solution adaptation rather than solution construction" (Robinson et al, 1995, p. 51). The authors suggest that, while schools are self-managing, Boards of Trustees should be making decisions within a range of acceptable solutions to what may be common problems. Other issues relating to the administration of schools at the local level are discussed by authors including Notman (1995), Gordon (1995), Novlan (1998) and Rae (1997).

Kelsey encapsulates the reality of devolution for all government agencies when she states:

Many of those who believed the devolution sales pitch were quickly disappointed. Once the formal agencies of the state had been dismantled, communities were thrown back onto their own skills and resources. Ministers were able to determine who secured funds, in what amount and what terms, and disclaimed responsibility for the result. If the consumers were dissatisfied, they could take it up with the providers. (Kelsey, 1997, p. 213-214)

Walsh and Bartley (1999) refer to devolution in their preface to the text *Schools go to Court: Education Case Law for New Zealand Schools*. They report that:

The courts are generally reluctant to review decisions made by principals and Boards of Trustees. They have, by their own admission, no particular expertise in educational matters and it runs contrary to the spirit of 'Tomorrow's Schools', which devolved decision making to boards. (Walsh and Bartley, 1999, p.vi)

Walsh and Bartley contribute to the devolution debate by discussing the background facts, issues, court decisions and implications for schools of a number of education cases related to decisions made by Boards of Trustees concerning employment, student discipline, Human Rights and Privacy. Walsh and Bartley highlight potential difficulties for school boards making decisions that may lead to complaints being laid with outside agencies and possible subsequent litigation. The concept of litigation and Boards of Trustees will be returned to in chapter two.

In the context of schools in New Zealand and the United Kingdom, Robinson, Ward and Timperley (2003) discuss the ability of lay trustees and governors to “meet the goals of the state and their local communities and the capacity of government to support and regulate their activities” (p. 263). Their research demonstrates a gap between trustees’ self-reporting a moderate to high level of confidence and satisfaction with their roles and independent studies that indicate a wider range of opinion on these issues. Small schools and low decile schools more likely to be considered less satisfactory or less confident. They conclude that many New Zealand Boards of Trustees lack the necessary expertise to establish and monitor the school-based policy as required through devolved decision-making at the local level.

School governance issues are also discussed by Payne (2003) through the notion of ‘dilemmas’. Payne uses this notion to describe issues arising for those charged with the task of governing schools when competing demands complicate decision making. The research findings indicate that: “the dilemmas of school governance are conceptualised as dilemmas of boundaries of power, dilemmas of form and process, and dilemmas of identity” (Payne, 2003, p.2). Payne concludes that the educational reforms, based on the tenets of NPM, provide schools and their governors with a series of conflicting choices that are not easily solved. She records these choices as: “whether to focus on core activities of education and philosophy or to concentrate on the growing administrative and accountability workload” (Payne, 2003, p. 11). This is an ongoing theme that will be raised elsewhere in this thesis. (For example, see Part Two, chapters four and five).

Court (2004) draws on a case study to explore how NPM theory has been successfully challenged in a small primary school. The managerial concepts of pared-down management and hierarchical lines of accountability were over-ridden by this school. The Board of Trustees accepted that all three teachers in their school would act as co-principals and work together to “share between them the work, functions and responsibilities of the principalship” (Court, 2004, p. 174). This case study demonstrates that the concerns expressed by the Picot report over pressure exerted by professionals to protect or extend existing rights were not realised. Instead, the study confirms that an alternate doctrine to NPM was operating to provide a flat management configuration that operated in a democratic, effective and open manner. (See also Court, 1998).

1.3.1 Responsibility for staff

Tomorrow's Schools lists ten key tasks for boards with the major change being the devolution of legal employer status to Boards of Trustees, who therefore became responsible for all staffing matters. This devolved responsibility remains a huge task for school Boards. Issues including appointment of all staff, staff appraisal, development and discipline, equal employment opportunities and employment contracts, remain ongoing concerns for many Boards.

Notman (1995) discusses factors impinging on the way school trustees appoint principals. His research identifies a number of issues arising from the education reform's expectations that a lay Board of Trustees would have the expertise and ability to appoint an educational professional to the key leadership role in their school. Notman concludes that trustee training must be provided in the three key areas relating to the principal appointment process. These areas are: knowledge of key employment legislation; knowledge and understanding of school leadership and management issues; and the ability to select and use appropriate selection tools and processes.

The ERO maintains a comprehensive website that includes access to more than a hundred evaluation reports that have been published since 1994. These publications may be accessed at www.ero.govt.nz/Publications/index.htm. At a conservative estimate, approximately half of these reports are about staffing issues or refer to staffing

as a key component of the issue. That such a high proportion of these evaluation reports discuss staffing issues would seem to indicate the significance of staffing matters in education since the 1989 reforms.

Further evidence of the complicated and potentially damaging nature of staffing issues for Boards of Trustees is provided by Walsh (1997), Rishworth and Walsh (1999), Walsh and Bartley (1999) and Rishworth, Walsh and Hannan (2001). These authors all discuss the legal implications for Boards of Trustees who contravene education law, and in particular, employment law. Rishworth and Walsh in their introduction state:

“Education law” is becoming established as a specialist area of legal practice.

That is reflected in the growing number of seminars devoted to it, the number of lawyers and law firms practicing in this area, and in the publication of books and journals devoted to the topic. While there are not yet law school courses devoted exclusively to it, the subject is taught in a number of education-related degree and diploma courses. (Rishworth and Walsh, 1999, p.1)

1.4 Contractualism and the notion of charters

The notion of a charter that defines the purposes of a school and that is drawn up by the trustees and staff in consultation with the school community continues to generate vigorous debate. Part of the debate, as discussed earlier in this chapter, relates to the promises that devolution would transfer the power and control of education to Boards of Trustees. Further debate relates to the significant changes the Government made to the charter framework almost from its inception and which are ongoing.

Codd and Gordon (1991) provide a discussion of what they refer to as ‘the saga of school charters’ (p. 21). They describe the various changes to charter framework from the Picot recommendations until 1990. A number of changes were made during these two years occurring, for example during the policy development process and following consultation with schools. Codd and Gordon develop their argument by analysing the changes through the medium of New Right politics:

Consistent with the underlying ideological adherence to individualism and market liberalism is the conviction that managerial intervention on the part of the state should give way to public choice within contractual limits. (Codd and Gordon, 1991, P. 22)

The changes included adding the principle that *the needs of children and their learning shall be paramount* (that was removed almost immediately) and making the charter and agreement rather than a contract. This latter change had the effect of reducing the Picot recommendation of a contract that would bind the state, school and community to a contract between the state and the school. The term 'agreement' was changed again to 'undertaking' which, combined with the removal of a funding clause, had the effect of protecting the power of the state. Codd and Gordon conclude their argument by stating:

The withdrawal of state resources in order to manage economic supply would thus not endanger the power of the state to exercise regulatory control over the actions of individuals and institutions within civil society. (Codd and Gordon, 1991, p.33)

Of major interest to this thesis however, is the argument regarding the significance of the following clause in the 1990 charter framework:

In governing this school, the board of trustees will take all reasonable steps to ensure that the school meets the goals and objectives of this charter within the resources and time available to it, in accordance with section 64 of the 1989 Education Act. (cited in Codd and Gordon, 1991, p. 32.)

Codd and Gordon argue that the qualifier, "within the resources and time available to it" negated the effect of the undertaking between the state and the school and makes it highly doubtful that the Board could be held accountable for not meeting the terms of the charter. The time and resources qualifier was removed from the charter framework in 1992 following this kind of criticism. However, the requirement for Boards of Trustees to take all reasonable steps when implementing their charter goals and objectives remains in the charter framework and in the Education Act 1989 and in subsequent education acts and amendments.

Barrington (1997) maintains that charters, established as a means of providing schools with freedom and flexibility, operate as a medium of further control by the state. Barrington summarises writing by Rae in 1994 and 1995 and reports that significant developments were being undertaken at government policy level whose work would further impact on schools. This work included proposed changes to the curriculum and financial legislation that would impact on schools. Barrington also reports that legal strategies are also available to central agencies that have the effect of

imposing central requirements over supposedly self-governing schools. Barrington concludes by stating:

To the extent that parallel developments have often occurred, with increases in central authority being matched simultaneously by greater decision-making responsibilities at the local level, terms like “centralisation” and “decentralisation” seem rather inadequate to describe with complete accuracy the nature of the metamorphosis which has occurred in our school system. (Barrington, 1997, p. 91)

The metamorphosis described by Barrington continues with amendments to the Education Act in October 2001 and enacted from 2003, changing the way schools plan and report to the government and their communities. School charters now need to contain annual and long-term plans that set priorities for improvement. In addition, each school must now lodge with the Ministry a copy of their annually up-dated charter along with a copy of their annual report. This new level of accountability does indeed “signal the power and control of the state” (Codd and Gordon, 1991, p 21).

1.5 Accountability

The New Right tenet of accountability is an integral part of the reforms discussed already in this chapter. Devolution or decentralisation demands that those with the devolved responsibility, in this case Boards of Trustees, are accountable to those who devolved the responsibility, that is, the MOE as the agency of government. However, *Tomorrow's Schools* specified other areas of accountability for the school sector. In summary, schools were to be accountable also to their community and were required to report regularly to their community on how well the charter objectives had been achieved. Further, they were required to report the overall achievements of the school as a whole. The school's performance was to be reviewed also by the Review and Audit Agency (ERO) with two years passing between each review. (Boards could also request a review based on concerns expressed by the board or its community.) Individual trustees would not be liable for “loss of good faith” but could be found liable for “fraud or wrong doing.” Finally, a code of conduct was to be provided for Boards of Trustees, including complaint procedures.

Robinson, Halliday and Timperley (1995) comment on the school accountability structures in place by 1995. They state that: “along with this emphasis on self-

management comes greatly increased accountability requirements enshrined in a range of legislation and national guidelines and curriculum statements” (Robinson et al, 1995, p. 1). The ERO *Handbook of Contractual Obligations and Undertakings – Schools* (Education Review Office 2004a) lists twenty nine Acts, Regulations other official sources that schools must comply with in their day-to-day operation. As each of these sources contains numerous sections and requirements, accountability has become a major aspect of school self-management.

Codd (1999) discusses how the educational reforms have lead to a ‘culture of distrust’ through the NPM drive for accountability. He argues that this model of accountability has impacted negatively on the ethos of trust in New Zealand schools through, for example, contracting out support services, increased surveillance by government agencies and the “erosion of public service values and their replacement by self-serving values’ (Codd, 1999, p. 49). Codd goes on to suggest an alternative form of professional accountability that is based on professional responsibility maintained by “internal motivations such as commitment, loyalty and a sense of duty” (p 51). He suggests that a major policy change is required in order to restore collegial trust into New Zealand schools.

Court (2004) also presents an alternative to the NPM version of accountability. Her research demonstrates an instance where the NPM ‘single-line’ accountability structure has been successfully replaced with structure based on mutual responsibility shared by three co-principals. Court maintains that while NPM accountability is hierarchical, accountability can also be built on:

collectively agreed aims and accountabilities that included ethical considerations and individual moral commitments to the practice of personal integrity, honesty and shared responsibility in the provision of education as a social good. (Court, 2004, p. 187)

The three co-principals who built this model of accountability believe it also meets the legal requirements for leadership and management in New Zealand schools. The school Board established the co-principalship as a “shared position, with responsibilities and accountabilities *mutually* held by all three women” (Court, 2004, p. 186, emphasis in original).

The close connections between accountability and compliance with legislation will be explored further in the review of the literature and in Part Two of this thesis.

1.6 The legal requirement ‘to take all reasonable steps’

The legal requirement ‘to take all reasonable steps’ was first introduced into education legislation with the Education Act 1989. This phrase now appears on more than forty occasions in current education legislation. The phrase is neither defined nor interpreted in any education legislation. Despite systematic research, the reason why this specific phrase was introduced into education legislation has not been ascertained. Inquiries with the MOE, Parliamentary Counsel and Parliamentary librarians failed to shed any light on the matter. However, the MOE provided the information that such matters, if not already in the public domain, remain confidential to the client (the MOE) and the solicitor (Parliamentary Counsel).

The Education and Science Select Committee at the time the 1989 education bill was being drafted discussed the application of the phrase ‘to take all reasonable steps’ with Parliamentary Counsel (who were drafting the bill). Parliamentary Counsel advised the Education and Science Select Committee that the notion of reasonableness was a matter for the courts should the question ever arise (Chairperson of Education and Science Select Committee, personal communication, 24 May, 2003).

It appears that, to date, no court of law has interpreted the requirement ‘to take all reasonable steps’ in education legislation. This conclusion has been arrived at through three main sources of evidence. First, through contact with the Parliamentary Librarians and MOE officials and second, a search of case law available on the database of the New Zealand Court of Appeal judgements from 1995 to the present (cases prior to 1995 are not available on this data base). Third, a reference titled *New Zealand Legal Words and Phrases* provides an alphabetical list of statutory definitions from New Zealand Acts of Parliament and words that have been interpreted and considered in the courts. This text is updated annually by cumulative supplement. After consulting all three sources, no evidence was found that, to date, the legislative requirement ‘to take all reasonable steps’ in education law has been subject to a judicial review in a New Zealand court of law.

The lack of a definition or interpretation of this legal requirement in education legislation means that the meaning must then be determined (when and if necessary) by way of statutory construction, that is, by a court of law. The Interpretation Act 1999 provides that the meaning of an act is to be ascertained from its text and in the light of the purpose of the act. The ‘long title’ of the Education Act 1989 (where the purpose of the act is spelt out) merely says it is “an act to reform education” and does not provide any further guidance. This means that, should a case be brought in law to interpret the legislative requirement ‘to take all reasonable steps’, lawyers would need to ascertain the meaning of each word or phrase in question. Lawyers would take a number of steps, including dictionary meanings and looking at the act as a whole and then attempt to summarise its purpose. Lawyers would also turn to any decided cases in other legislation that may provide an interpretation that could provide assistance in the case of education. Finally, the case would be considered within its specific context.

The absence of a definition or interpretation of ‘to take all reasonable steps’ has significant implications for all those who are required to comply with its direction. On a daily basis, individuals and groups in educational institutions are making decisions about governing and managing those institutions. Boards of Trustees including school principals and other bodies such as the Teacher Registration Board are engaged in managing their contractual obligations. ERO is engaged in evaluating and reporting publicly on the education and care of students in schools and early childhood services. That this major legal requirement is open to interpretation by such a broad spectrum of people working within the legal requirement ‘to take all reasonable steps’ could, at least, lead to significant inconsistency over the application of the legislation. In addition, the potential for disagreement over what constitutes a reasonable step is significant.

1.7 Two agencies at the centre of the education reforms

1.7.1 The Ministry of Education

The MOE, the agency that replaced the Department of Education, was established to: “provide policy advice to the Minister, to administer property, and to handle financial flows and operational activities” (Minister of Education, 1988, p. 2). The new Ministry began life in a pared down fashion in comparison with the old Department and

the ethos and culture were expected to be very different as the new public sector model required the separation of the functions of policy, advice and inspection. These functions had been the responsibility of the old Department but in the new system, the MOE retained only the function of policy advice and operations. Advice was allocated to privatised education service centres and Colleges of Education and eventually to independent advisory services. The role of 'inspection' was allocated to the Review and Audit Agency (ERO) through its joint role of monitoring and reporting accountability and institution improvement.

The Education Act 1989 defined the National Education Guidelines (NEGs) which have four components. These four components are: the National Education Goals that relate to elements of the school including statements of government policy objectives and statements of desirable achievements by the school; curriculum policy statements concerning teaching, learning and assessment; the National Curriculum statements that cover the areas of knowledge, understanding and skills for students and the desirable levels in these areas to be attained by the students; and the National Administration Guidelines (NAGs) which provide guidelines for administering schools, including codes of conduct, requirements for board planning and reporting and the means for communicating Government policy objectives. The NEGs provide Boards of Trustees with key directions and guidelines for administering their schools through their charters.

The power base of the MOE has steadily increased since 1989 as was predicted by writers such as Codd et al (1990). Staff numbers have increased and increased roles and responsibilities have been added to the original function of the MOE. A significant development in the role of the MOE was added in 2001. The Joint Work Programme with ERO was introduced that expected both government departments would work together on agreed specific activities. (For a discussion of this major change see section 1.8.5).

1.7.2 Review and Audit Agency

The Review and Audit Agency was described in *Tomorrow's Schools* as "An independent body...established to ensure that institutions are accountable for the

government funds they spend and for meeting the objectives set out in their charter” (p.20). The charter was identified as a framework for the work of this agency and hence the significance of the legal requirement ‘to take all reasonable steps’ that stands as an overarching legal requirement over all the charter goals and objectives. By May 1989, an establishment unit was in place and working towards setting up offices for the proposed 350 staff at the head office in Wellington and the nine district offices in four areas. At this time, the decision to conduct reviews of learning institutions every two years was changed by the Director General of Education to every three years. This was in order to conserve resources. This change to the way ERO would operate, introduced so early in the establishment of the new government department, was a signal that the changes to the administration of education would continue.

The inaugural Chief Executive, Maurice Gianotti, was appointed in June 1989 and he gained approval for the agency’s name to be changed to ‘Education Review Office’ (ERO) to avoid any confusion with the Audit Office. ERO opened on 2 October 1989 with a national office based in Wellington and four area offices. The nine district teams consisted of a manager, early childhood, primary, secondary reviewers and specialist reviewers in Equal Employment Opportunity (EEO), property and finances. After positions had been filled by transferring staff, the remaining actual vacancies were advertised. Applications were sought from individuals who “would have a track record as high-performing teachers and be experienced senior managers in a learning institution” (French, 2000, p. 4).

1.8 Accountability, compliance and ERO methodology

The passage of ERO through its fifteen years as a stand alone government department has been fraught with cuts to its budget and consequent reductions in staff numbers and with the need to make changes to the ways it audited and then evaluated education in schools. These changes will be discussed in relation to the various ways ERO has evaluated the quality of education provided to students and reports on the performance of their learning institutions. As this thesis interrogates the meaning of the legal requirement ‘to take all reasonable steps’, the focus is on ERO’s interest in compliance and in the specific legal requirement ‘to take all reasonable steps’. Figure one demonstrates that although ERO has developed and used six different

methodologies in the fifteen years since its inception in late 1989, compliance has remained a central focus.

Figure 1: Changes to ERO methodology

YEAR	METHODOLOGY	FOCUS
1990	First reviews	Different methodologies around ERO regions <i>Compliance</i>
1991	First national methodology	<i>Compliance</i>
1991	Five Heading Review	Two foci: <i>compliance</i> student achievement
1992	Assurance Audits Effectiveness Reviews	<i>compliance</i> student achievement
1997	Accountability Reviews	Flexibility according to identified needs of each school <i>compliance</i> ; and quality of school performance; and management of risk to students and to the Crown
2002	Evaluation Reviews	<i>compliance</i> ; and scoped according to priorities identified by ERO and school; and government priorities

1.8.1 1990: First reviews²

The early approach to these initial reviews was to allow individual teams to develop their own methods and approaches to the task of reviewing schools and centres against their charters. Gianotti believed that schools would make improvements within a positive climate of change where schools and ERO worked together with ERO making suggestions to promote that improvement. The first formal reviews were carried out from July 1990 by which time ERO believed that Boards of Trustees would have had time to develop their charters and to establish their new governance and management systems.

² I was appointed to the ERO as a review officer in January 1990 and remained with the Office for ten years and I draw on my personal knowledge and experiences as I write this section of the thesis.

These first reviews set the scene for ERO's initial focus on Board of Trustee compliance with charter objectives within the legal requirement 'to take all reasonable steps'. However, as the first charters developed by learning institutions were very general and tended to be uniform the task proved to be very difficult. A further complicating factor was the size of task that the review officers set themselves. The first teams were large and cumbersome and the size of these teams, when coupled with the difficult task of reviewing against very general charter objectives, made the process unmanageable.

A significant issue at this time was that learning institutions and review officers were unsure about the extent of the legislation that applied to schools. At this time, there was no resource that contained or listed all the legislation that applied to schools or to Boards of Trustees. The legal obligations imposed through the legally binding charter between individual school Boards of Trustees and the MOE was a very new idea that took a lot of understanding and working through by all the parties. The varying methodologies used by the district teams contributed somewhat to the difficulties the Office and learning institutions were having with the very early reviews.

In February 1990, the Government established the Education Reform Implementation Process Review Team and the committee, headed by Noel Lough reported back to Government two months later. The terms of reference for this committee were: "To carry out a wide ranging review of the process and outcomes of the reform of education administration to date and to recommend any necessary improvements in the process or the structures" (Lough, 1990, p. 2). *Today's Schools*, published in 1990, commonly known as the Lough Report, was implemented by the National Government elected in 1990. The Chairperson's foreword summarises the reasons for the review being conducted just six months after ERO was established:

However, there is a perception that what has emerged in practice is increased central bureaucratic control, increased burdensome administrative tasks, inadequate resourcing and support for institutions, and inadequate attention to educational outcomes. (Lough, 1990, p. 6)

For the ERO this translated into: reducing the Office's budget; halving its staffing; the disestablishment of the financial reviewer positions along with some of the property reviewer positions; a direction to develop a methodology that focused on outputs and

outcomes; and that field staff use this methodology to review schools as effectively as possible. Thus did *Today's Schools* re-emphasise the tenets of managerialism, devolution and accountability.

1.8.2 1990: First national methodology

A team of ERO staff members was established to draw together the best of the methodologies developed by the various districts and to develop a process that would meet the specifications of the Lough Report and be implemented consistently across all districts. This methodology used the following headings:

- The Treaty of Waitangi
- Legislation and Government Policy
- The Charter
- ERO values, guiding principles and mission statement
- The intent of the review
- Sequence of the review
- Procedures of the review

This methodology continued with the focus on compliance with education legislation, including the charter, and was used by the ERO for approximately a year. Gianotti resigned in October of 1990 and Val Fergusson, Group Manager for the Southern Region, was appointed as Acting Chief Executive.

The change of government in October 1990 signaled further changes for the ERO with Dr Lockwood Smith taking over as Minister of Education in November. Cabinet almost immediately conducted a further review of education agencies in order to achieve financial savings that would fund their proposed changes to education policy. Fergusson sought to determine the expectations of the new Minister of Education and reported to the ERO staff that the new direction was to focus on educational achievement by reporting learning outcomes and other quality outputs. The Minister also directed the ERO to assist schools with their task of being self-managing and with developing self-review strategies.

1.8.3 1991: Five Headings Review

Under Fergusson's direction, ERO senior managers developed a new methodology that met the Minister of Education's requirements. The Five Headings Review methodology was published in August 1991 and reports were to be written under the headings of;

- Student Achievement
- Learning and Teaching
- Assessment and Evaluation
- Leadership and Management
- Community Participation

The Five Headings Review methodology, while maintaining a focus on compliance with legal requirements, drew attention to the significant lack of information in schools about how well students were achieving. In general, the only achievement information available in schools at that time was external examination results for senior secondary school students. As a consequence, the ERO struggled to meet the Minister of Education's expectations that ERO reports would focus on student achievement. A new process of returning to schools a year after the review visit to check on progress was also instigated by Fergusson. This discretionary review, (now called a supplementary review) remains a procedural device for the ERO that maintains a focus on compliance.

Judith Aitken was appointed to the position of Chief Executive of the ERO in November 1991 and coinciding with this appointment was the news of further cuts to the ERO's budget. The Office continued to reduce staffing levels in order meet continuing budget cuts. The remaining specialist EEO Reviewer and Property Reviewer positions were dispensed with at the end of 1992. This meant that all field staff were now considered to be generic review officers and with one or two exceptions, the remaining review officers' expertise was in education. However, all review officers were expected to be able to continue to monitor schools' compliance with all legislation, including finance, personnel and property.

The Office began to develop a range of internal strategies to achieve Aitken's objective of a team of professional cross-sector evaluators. Aitken began the process of moving ERO towards being a strong government department that focused on evaluation. Aitken sought to determine what output classes (services) the office had and what output classes should be developed in order meet the government's

expectations. At this time, ERO decided on four output classes: Evaluation Services; Ministerial Services; Assurance Audits and Effectiveness reviews.

The Five Headings Review methodology was divided into two output classes, the Assurance Audit, that continued the focus on compliance with legislation and the Effectiveness Review that considered educational outcomes for students in schools. The lack of achievement information in primary and secondary schools continued to be a problem for both the ERO and the schools.

1.8.4a 1992: Assurance Audits

A draft methodology for Assurance Audits was developed by August 1992 and a Handbook for Standard procedures was written to assist teams across the country to implement the methodology consistently. The methodology highlighted the extent of the legislation that sat over educational institutions. At this time, there were at least 34 relevant Acts of Parliament that ranged from those specific to education, such as the Education Act 1989, and general acts such as the Local Government Official Information and Meetings Act 1987 and the State Sector Act 1987. Most Boards of Trustees were unaware of the extent of their legal obligations inherited as a result of the 1989 education reforms. At this time, the ERO developed a handbook that drew all this legislation together in one volume for schools. While this handbook was developed primarily for use by the ERO, it was available for purchase by Boards of Trustees and schools.

The Assurance Audit methodology required review officers to ask if governing bodies knew their obligations and undertakings and what was being done to meet those obligations. The audit process then required review officers to identify and report the level of compliance. The Assurance Audit process drove home to those governing and managing learning institutions that they were subject to full compliance with all these legal requirements. By the end of 1992, the findings of the first Assurance Audits had highlighted many deficits in compliance with legal requirements. Some ERO reports on learning institutions included statements about whether or not the school boards were 'taking all reasonable steps' as they governed and managed their schools.

Discretionary Assurance Audits were carried out in those schools and centres whose level of compliance was seen as unacceptable. These audits focused on the areas of non-compliance identified during the scheduled Assurance Audit and were usually scheduled within twelve months of that audit. Ongoing non-compliance could result in the dismissal of a board by the Minister of Education and the subsequent appointment of a Commissioner.

French (2000, p. 19) reports tension growing within the Office and among schools between the ERO's dual outputs of audits that measured compliance, and reviews that measured the quality and outcomes of the education received by students. From the point of view of schools, the tension began to resolve as the ERO deferred Effectiveness Reviews in some schools until their level of compliance with their legal obligations had reached what the Office viewed as an acceptable level.

1.8.4b 1992: Effectiveness Reviews

The methodology for Effectiveness Reviews required review officers to undertake three main steps. Boards were asked what counted as achievement in their schools and to provide the Office with information that demonstrated that achievement. Review officers were also required to identify factors operating in that school that contributed to that achievement or lack of achievement. These early Effectiveness Reviews, like the Five Heading Reviews before them, continued to highlight the paucity of accurate and reliable information about how well children were achieving. Issues around how and why assessment data was collected, formative and summative assessment, aggregating achievement data began to consume both schools and the ERO. Effectiveness Reviews remained difficult exercises for both school and the ERO reviewers.

In 1993, while continuing to implement the ERO's output classes, Assurance Audits and Effectiveness Reviews in schools, publishing Evaluation Reports, and providing Ministerial Services, Aitken encouraged the Office to develop a deeper understanding of the nature of the relationship it had with schools and with government. As an integral part of this process, the ERO developed several internal tools including a Code of Professional Conduct, identification cards and a process for designating review

officers. The drive to emphasise field staff as evaluators continued with pre and inservice staff development and training occurring nationally and within individual district offices. As a professional public servant, Aitken understood the significance of the ERO's role as a government department, serving both the Minister and government.

But, in addition, Aitken began to direct the Office towards focusing on a consumer-based approach to its work, with the child seen as the consumer. The ERO's whakatauki (slogan), *Ko te tamaiti te putake o te kaupapa; the child, the heart of the matter* was adopted as a result of this new focus. The focus on children and parents as key stakeholders in education and Aitken's move to place school and centre reports in the public domain have been significant steps in helping parents to decide which school is right for their children. In this way, Aitken was emphasising the market version of accountability, that is, the provision of information about education providers to inform parental choice. However, the policy of publishing school reports was controversial from the outset and this decision has caused significant criticism of the ERO. The impact of this decision will be referred to again in Part Two of this thesis.

1.8.5 1997: Accountability Reviews

By 1997, ERO records demonstrated that fewer than 20 percent of schools required follow-up action from the ERO as a result of their level of non-compliance with their legal obligations. In April 1997, a new form of review was agreed to by the Minister of Education. The Accountability Review developed a revised methodology that moved the focus away from compliance to the quality of performance and the management of the potential risks of that performance to the student and to the crown. The Accountability Review was a flexible tool that allowed review officers to identify the appropriate emphasis for each school according to its stage of development as a self-managing school and its level of compliance.

Schools were provided with the evaluative criteria for Accountability Reviews under the headings of:

- Financial management;
- Management of staff performance;
- Self-review;

- Innovation;
- Principal performance; and
- Balanced curriculum.

The process required that Boards of Trustees undergo a self-review of their level of compliance prior to the review being undertaken. The reliability of the board self-review process was checked by review officers during the review. In this way, the ERO continued to check on learning institutions' compliance with their legislative obligations. Accountability Reviews continued to be the Office's review methodology until the end of 2001.

In August 2000, the Minister of Education announced a second Ministerial Review of the ERO (the first review, in 1997, was chaired by Margaret Austin). The report was presented to the Minister of Education in December 2000 and its recommendations included that the Office work more closely with the Ministry of Education, maintain its compliance functions and develop an "assess and assist" model. This model was trialed for six months during 2000 and 2001 and the decision was made that the "assess and assist" model would become part of the ERO's core business.

A further significant development to the role of the ERO occurred in 2001. The Ministerial Review of the Education Review Office focused on the "external evaluation and follow-up actions, including structures and responsibilities" (Education Review Office, 2001, p. 4). The Review recommended that the Office would continue as a stand-alone department, that reviews focus on educational improvement, that the compliance function remain and that the ERO and the MOE work closely together to support improvement in schools.

A striking result of the 2000 ministerial review was the introduction of two new initiatives. The 'assess and assist' model established an expectation that ERO would have an advisory and support role as well as an evaluative role in learning institutions. The second initiative, the Joint Work Programme with the Ministry of Education, introduced the expectation that the government departments would work together on agreed specific activities. Both these initiatives mark significant moves away from the NPM theoretical underpinnings to the educational reforms of 1989. A basic principle of

those reforms was the separation of the functions of policy development and implementation (MOE), review and audit of performance (ERO) and the provision of advice (advisory services).

1.8.6 2002: Education Reviews

From February 2002, the ERO introduced a new form of evaluation, the Education Review. This methodology was the Office's response to the findings of the 2000 Ministerial review of the work of the ERO and it was stated that Education Reviews have two main purposes, educational improvement and accountability and:

have three strands: school-specific priorities, government priorities and compliance issues. The focus of these reviews is on educational improvement and the reports are designed to make it easier for schools to know what they are doing well, where they need to improve and what they should do next. (Education Review Office, 2002a, p. 11)

The Education Review methodology uses several new strategies including a discussion with the Board to determine the focus areas for the review, board assurance guidelines and self-review checklists and post-review assistance.

The Board Assurance Statement (BAS) and Self-Audit Checklists are designed to assist boards to use self-review more effectively. Indeed, the guidelines state:

The more assurance a board can provide to ERO that it is meeting its legal requirements and taking appropriate action to remedy areas of non-compliance, the greater the emphasis can be on other areas of review. (Education Review Office, 2002b, p 1)

The BAS is in the form of a Compliance Certificate and lists six areas of compliance (board administration, curriculum, health, safety and welfare, personnel, financial and asset management). The board is required to attest that they have taken all reasonable steps to meet the legal requirements in each area of compliance.

The ERO provides a Self-Audit Checklist for each of the six areas of compliance. Each board, prior to a review taking place, is required to complete the checklist, marking whether or not it believes it has met each point listed in each of the six areas of compliance. The Board Chairperson and the principal are then required to sign the attestation that states:

The Board of Trustees and the principal have taken all reasonable steps to meet their legal requirements including those detailed on Ministry of Education Circulars and other documents. Where non-compliance has been identified, measures are being taken to remedy this. (Education Review Office, 2002b, p.3)

The ERO uses the completed checklists and assurance statement to assist with planning the review. During the review, the ERO checks the accuracy of the board's assurance statement and any identified areas of discrepancy could be investigated further. The ERO states that its main interest is in the quality of the board's self review and states:

Any non-compliance not identified by the board and discovered by ERO may be reported in the ERO report and, if significant, may result in a supplementary review. ERO will decide on a case-by-case basis whether or not to report non-compliance issues identified by the board (Education Review Office, 2004b, p.7).

The ERO states that compliance will only be a major focus if non-compliance leads to "significant levels of risk" (Education Review Office, 2004b, p.6). A discussion about what this means for school boards will follow in Part Two.

The impact Evaluation Reviews have on schools and their Boards of Trustees will be discussed in Part Two of this thesis.

1.9 Two national issues impinging at local level

Tomorrow's Schools listed several national issues that would impinge at local level. Two of these national issues related to equity and Maori are discussed here as they emerged as themes during the research process. Both issues are covered by the overarching legal requirement that says boards must 'to take all reasonable steps' when implementing their school charters.

1.9.1 Equity issues

Equity was a key theme in the Picot report and *Tomorrow's Schools*, which detailed equity objectives that underpinned the reforms. Improving equity for women, Maori, Pacific Island and other groups with minority status was stressed along with the equal employment opportunities requirements of the State Sector Act 1988. Evidence is now available that indicates these objectives have not necessarily been achieved in the way that was intended however.

Hawk (1997) explores the experiences of chairwomen of six Boards of Trustees and the way they carried out their key role. Her research identified common issues faced by the six women and found that while their gender was an important factor in the way they operated, other factors also became evident. A key factor was the way the chairwomen identified and managed the conflicting demands of their multiple realities as women and as women in a leadership role. Hawk discusses the equity provision of the Education Act 1989 that allows Boards to adjust the gender, ethnic and socio-economic balance of their board through co-option and finds that, despite this provision, women are under-represented on school Boards.

Brooking (2003) cites MOE statistics that demonstrate men's continuing disproportionate representation in school leadership roles:

60% of principals are appointed from the 18% male pool of the workforce in primary schools. Men are six times more likely to win a principal's position, disregarding experience or qualifications, than women (Brooking, 2003, p. 1).

Brooking finds that, while Boards are influenced by the market, managerialism and gender discourses, another factor is seen by boards as being of the utmost importance in selecting a principal who would 'fit the community'. Brooking found that the combination of factors used by Boards to select a principal combines to result in the selection of more males than females as principals and states: "the autonomy, power and "local logics" employed by boards, is effectively gate keeping the masculinised culture in place" (Brooking, 2003, p. 12). This article provides more evidence that the gender equity goal of the 1989 reforms has failed to be achieved.

While equity of educational outcomes was not specifically outlined in *Tomorrow's Schools*, the covering letter written by the Minister contains brief references to improved learning opportunities for children and the equity section does make a brief reference to "equal-educational-opportunities" (Minister of Education, 1989, p.26). The Innocenti Working Paper number 93, (2002) paints a bleak picture of the outcomes of the 1980s economic and social reforms for New Zealand's children. The paper quotes a report prepared by the United Nations Committee on the Rights of the Child in 1997 that recommended that the government evaluate the effects of the economic reform process on children, young people and their families. Blaiklock et al

(2002) report that such an evaluation was not undertaken. The paper summarises a number of the educational initiatives introduced into education and then reports trends in education. The authors conclude the section on education with the following summary:

The education reforms have been associated with increasing inequality at all levels of the sector, with growing gaps and continuing disparities between Maori and non-Maori, and evidence that Maori and Pacific Island children, and children from low income families are disadvantaged. While participation rates have increased, this may have been in part the result of declining employment opportunities for secondary school leavers. Parental choice of schools was limited. There appear to be financial and other barriers to equal participation in education (Blaiklock et al, 2002, section 6.3).

This paper demonstrates that the implementation of NPM has impacted negatively on a large proportion of the population and that it has failed to improve educational outcomes for many New Zealand children. *Tomorrow's Schools* broad theme of equity for all has failed to be achieved despite the exhortation to Boards of Trustees to "take all reasonable steps" when implementing the curriculum and staffing goals and objectives of their school charters.

1.9.2 Maori interests

The educational reforms had a clear interest in addressing the interests of Maori. *Tomorrow's Schools* identifies the promotion of te reo and whanau participation in education and the requirement that central agencies would directly represent Maori interests. Stewart-Harawira (1997) asserts however, that New Right philosophy has contributed to the deteriorating social conditions of Maori. The author claims that:

the policies of the New Right are exacerbating what are already alarming socioeconomic conditions for Maori. It is in this context that the state has abdicated responsibility for Maori wellbeing and has devolved it onto other agencies such as church and charity organisations. Most important of all, the state is redefining 'family' in the model of the nuclear, patriarchal family and simultaneously mandating responsibility for health, welfare and education to the family (Stewart-Harawira, 1997, p.341).

The concept of whanau is paramount to what it means to be Maori. Stewart-Harawira is pointing out the inherent conflict between the stated aims of the educational reforms and the actual needs and aspirations of Maori.

The issue of policy reforms for Maori is also addressed by Johnston (1997). Johnston indicates that an outcome for Maori of the restructuring is 'powerlessness' at all levels as a direct result of a lack of consultation. Johnston argues that this lack of consultation is an ongoing issue for Maori. Johnston provides a summary of her research into the *Tomorrow's Schools* claim that Maori interests and aspirations would be met in the new system through Maori participation on school Boards of Trustees. Her findings include: Maori have not been empowered as anticipated by *Tomorrow's Schools*; some Maori trustees have experienced alienation and hostility; and Maori have little or no control or influence over the way the Maori Language Factor Funding is used by schools. These ideas will be explored further in Part Two, Chapter Six.

Conclusion

This chapter has set the historical scene for the ideas explored in this thesis. The ideological basis and government documents that underpinned the 1989 education reforms and the NPM tenets of devolution, decentralisation and accountability have been outlined. The legal requirement 'to take all reasonable steps', introduced into the Education Act 1989 was the mechanism provided to Boards of Trustees in order to operationalise the discretion given in the same act. ERO's various methodologies and the way this agency has viewed Board of Trustee compliance with the legislative base has been introduced. Finally, two further issues, those of equity and Maori, have been discussed.

The following chapter provides a review of the literature relevant to this thesis.

CHAPTER TWO

Literature Review

Introduction

This literature review provides an overview of some of the key issues facing Boards of Trustees as they govern and manage their schools within the legislative requirement ‘to take all reasonable steps’. Key issues are: the objective standard of ‘reasonableness’; education and law; concepts of power and empowerment; decision making; and compliance. Rigorous attempts were made to find research or writing related to the legal requirement to ‘take all reasonable steps’ in education in New Zealand or elsewhere in the world. Strategies included searching national library catalogues, national and international journal databases and web search engines, and discussions with university staff, including librarians. Despite these attempts, I was unable to find any existing research related to the legal requirement ‘to take all reasonable steps’ in the education domain. However, the ERO has undertaken some analysis of school information in its database relating to levels of compliance with legal obligations and these findings are discussed in this literature review.

Given this lack of literature pertaining to reasonableness in the education domain and the pervasiveness of reasonableness in legislation in general, it is necessary to explore the meaning of, and use of the objective standard of reasonableness.

2.1 The objective standard of reasonableness

2.1.1 *The concept of reasonableness in law*

The concept of reasonability in public and private law has been debated and adjudicated since at least the 16th century. The debate consistently links the concepts of discretion and reasonableness. The Oxford English Reference Dictionary (Pearsall & Trumble, 2002, p. 405) defines discretion as “the freedom to act and think as one wishes, usu. within legal limits.” The same dictionary (p. 1203) defines reasonable as “having sound judgment; moderate: ready to listen to reason” and “in accordance with reason, not absurd” and “within the limits of reason; not greatly less or more than might be expected.”

Wade (1988) discusses the legal concept of discretion and the principle of reasonableness in British law. Wade (1988, p. 395) states that, in the first legal case cited in 1598, the judge defines discretion in a way which is relevant today:

and notwithstanding the words of the commission give authority to the commissioners to do according to their discretions, yet their proceedings ought to be limited and bound within the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colorable glosses and pretences, and not to do according to their wills and private affections; for as one saith, *talis discretio discretionem confundit*.³

Early cases include one in 1666 where a court found against the Commissioner of Fens judging that he had proceeded unreasonably when pursuing his powers. Another case heard in the eighteenth century also related to commissioners exceeding their powers and thereby judged to be acting unreasonably. In a 1925 case, Wade reports that Lord Wrenbury stated:

A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course by which reason directs. He must act reasonably (Wade, 1988, p. 367).

This interpretation by Lord Wrenbury clearly demonstrates the close links between discretion and reasonableness when making decisions about a course of action. The concept of reasonableness is central to the practice of judicial review today. The courts generally ask three questions of any act by a government agency, including a school Board of Trustees: is it lawful, is it reasonable and is it procedurally proper? (Joseph, 2001).

Law is divided into two fields. Administrative or public law governs relations between agents of government, and between individuals and the government. Education and its legislative base sit within this branch of the law. Private law controls relations between individuals and comprises the law of contract and the law of torts or legal wrong doings. The concept of reasonableness is relevant to both fields and accordingly, both fields are explored.

³ *Talis discretio discretionem confundit*: is the judge's Latin translation of his preceding paragraph

2.1.2 *The principle of reasonableness in administrative or public law*

The principle of reasonableness continues to be debated rigorously in administrative or public law. Judicial review is the process by which courts make sure the decision-makers (such as Boards of Trustees) who are empowered by legislation or who make decisions that affect the rights and expectations of others, do so in a fair, reasonable and legal manner. The debate includes the use of alternatives to the terms 'reasonableness' and 'unreasonableness'. Wade reports two cases in 1919 and 1972 where the expressions 'arbitrary and capricious', 'frivolous or vexatious', and 'capricious and vexatious' were used as synonyms for unreasonable. Wade also reports the introduction of the term 'irrationality' as an alternative to 'reasonability' that was used in a judicial appeal in 1987. In describing a case that was heard in 1911 in New South Wales, Australia, the word 'reasonably' was used in conjunction with 'fairly, and justly' (Wade, 1988, p. 397). The concept of fairness is also referred to by Joseph (2001, p.835) who records this pronouncement by a judge in 1985 "[A]n unfair action can seldom be a reasonable one."

A case in 1968 provided a new doctrine for reasonableness in administrative law that is now known by the nickname of *Wednesbury*. Wade explains that the nickname derived from the case *Padfield v. Minister of Agriculture, Fisheries and Food* where the House of Lords "asserted legal control over the allegedly absolute discretion of the Minister of Agriculture and held that he had acted unlawfully" (Wade, 1998, p. 401). He states that "Wednesbury is now a common and convenient label indicating the special standard of unreasonableness which has become the criterion for judicial review of administrative discretion" (Wade, 1999, p. 398). Joseph (2001, p. 832) records several New Zealand Court of Appeal decisions where expressions for 'Wednesbury unreasonableness' include "outside the limits of reason", "so outrageous in its defiance of logic or of accepted standards" and "a pattern of perversity."

A key aspect of the "Wednesbury principle" is that it is a standard that distinguishes between the proper and improper use of the power invested in an authority, that is the discretion to act within that authority. It is "an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended" (Wade, 1988, p. 407). Wade (1988) records judgments

made by two British Law Lords. Lord Hailsham in 1971 stated that: “two reasonable persons can perfectly come to the opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable” (Wade, 1988, p.407). Lord Diplock said in 1977 that:

The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred (Wade, 1988, p. 409).

Section 75 of the Education Act 1989 takes cognisance of this principle by stating “Except to the extent of any enactment or the general law of New Zealand provides otherwise, a school’s Board has complete discretion to control the management of the school as it sees fit.”

School Boards of Trustees who are working within the legislative requirement “to take all reasonable steps” could take some direction from the Wednesbury standard, as stated by Wade, (1988, p.407), the two judgments made by Lords Hailsham and Diplock, and in particular Section 75 of the Education Act 1989. All acknowledge a degree of choice or more than one acceptable interpretation as to what may be regarded as acting in a reasonable manner. Parliament has allocated the power of discretion to those making decisions and the judicial review process ensures this discretion is exercised in accordance with the standards of reasonableness, fairness and the law. The linking of fairness with reasonableness seems to have the implication that the particular circumstances relating to the reasonableness of an action are also a key element in the equation.

Joseph (2001) discusses laws that empower individuals or groups (such as school Boards) and the process of judicial review. He cites judicial reviews that find that the power of discretion must be exercised within its specific legal framework and that, in any dispute, the courts will speak with authority only over points of law. In the case of school Boards, any judgment would be answering the question “has this Board of Trustees exercised its discretion in accordance with section 75 of the Education Act 1989”, or in the case of the principal, with section 76 of the same act. These are the sections of the act that provide trustees and principals with the power of discretion. It

seems that, unless a Board of Trustees has breached another section of education legislation or any other relevant legislation, a positive outcome from judicial review is unlikely.

This view is supported by case law quoted in Rishworth and Walsh (1999). In the case *Maddever v Umawera District School Justice Williams* is quoted as saying “that the remedy of judicial review ought to be sparingly utilised in the context of the Education Act 1989” (Rishworth and Walsh 1999, p. 13). This judgment is based on the expectation of the Act that decision making was to take place at local level and that Board of Trustee accountability for those decisions lay in reporting requirements and election processes.

2.1.3 *The principle of reasonableness in private law*

Private law (which controls relations between individuals) also deals with the concept of reasonableness. The concept of ‘the reasonable man’ was invented by the courts as a way of working within a standard of reasonableness. A judge first defined the ‘reasonable man’ in a case heard in the middle of the 19th century. Todd (2001, p. 383) records the ruling:

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do.

Another case heard in Great Britain in 1955 resulted in the following attributes being attributed to a ‘reasonable man’:

[The reasonable man] is not an extraordinary or unusual creature; he is not super human; he is not required to display the highest skill of which anyone is capable; he is not a genius who can perform uncommon feats, nor is he possessed of unusual powers of foresight. He is a person of normal intelligence who makes prudence a guide to his conduct. He does nothing that a prudent man would not do. He acts in accordance with general and approved practice. His conduct is guided by considerations which ordinarily regulate the conduct of human affairs. His conduct is the standard adopted by the community by persons of ordinary intelligence and prudence. (Todd, 2001, p. 354)

However, while the ‘reasonable man’ is described and discussed in case law, a British Appeal Court decision found that in common law, there is no such thing as a

'reasonable woman'. Herbert (1972) records the judgment in his book containing what he calls "misleading cases." In the case *Fardell v. Potts*, a jury had found that a woman, while driving a motor boat had not exercised reasonable care in that she had collided with a punt causing the male occupant to fall into the river. The Court of Appeal overturned the judgment on the grounds that the case should never have been allowed to go to a jury. The judge based this decision on the proposition, "I find that in Common Law a reasonable woman does not exist" (Herbert, 1972, p. 6). While this case makes quirky reading, it fails to add anything of practical substance to the question of reasonableness in law in today's context. However, this case does make it clear that reasonableness is associated with men and that traditionally, the reasonable man standard has been applied to women. It therefore raises questions for women who work with the legislative requirement 'to take all reasonable steps' as trustees, principals, teachers and review officers. On closer examination, the concept of the reasonable man has significant problems associated with it. Some of these problems are outlined below.

2.1.4 Reasonableness in feminist legal discourses and egalitarian discourses

In Western philosophical thought men have traditionally been associated strongly with reason and women with senses or emotions (see philosophers including Plato, Aristotle, Aquinas, Rousseau, Bacon, Kierkegaard and Nietzsche). The masculine standard of reasonableness has developed from this philosophy. The 'reasonable man' debate and its impact on legal judgements have been extensively examined and reported (see for example; Cahn, 1992; Carlyle, 1994; Chalmers, 1999; Dalton, 1985; Forell, 1992; and Parker in McDonald and Austin, 1993). These authors and many others argue that the traditional legal view of a masculine standard of reasonableness is not an appropriate standard to apply to cases concerning women. Cahn (1992) and Forell (1992) argue that the use of the apparently gender-free term 'reasonable person' in fact applies a masculine standard that continues to ignore the experiences of women. They promote a standard that is based on an ethic of care, seen as a feminine approach to reasoning rather than an ethic of rights that is seen as a masculine way of reasoning. (For a discussion on an ethic of care see Gilligan, 1982, Noddings, 1984, Cahn, 1992, Martin, 1994 and O'Neill, 1996).

Feminist legal discourse makes a significant contribution to the growing body of knowledge that recognises legal and other processes must change to address meaningfully the needs of women. Dalton (1985, p.999) argues that: “Law, like every other cultural institution, is a place where we tell one another stories about our relationships with ourselves, one another, and authority.” She concludes: “my story focuses fresh attention on those whom we give the power to shape our world” (Dalton, 1985, p. 1114). These two sentences encapsulate the ideas behind feminist legal discourses; that *our* stories in law will depend on *who* women are and on *who* has the power to shape and speak about *our* world. Dalton’s conclusion gives weight to the case that women’s views must be taken into account when Boards of Trustees are considering the reasonableness of their actions.

Boards of Trustees, including principals, have a major role in shaping their schools. The standards they use, including their standard of reasonableness, when making decisions about their school will have a significant impact on these decisions. O’Neill (1996) makes a significant contribution to the developing egalitarian approach to the issue of standards in society. She builds a compelling case for viewing obligations and duties as more ethical than rights when establishing and meeting standards. Her work builds on the theory of an ethic of care (as propounded by theorists including Gilligan (1982) and Noddings (1984) and argues that the principles of justice and virtue may be viewed through a new paradigm of practical and ethical reasoning. O’Neill proposes building just and virtuous lives and societies and says:

At each time and place, those who hope to move towards justice and towards virtue will have to build, and to rebuild, shaping the institutions, policies and practices which they find around them, and their own attitudes and activities, to meet standards which, they believe, can be standards for all within the domain of their ethical consideration. (O’Neill, 1996, p.212)

Boards of Trustees need to be aware of the standards they use when making decisions and considering the reasonableness of those decisions.

There is a growing body of work that discusses what Moran (2003) describes as ‘an egalitarian reconstruction of the objective standard’. Moran questions why the reasonable man matters at all and states: “While his centrality as a legal device certainly underscores the importance of his task, it does not answer the question of just what it is

that he actually accomplishes” (Moran, 2003, p. 3). She critiques the ‘ordinariness’ (or normative/non-normative) of the reasonable standard and points out the dilemma resulting from such a masculinised standard. An egalitarian approach to reasonableness defines such a standard as discriminatory. Moran (p 286) takes an ethical approach and defines reasonableness as “appropriate attentiveness to the interests of others” and unreasonableness as “indifference to the interests of others” and suggests that focusing on the person, rather than the reason is more egalitarian in its approach. This approach could sit well within the domain of education.

Feminist legal discourses demonstrate that women and other minority groups have been largely invisible in law as is evidenced by the gender-specific ‘reasonable man’ and the lack of an authoritative equivalent term for women. The legal term ‘to take all reasonable steps’ is based on the premise of a ‘reasonable man’ and, as acknowledged by Cahn (1992) and Forell (1992), this standard ignores the experiences of women. As discussed above, compelling arguments are being made for an alternative paradigm to the masculine standard of reasonableness but the standard remains in legislation in New Zealand, and as discussed in this thesis, is particularly relevant to school Boards of Trustees.

2.2 Education and law

Since the inception of *Tomorrow's Schools*, there has been an increase in interest in education law. The New Zealand Law Society, in the introduction to the 1999 Education Law Seminar booklet, describes the growth of ‘education law’ as a specialised area of legal practice throughout the 1990’s. The presenters describe disputes that call for a legal opinion as the major reason for this increase in interest rather than an explosion in law cases. The causes for this increase in interest include: the devolution of authority to school Boards of Trustees as a result of the Education Act 1989 and the need for Boards to obtain their own legal advice; the increase in redress for alleged wrongs being sought from the legal system rather than from politicians; the growth in the culture of individual rights; the increased number of laws pertaining to education; and the creation of bodies who have powers and jurisdiction over schools, for example, the Education Review Office and the Privacy Commissioner. The booklet quotes Stewart (1996) as believing that:

preventative legal risk management is about implementing policies and practices which protect the individual and the organisation from the risk of legal claims and which help ensure that legal obligations are complied with. (Rishworth and Walsh, 1999, p. 2)

As has been discussed earlier in this study, Boards of Trustees have the discretion to control their schools as they see fit and that this discretion may be applied through the legal requirement ‘to take all reasonable steps’. School boards need to make sure that the choices they make as they govern and manage their schools do not expose them to the risk of legal claims.

Walsh (1997) and Walsh and Bartley (1999) examine the legal problems and issues facing educational institutions, discuss current education legislation and illustrate these matters through recent case law. Walsh (1997) addresses governance and management issues and provides three themes that exemplify the nature of the working relationship between trustees and principals. These themes are: the lack of any clear definition of the terms of ‘governance’ and ‘management’; issues related to the division between the functions of governance and management including the dual role of the principal as a member of the board and solely responsible for the day-to-day management of the school; and the need for co-operative and consultative relationships between Boards and principals. Walsh states that defining the legal parameters of the relationship between principals and trustees is important as “educational litigation seldom leaves anyone happy, with both parties normally left out of pocket, bitter, and with damaged reputations” (Walsh, 1997, p. 102). As the requirement ‘to take all reasonable steps’ applies specifically to Boards of Trustees’ role of governance and to principals’ role of management, their understanding of these roles and the quality of the relationship between the principals and trustees become essential components of the control of schools.

The ERO provides its perspective on schools and the law by reporting the findings of a survey completed in 2003 of 125 schools. Part of the ERO’s evaluation procedures require schools to undertake a self audit of the degree to which the schools believe they are taking all reasonable steps to comply with the legal obligations. The report finds that “Overall there was a high level of the desirable ‘Yes’ response (on average 86 percent) to the self audit checklists and the BAS submitted by each school” (Education

Review Office, 2003a p.13). Compliance was identified as an issue for ten percent of schools in all areas except finance, with the major area of concern related to health, safety and welfare.

Boards of Trustees are able to seek assistance on matters of law through the New Zealand Principals' Federation website. The website includes three articles concerning the legal principles of judicial review, the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and their applicability to the school setting. Cuncannon and Dorking (2003a) state that illegality and unreasonableness are 'difficult areas of the law' (p.5) and advise that Boards should always give reasons for their decisions as reasons demonstrate accountability and consideration of any issue under debate.

A search of case law on various websites, and the case law used as exemplars in literature already discussed in this section, clearly demonstrate the increase in the numbers of individuals and groups seeking legal solutions to school-based disputes. This illustrates the desirability for Boards of Trustees, including principals, to have a clear understanding of their legal obligations and duties and a degree of legal literacy.

2.3 Concepts of power and empowerment

As discussed in the preceding chapter, school Boards of Trustees have considerable power vested in them through the Education Act 1989, with the legal requirement 'to take all reasonable steps' and the 'complete discretion to control the management of the school as it sees fit'. A rationale behind the 1989 education reform sought to "empower" parents and communities through the devolution of responsibility from bureaucracy to schools and their Boards of Trustees who were to be elected from their parent bodies (later legal changes allowed trustees to be elected from the wider community).

However, Muetzelfeldt (1992) states that the "devolutionist doctrine does not lead to an authentic dispersal or devolution of power within organisations, even though it purports to" (Muetzelfeldt, 1992, p. 203 -204). He reports that devolution depends on the maintenance of central control through organisational systems such as incentive

structures. Where ‘power’ has been devolved, he believes that rather like a web, power is in fact retained at the centre and continues to be exercised out to the rim.

The New Zealand education reforms illustrate Muetzelfeldt’s web theory. Wylie (1995) argues that these reforms are in fact ‘centralised decentralisation’ and that the NPM rhetoric of empowering parents is limited significantly by retained central control. She considers the role of central education agencies, increased accountabilities to the government and centrally controlled fiscal resources as examples of centralisation limiting the effects of decentralisation for school Boards of Trustees. Wylie considers that these tensions distort the *Tomorrow’s Schools* framework from the NPM rhetoric into a different reality for Boards of Trustees and for schools. These tensions, when coupled with the actual context within which schools operate, such as the desire of trustees and school staff to work within other values and practices based on student needs rather than government accountabilities may have a disempowering effect for the school community.

Foucault (1994a) provides an analysis of power in relation to how individuals or groups of people may come to be regarded or treated as ‘subjects’ that is, “as subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge” (Foucault, 1994a, p. 331). He calls these “dividing practices.” Foucault examines and analyses these struggles and power relations and concludes that these power struggles can result in a form of subjugation. Foucault’s work on knowledge is closely allied to his theories of power and questions: “the way in which knowledge circulates and functions, its relations to power. In short, the regime of knowledge (savoir)” (Foucault, 1994a, p. 331). Foucault believes: “behind all knowledge [savoir], behind all attainment of knowledge [connaissance], what is involved is a struggle for power” (Foucault, 1994b, p. 32). Lee (1997) discusses Foucault’s beliefs about knowledge and power when considering OFSTED’s data base of information about schools in England and Wales. Lee states: “OFSTED holds and controls this information as raw data in order to recontextualise it as new knowledge”, and “The central data base leaves it in a strong position as custodians of ‘knowledge’ with the ability to reproduce that knowledge in policy making” (Lee, 1997, p. 49). The ERO also holds an extensive data base of information on schools and uses this information to create new knowledge and to inform stakeholders such as parents and

other government agencies including the MOE. Thus the ERO maintains powerful relationships with schools. Foucault's concepts of knowledge, power and subjugation will be drawn on in part two of this thesis.

For the purposes of this study, I have narrowed the very expansive field of literature on issues of power to include the following issues: power and empowerment in education; and power and empowerment issues for Maori.

2.3.1 Power and empowerment in education

Rae (1990) points out that a purpose of the education reforms was to "return 'power' to the community from the bureaucracy" (1990, p. 67). He maintains that charters were seen by the Picot Taskforce in 1989 as the "lynch pin" of the return of that power to the community and the charter was seen as the device for achieving this objective. At this time, charters were viewed as the tool for establishing the agreement among the government, communities and school Boards regarding their obligations and objectives. Rae (1990, p. 670) quotes Wilkes when discussing pluralist states and issues of community development being "driven by the purpose of serving 'the common good' as an 'instrument of reason'". While Rae refers to the role of review officers and the impact of their perceptions of the work of schools within a wider sociological perspective and with their relationships with school leaders he makes no reference to the overarching requirement on Boards 'to take all reasonable steps' with relation to the implementation of their charters. However, given that overarching legal requirement it is interesting to see that Rae chose to link charters as an example of community development with the phrase 'instrument of reason'. As has been discussed earlier, reason is viewed as a masculinised concept and as such, it fails to consider the views of women.

Codd and Gordon (1990) focus on the purposes of school charters as an issue of political control. They discuss the changes to school charters during the early years of educational reform and focus on the meanings of community partnership and a relationship with the government as the supplier of educational resources. In a discussion about the use of the term 'undertaking' (as opposed to the initial term

agreement) Codd and Gordon quote the following sentence that appeared in the April 1990 charter amendments:

In governing this school, the board of trustees will take all reasonable steps to ensure that the school meets the goals and objectives of this charter within the resources and time available to it, in accordance with section 64 of the 1989 Education Act (Codd and Gordon (1991, p. 32).

The authors conclude that this amendment to the charter requirements meant that the State would continue to hold the power over the nature of the contractual relationship and that the charter would therefore become a symbolic document. While the reference to resources and time have been removed from the act, the passage of time since this article was written demonstrates that the charter is a mechanism for accountability as the ERO uses the goals and objectives of school charters as evaluative ‘standards’, including schools’ standard of reasonableness, in their review processes.

Court (2001) contributes to the body of knowledge on power and empowerment. She demonstrates that women have a more egalitarian approach to leadership and power than masculine styles of leadership. Ethical issues are explored, for example, the difference between empowering others and exercising power over others and finds that women favour the leadership styles that empower those with whom they work. Court finds that the co-principals who took part in her research shared their power and lead their schools by “constructing a ‘flatter’, more fluid, relational, and process oriented ‘team of equals’ approach” (Court, 2001, p. 496). The model of leadership promoted by *Tomorrow’s Schools* is based on a hierarchical model of accountability that does not allow for alternative models of leadership. As discussed earlier, more collegial and collaborative forms of governance and management are likely to promote more reasonable decisions.

2.3.2 *Power and empowerment issues for Maori*

For trustees who are Maori, what counts as a reasonable step may not be the same as for trustees with other ethnicities. Reasonableness may be seen as culturally relative. Pihama (in Olssen and Mathews 1997) explores Maori continue to be marginalised through policies that convey singular meaning and quotes Codd as saying “Policy documents...do not have a single authoritative meaning. They are not blueprints for political action expressing a set of unequivocal intentions (Codd, 1988 cited in Pihama,

1997, p. 283). Pihama states that policies are shaped and influenced by the world views of those who devise and write policy. Likewise, the concept of reasonableness in law has been shaped through Western philosophical thought and Maori may view reasonableness in a different way.

Johnston (in Olssen and Mathews, 1997) discusses issues for Maori that have arisen from the 1989 restructuring of education. She indicates that an outcome for Maori of the restructuring is 'powerlessness' at all levels as a direct result of a lack of consultation. Johnston reports that this lack of consultation is an ongoing issue for Maori. Johnston argues that the claim that *Tomorrow's Schools* would meet Maori interests and aspirations through Maori participation on school Boards of Trustees has not been achieved. She concludes that Maori aspirations have not been realized and neither have Maori been empowered as anticipated by *Tomorrow's Schools*. She highlights the importance of appropriate and meaningful consultation and participation by Maori in the management of schools. The issue of power, and in whose hands the power lies is a key component in Board of Trustee decision-making and in the reasonableness of those decisions.

The ability of Boards of Trustees to co-opt trustees who have strengths and skills needed by a board or to fulfill the aspirations of their communities is a key way for schools to overcome these issues identified by Pihama (1997) and Johnston (1997). Maori participation as school trustees and consultation with Maori communities would greatly assist Boards of Trustees to work within Maori expectations of reasonableness. Smith (1999) asserts that Maori traditional decision-making and networking processes, for example, provide a way of empowering Maori through their participative nature. Western processes, by contrast, leave many Maori unheard and uninvolved in the democratic process. Smith asserts that: "Democratizing in indigenous terms is a process of extending participation outwards through reinstating indigenous principles of collectivity and public debate" (Smith, 1999, p. 156). These very principles are essential components of the education reforms of the 1980s.

2.4 Decision-making

For the purposes of this literature review, I shall limit the review of literature available in the domain of decision making to three main areas. These areas are; making legally sound decisions; board decision-making; and student participation in decision making. These areas provide information that is relevant to the underlying legal requirement of taking all reasonable steps with school governance and management.

2.4.1 *Making decisions that are legally sound*

The devolution of responsibility for administering schools from the government to communities gave significant power to those communities through the mechanism of Boards of Trustees. The execution of that power means that Boards of Trustees must routinely make decisions as an integral part of their work of governing and managing their schools on behalf of their communities. Rishworth (2001) describes three guiding principles in education law that summarise the nine general principles discussed at the 1999 New Zealand Law Society conference. These three principles are:

- “Education is a public trust and those responsible for its administration have ‘trust-like’ responsibilities;
- Education is the legal right of students; and
- Don’t rush: there is almost always time to make careful and informed decisions (Rishworth, Walsh and Hannan, 2001, pp 2-4).

Rishworth goes on to say that hasty decisions made at any level can result in poor decisions that lead to difficult situations, some of which may require legal solutions. The rise in the numbers of education case law described earlier in this literature review clearly demonstrates the importance of Boards of Trustees making decisions that are both legally sound and that are in the best interests of the children, staff and community.

Cuncannon and Dorking’s (2003a) discussion of discretionary decision making resonates with the concerns of this thesis. When discussing the exercising of discretion by trustees and principals the authors state “*Every grant of discretion is conditional upon being exercised reasonably and in good faith*” (Cuncannon and Dorking, 2003a, p. 3, emphasis in original). The need for decisions to be made on the evidence before the board at the time is also stressed. The authors provide a checklist and advise that if

any of the questions can not be answered the Board should make further investigations or take legal advice. The checklist is:

- Do I have the power to make this decision?
- Am I being reasonable and acting in good faith? Would an objective outsider looking at my actions think I am being reasonable and acting in good faith?
- Have I fully considered this individual case?
- What are the relevant considerations? What are the irrelevant considerations?
- What needs to be achieved from this decision?
- Does my reasoning support my proposed course of action? (Cuncannon and Dorking 2003a, p.3)

Cuncannon and Dorking go on to provide a number of steps for Boards of Trustees to follow. These steps include: discussing the issue with other appropriate people; ensuring the Board comprises the broadest possible representation of the community; giving reasons for the decision; and establishing a system for scrutinising Board decisions. Boards of Trustees need to minimise the possibility of making unreasonable decisions.

2.4.2 Board decision making

The notion of reasonableness in law relates to the context in which decisions are made and the requirement for boards to consider the opinions of their communities when making decisions highlights the significance of making collaborative decisions. A key aspect of the thinking behind the educational reforms in the late 1980s was the relocation of decision-making from government and government agencies to individual school communities through Boards of Trustees. The summary of the Picot report states quite clearly that “decisions should be made as close as possible to where they are carried out” (Department of Education, 1988, p. xi) and goes on to list “decisions at appropriate levels” and “co-ordinated decision making” (p. 41) as essential features of achieving the proposed reforms.

Involving communities in school decision-making is a key task for Boards of Trustees. Ramsay et al, 1990 summarises literature available in the field of partnership in education and finds three main prerequisites to be essential when undertaking this task. Cattermole & Robinson (1985, cited in Ramsay et al, 1990, p. 7) consider:

understanding the needs and expectations of students and parents; providing the community with accurate and current information about the schools; and the importance of close communication, shared goals and commitment to the school to be important aspects of developing partnerships between schools and their communities. The report finds major gains to be made for all involved when collaborative decision making is employed by schools and their communities. A key finding of the research is that there are multiple ways of collaboratively making decisions and that a: “repertoire of strategies is required and moreover that teachers and parents involved in collaborative decision-making need to be both critical and divergent thinkers” (Ramsay et al, 1990, p. 34). Such approaches to decision-making are likely to increase the reasonableness of those decisions.

2.4.3 *Involving students in decision making*

The New Zealand Curriculum (1993) (which Boards of Trustees are required to ‘take all reasonable steps’ to implement) contains an objective that all students will learn to participate fully in New Zealand’s democratic processes and student participation in school decision-making as an effective way of attaining this objective. The ERO has evaluated the ways some New Zealand schools encourage students to participate in school decision-making. Their evaluation report (Education Review Office, 2003c) finds that schools involve students in decision making at two main levels; through the mechanism of student representation on school Boards and in their classrooms. The report finds that:

Effective involvement of students adds significant value to schools’ decision-making processes, promotes early student engagement (and connection) with public and community life and provides students with essential life skills. In short, student involvement in decision-making benefits everyone involved – students, staff, parents, whanau and communities. (Education Review Office, 2003c, p. 1)

The United Nations Convention on the Rights of the Child (UNCROC) has values and principles for children and these principles include promoting the participation of children and young people in decision-making. New Zealand is working towards achieving these objectives through implementing the Ministry of Social Development (2002) and the Ministry of Youth Affairs (2003) documents including *New Zealand’s Agenda for Children*, and “*Keepin’ it real.*” A useful resource for involving children

and young people in decision making is a report developed for the Ministry of Social Development and the Ministry of Youth Affairs in 2002. This report reviews national and international literature published in 2000 and 2001 and includes feedback from consultation with children and young people and various government departments and non-governmental organisations. The report (Gray, 2002) discusses ways of involving children, youth and young adults, including Maori and other ethnic groups in decision-making processes relating to policy making and service development as the local or central government level.

Gray (2002) asks two interesting questions for school Boards to consider: “How much notice will they take of young peoples’ views in revising policies and services? and how much power are they willing to share?” (Gray, 2002, p.54). She refers to several models of children and young people’s involvement in decision-making and makes a number of points relevant to this thesis. She describes *Hart’s ladder of participation* (Gray, 2002, p. 7) as the best known model of children and young people’s involvement in decision-making. The ladder lists eight levels of participation with the lowest level described as ‘Manipulation’ and the highest level as ‘Child-initiated and directed’. The second model of participation described by Gray is *Schier’s pathway to participation* (Gray, 2002, p. 8-9). Gray quotes Schier’s five levels of participation with the lowest level listed as ‘Children are listened to’ and the highest level as ‘Children share power and responsibility for decision-making.’ Gray elaborates on the purposes of involving children and young people in decision-making processes. She states:

In exercises that are truly participatory, children, young people and young adults learn to appreciate the realities of decision-making. They gain a better understanding of the social, political, economic, cultural and personal aspects of issues that affect them. They also learn to prioritise alternatives and to consider the implications of their decisions. (Gray, 2002, p.6)

Research undertaken in Great Britain confirms the significance and relevance of involving students in school decision-making. Doddington et al (2000) find that listening to pupils and taking notice of what they say can lead to improving schools’ performance. Their research demonstrates that pupils are highly sensitive to their school’s ethos and that taking children’s opinions and views seriously can lead to

improvements in attitudes to learning, behaviour and self esteem. The authors state: “by giving pupils an active role in the decision-making process they are encouraged to develop a sense of responsibility for their actions and this will lead to a better learning environment” (Doddington et al, 2000, p. 49). For a discussion regarding involving students in decision-making in the New Zealand context, see Capper (1994).

2.5 Compliance

This section of the literature review looks at the issue of compliance which, as has been discussed already, is a key element of NPM theory and therefore the philosophy behind self-managing schools. Chapter one highlights the ERO focus on compliance through its various methodologies. The focus on accountability and its emphasis on compliance with legislation have also been widely discussed in literature in a number of other Western countries that have introduced various forms of NPM. Fink (2001) describes the strategy that brought about these international reforms as:

a top down compliance model. An international pattern has emerged - first manufacture an educational crisis by naming, blaming and shaming educators for real and alleged failures of the system; design a curriculum with more content and ‘higher’ standards; change structures of governance to reduce local political control, and reduce funding in the name of efficiency. The ‘conventional wisdom’, propagated by the popular press, corporate leaders, and ambitious politicians, is that teachers and other educators are the source of most problems. They must, therefore, be obliged to comply with mandates through elaborate and usually expensive accountability measures (Fink, 2001, p. 231).

In England and Wales, education reform that began during the late 1980s saw the disestablishment in 1992 of Her Majesty’s Inspectorate (HMI) as the body which had the power to inspect and report on educational institutions and the introduction in its place of The Office for Standards in Education (OFSTED). OFSTED was established as the government department with the responsibility of controlling inspection, analysing inspection data and reporting its findings to government and to the public. The department is headed by the position of Her Majesty’s Chief Inspector (HMCI).

Since the inception of OFSTED, literature demonstrates a growing unease with the inspection methods and with the effects of those inspections on educational institutions, governors, educational leaders and teachers. As with the ERO in New

Zealand, changes have been made to OFSTED inspection methodologies. The most significant change was made to the inspection framework in September 2003. At the same time, the role of school governors in England and Wales was strengthened through OFSTED requiring school governors to audit and attest their school's compliance with statutory regulations. OFSTED's new inspection framework states in the inspection principles "Inspection is evaluative and diagnostic, assessing quality and compliance, and providing a clear basis for improvement" (OFSTED, 2003, p.3). Parallels can easily be seen with the ERO's new Evaluation Reviews introduced in New Zealand in 2002 that also have a compliance element to its evaluation methodology.

Authors who have reflected on the effects of the new emphasis on compliance has on schools include Woods et al (2001, p. 91) who discuss the lack of government trust in teachers to implement reform leading to more direction and monitoring and Moore et al (2002) who discuss how teachers reposition or compromise their identities under a compliance regime. Humes (2000) examines literature concerning the discourses of educational management and discusses findings that demonstrate educational managers and teachers respond to ongoing education reforms: "most energies are directed towards ensuring that new systems, structures and processes are in place" (Humes, 2000, p. 38). This finding correlates with ERO's stated intention of making sure that schools act lawfully through its ongoing focus on compliance with legislative requirements.

Gay (2003) compares governance in schools as promoted by the MOE and the ERO with governance undertaken in the corporate sector. Gay finds that the form of governance operating in New Zealand schools as a consequence of the work of the MOE and the ERO results in confusion between the desired objectives of improved performance and compliance. Gay suggests that relationships among governance, performance and compliance have not been established and so the NPM desire to protect stakeholders, especially government fiscal arrangements, may be in jeopardy. Gay's analysis of ERO documents leads her to the conclusion that while the ERO has improved schools' compliance with their legal obligations, it has been less successful in promoting school performance and furthermore, that the ERO has treated these essential elements of NPM theory inconsistently over time.

Conclusion

The lack of existing research into the legal requirement 'to take all reasonable steps' in education is reflected by the broad base of literature selected to inform this study. It was necessary to investigate reasonableness in law and education and law in order to establish a legal base within which to situate this study. It was also necessary to explore aspects of NPM theories as these theories impact on the way New Zealand schools have been managed since the education reforms of the late 1980s. Issues of power and empowerment, decision-making and compliance completed the literature considered necessary to inform this thesis.

The following chapter describes the theoretical underpinnings and methodology used to conduct this research. The complex nature of the key research questions is reflected in the journey undertaken as the research progressed towards its conclusion.

CHAPTER THREE

The Research Methodology and the Research Journey

Introduction

This chapter will describe the theory underpinning the research design, an emergent phenomenological approach within the qualitative research paradigm. It describes how the methods of a survey questionnaire, interviews and document analysis were used to collect the data. The analysis procedures are also described. Ethical considerations and limitations of the research will also be discussed.

While the completed research follows these methods of collecting data, there were a number of unanticipated constraints that impacted on the research process and hence the research findings. Thus, in this research, the journey became an integral part of the research and could not be separated from the research methods. I will therefore interweave the ‘intended’ with the ‘reality’; the methods and journey as an integrated whole.

In 2003, I completed initial research in the form of a literature study into the legal phrase ‘to take all reasonable steps’. The literature study covered the domains of law, philosophy and feminism as I sought to develop an understanding of the concept of reasonableness. Theories of NPM added an essential dimension to my understanding of the context in which the legal requirement ‘to take all reasonable steps’ was introduced into education legislation with the Education Act 1989.

It was intended that the research would be a small-scale, in-depth case study designed around a series of interviews and analysis of school documents. I proposed to undertake the initial interviews, document analysis and data analysis in three schools. The study would then be progressively expanded until the data saturation point was reached which I anticipated would occur with no more than eight schools. I intended to include in the sample the widest possible range of types and sizes of schools within a defined geographical area.

Following initial discussions with my supervisors changes were made to the strategies used for gathering data. It was agreed that data gathered from a wider sample would enhance the research.

3.1 Research Approach

3.1.1 Case study

The research employs a case study approach. A case study is a detailed examination of a case or entity that may be something “as simple and simplistic as ‘Mr. Brown, the Principal’ or complex and abstract as ‘decision making within a teacher union’” (Burns, 1997, p. 364). Stake (in Denzin and Lincoln, 2000, p. 437), describes three types of case studies: intrinsic; instrumental; and collective. The case study described in this research fits within Stake’s first type, an intrinsic case study which:

is undertaken because, first and last, the researcher wants better understanding of this particular case. Here, it is not undertaken primarily because the case represents other cases or because it illustrates a particular trait or problem, but because, in all its particularity *and* ordinariness, the case of itself is of interest. (Stake, in Denzin and Lincoln, 2000, p. 437, emphasis in original)

The particular case of this research examining the meaning of the legal requirement ‘to take all reasonable steps’ in education in New Zealand, is interesting in itself for several reasons. For example, the requirement is all pervasive in that it is specified on more than forty occasions within legislation relevant to education without once being defined or interpreted in the legislation. The widespread nature of the reasonableness debate as outlined in section 2.1 of this thesis also makes it of interest. That the literature reviews I have conducted to date on this topic have failed to find any relevant research further locates this research into the category of an intrinsic case study. Thus this case study aimed to contribute new knowledge to the field of educational governance and management of schools in New Zealand.

3.1.2 Phenomenology

The phenomenological approach within qualitative inquiry underpins this small scale study. The phenomenological approach “is a focus on understanding the meaning events have for persons being studied” (Patton, 1991, quoted in Maykut and

Morehouse, 1994, p. 3). The concept of *Verstehen* (understanding) within the Weberian tradition, is a key element of phenomenology and is described by Patton as:

The tradition of *Verstehen* places emphasis on the human capacity to know and understand others through empathetic introspection and reflection based on detailed description gathered through direct observation, in-depth, open-ended interviewing, and case studies. (Patton, 1997, p. 271)

This research sought to understand “the meaning of events and interactions to ordinary people in particular situations” (Bogdan and Biklen, 1992, p. 34). In particular, this research sought to understand the meaning that the legal requirement ‘to take all reasonable steps’ has for school trustees and principals, who have taken up governing and managing schools under the NPM of self-governing schools.

3.1.3 *Qualitative Inquiry*

Qualitative research has been described as placing an “emphasis on understanding through looking closely at people’s words, actions and records” (Maykut and Morehouse, 1994, p.17). The authors go on to describe the task of the qualitative researcher as:

to find patterns within those words (and actions) and to present those patterns for others to inspect while at the same time staying as close to the construction of the world as the participants originally experiences it. (Maykut and Morehouse, 1994, p. 18)

Bogdan and Biklen (1992, pp. 29-33) describe five features of qualitative research. This study fits these characteristics in that this research:

- collected data in natural settings (schools) with myself (the researcher) as the collector of the information;
- collected data that is descriptive of school boards’ understandings of their legislative requirements and decision-making processes and includes direct quotes from those being questioned;
- is concerned more with processes (the how and the why) rather than objects and outcomes (the what);
- builds understandings and knowledge about school boards; and
- is concerned with developing understanding and meaning about aspects of the work of school boards and reflects the perspectives of those being interviewed as precisely as possible.

3.1.4 *The subjective view*

The philosophy of phenomenological and qualitative research demands that the researcher develop knowledge and understanding of the perspectives of those taking part in the research. The notion of empathy as described in the *Verstehen tradition*, which is the ability of a researcher to communicate an interest in people and their beliefs and opinions, is an important part of conducting qualitative research. An empathetic stance opens the researcher to the words the interviewees are using and to the way they are communicating their ideas and beliefs. As Maykut and Morehouse state a subjective approach encourages the researcher to understand the “speech patterns and behaviour of actors or agents and the specific context in which these behaviours occur” (Maykut and Morehouse, 1994, p. 20).

It is important for the researcher to understand how her “speech patterns and behaviours” influence the nature of the exchanges occurring within the context of the research. Subjective researchers recognise and acknowledge their biases and how these may be influencing the progress of the interview. The qualitative researcher acknowledges the various realities of the people under study and accepts that these realities are simultaneously valid. Therefore the findings of the research will reflect these multiple understandings.

It was appropriate to use a qualitative methodology of this kind as this research sought to *discover, understand and interpret* the ways school trustees and principals governed and managed their schools while working within the overarching legal requirement ‘to take all reasonable steps’. This thesis presents these understandings using, where appropriate, the words of the participants as they described their schools and communities, interprets these understandings and presents them: “for others to inspect” (Maykut and Morehouse, 1994, p. 18).

3.2 **Research design**

The research involved two stages of data gathering. First, a survey questionnaire was distributed widely to schools. The second phase involved interviews with key personnel in three schools selected from among the respondents to the questionnaire.

Several supplementary interviews and relevant school documents provided additional data.

3.2.1 Survey questionnaire

The aim of surveys is: “to select an approach that will generate reliable and valid data from a within a reasonable time period at minimum cost” (Burns, 1997, p. 468). Surveys gather descriptive data at a specific point of time and require the respondents to answer standard questions under similar conditions. Data needs to be gathered from a wide sample that represents a defined population. Comparisons of data may be made through the use of standard questions.

Burns (1997) provides a thorough discussion around survey questionnaires. He describes the advantages and disadvantages of this way of gathering data and the following are summaries of his key points. Key advantages of survey questionnaires include that they are:

- less expensive to administer than face-to-face interviews;
- likely to be more reliable as the written questions are the same for each participant; and are
- likely to reach a wider range and number of participants than other forms of surveys.

Disadvantages of distributing survey questionnaires include:

- problems eliciting an adequate response rate;
- a potentially reduced sample through non-response by some of the original sample;
- data collected is limited to the quality of the written responses by the respondents; and
- potential misunderstanding of the questions, especially if the content is open to different interpretations or understandings.

A survey questionnaire was chosen as the method of gathering data for the first stage for several main reasons. As the research was seeking to contribute new knowledge to the field of governance and management in New Zealand as wide a sample of opinion as possible was desirable. A questionnaire could potentially reach

schools that represented the full range of school types and sizes available in New Zealand. The advantages and disadvantages of survey questionnaires will be readdressed in sections 3.3.1a and 3.4 of this chapter.

3.2.2 *Participant Interviews*

Bogdan and Biklen (1992, p. 96) describe interviews as purposeful conversations where “the interview is used to gather descriptive data in the subject’s own words so that the researcher can develop insights on how subjects interpret some piece of the world.” Therefore interviews are an important tool when collecting qualitative data. Patton (1990, p. 295) states that: “When using qualitative interviewing strategies for data collection it is critical that questions be asked in a truly open-ended fashion. This means that the questions should permit the respondents to respond in their own terms.” To achieve this goal, strategies such as asking participants to elaborate further or to give examples may be used. Where there is more than one participant in an interview, other participants can be encouraged to contribute to points made by others. Each interview can be concluded with opportunities for participants to return to earlier questions, to provide further information or to make further comments as necessary.

When selecting interviews as the way to gather more in-depth data, the advantages and disadvantages of using interviews needed to be considered such as those identified by Burns (1997). Advantages of interviews include:

- flexibility: the interviewer is able to gauge the progress of the interview and facilitate the data collection process;
- higher response rates: many individuals respond more positively to face-to-face situations and therefore the interviewer is able to gather more representative data;
- motivation: data is more easily gathered in interviews as the participants are more likely to respond than when asked to complete a written questionnaire; and
- explanations and clarifications: the interviewer is able to provide explanations and seek clarification of matters if needed.

Burns’ (1997) disadvantages include:

- time and cost: interviews are time consuming and are considered to be the most expensive way of gathering data;
- recording data: the use of recording devices requires transcribing once the interview is completed. Writing responses by hand during the interview places severe limitations on the accuracy of recording the participants' actual words and the ability of the interviewer to keep the focus on the task and maintain an even flow to the progress of the interview; and,
- potential for bias: the presence of the interviewer may bias the interview. For example, the level of experience of the interviewer or inconsistencies in asking questions or providing explanations (Burns 1997, p. 484).

Interviews were chosen for the second stage of data gathering as the key advantages listed above were judged to outweigh any disadvantages. That face-to-face interviews facilitate data collection as described by Burns (1997) was also seen as a key advantage as it was judged to be important that as much data as possible was gathered through this second stage.

3.2.3 *Ethical issues*

Much has been written on the subject of ethics, a word that is related to the Greek words for habit and custom. The class of ethics that concerns itself with research is known as normative ethics and well known examples of this class are Kantian and utilitarian ethics. Normative ethics are standards of conduct and character *that ought to be* accepted by any group of individuals. Research ethics are normative in character and are particularly important in the conduct of qualitative research because the research intrudes on the private world of the participants. Stake (in Denzin and Lincoln 2000, p. 447) makes a strong statement when he says: "Qualitative researchers are guests in the private spaces of the world. Their manners should be good and their code of ethics strict."

This research study is bound by the Massey University Code of Ethics that establishes the expectations the University has of its staff and students when undertaking research. These guidelines are quite explicit and must be followed. Accordingly, the research was planned, conducted and written in line with these

expectations. The letter of invitation to boards at both stages of the research set out the ethical parameters under which the research would be undertaken. The requisite forms for participating in the research, agreeing to having any interview recorded and releasing the information to the researcher were completed by the participants. All participants understood that they could withdraw or not answer any questions at any time.

The main ethical concerns for this research study include:

- preserving the anonymity of the participants and their schools; and
- keeping the data confidential.

The completed questionnaires were coded with a number and this code was used for the summary and analysis process. For the second stage of data collection, the three schools were allocated another name and care taken to make sure their identity or their location was not revealed. The school aliases were used when summarising and analysing the interview data. The completed questionnaires, voice files, transcripts and other documents that could lead to the identification of the participating schools were kept in a locked cabinet.

3.3 Research process

3.3.1 Stages of data collection

Stage One: The survey questionnaire

Two sections of the Education Act 1989 informed the development of the questionnaire. These sections were:

- the discretion given in the Education Act 1989 to school boards and principals to govern and manage their schools; and,
- the legal requirement ‘to take all reasonable steps’ as specified in the education legislation and the Education Act 1989 in particular.

The two key research questions for this study emerged out of these requirements: how the legal requirement ‘to take all reasonable steps’ influences the ways schools are governed and managed in New Zealand; and how boards of trustees including principals make decisions about whether or not the steps they take to govern and manage their school are reasonable.

The questions developed for the questionnaire flowed from these key questions. They were designed to gather data relating to the understandings school trustees and principals had of their discretion to govern and manage their schools; what they considered were 'all reasonable steps'; what training was provided regarding these issues; whether the trustees or principals had experienced any differences of opinion over their discretion or reasonableness; and matters relating to their school community. To assist the respondents in answering the questionnaire, the key sections of the act were appended to the questionnaire. (See Appendix 1 for a copy of the questionnaire).

The questionnaire included two questions related to each school's policy documents. Board policy documents provide useful data in that they specify the detail of how each school is managed on a day-to-day basis. Each school was asked if they had policy that described the Boards' decision-making processes or how the Boards made sure the steps they took when governing and managing their schools were reasonable. The answers to these questions provided some guidance to the document analysis at each of the three schools.

Initially, the questionnaire was sent to thirty schools. These schools represented the widest range of schools, that is: full and contributing primary schools; intermediate, middle and secondary schools; state and state integrated schools; single sex and co-educational schools; area and year 7-15 schools; and kura kaupapa and special schools. The breadth of the sample was further extended by considering the size and decile rating of the schools. Schools in both rural and urban locations were included.

In an effort to facilitate a good response, a stamped addressed envelope was included with the letter of invitation to participate in the research and the questionnaire. The envelope was addressed to the chairperson at the school's address. In order to allow Boards the opportunity to discuss the invitation to participate in the research, a response was requested within a month of receiving the letter of invitation. (The letter of invitation is appended as Appendix 2).

By the end of the time suggested for the return of the questionnaire, just four of the thirty questionnaires had been completed and returned, with one further Board

declining and returning the uncompleted questionnaire. Such a poor response rate demanded further action and accordingly, telephone calls were made to the remaining twenty five schools.

As a result of the lack of response to these reminders, (and on eight occasions providing further copies of the letter of invitation and the questionnaire), a further ten schools were added to the sample in an attempt to match the original sample of schools. Despite the addition of these ten schools, further telephone calls and email messages, and a number of schools promising to complete the questionnaire, only nine completed questionnaires were received from the total of forty schools that comprised the sample. Although the size of the research sample was thus significantly reduced, the nine responses that were received contained sufficiently interesting data for the research to proceed to the second stage after analysis of the questionnaires was completed.

Possible reasons for this poor response include that there is usually a low response rate by schools to research questionnaires and that there was no advantage to schools in responding to the questionnaire. The timing of the questionnaire coincided with board elections and a Ministerial review of the provision of education in a geographical area contained in the sample. Finally, the questionnaire was asking questions about a difficult topic and the answers required thoughtful qualitative answers. These issues will be discussed further in the section addressing the limitations of the study.

Each completed questionnaire was allocated a number and this number was used consistently from this point on. The much reduced size of the sample, nine schools in total, meant that the analysis of the data was a relatively simple process. Accordingly, the process selected could be described as a manual spreadsheet approach. A large sheet of paper, (840 x 640 mm) was prepared with the school codes on the vertical axis and the questions on the horizontal axis. Space was left for comments and summaries at the end of each axis.

The contents of each questionnaire was summarised within the grid and potential quotes were identified by the use of small dots and the page where the potential quote

was to be found. As the individual school's questionnaires were summarised, potential themes and any comments were recorded at the end of that school's summary.

When the summaries had been completed for the total sample of nine schools, the data for each question was analysed and themes were identified and recorded in the space left at the bottom of each vertical column. These themes were then expanded on individual sheets of paper and the analysis used to develop the interview questions that were designed to explore each theme in more depth. A chart was developed that summarised the responses to the question of how boards and principals knew whether or not the steps they took to govern and manage their schools were reasonable. This chart was shown to the interview participants as part of the data gathering process. See Appendix 3 for a copy of this chart.

The nine responses to the questionnaires were analysed and this identified the key themes for exploration in the interviews. These themes were:

- the discretion to govern and manage schools and how this discretion empowered the Boards and principals;
- if and how power relationships impacted on the Boards of Trustees;
- how the Boards make sure the steps they take when governing and managing their schools are reasonable;
- whether the Boards had experienced any differences of opinion over what constituted a reasonable step;
- how Boards knew whether or not the steps they were taking were reasonable; and,
- what other influences were impacting on the ways the Boards governed and managed their schools.

The interview questions were developed from these themes and a copy of these questions are attached in Appendix 4.

Stage Two: Interviews

Three schools from the original respondents were selected to be approached to take part in the in-depth qualitative interviews. The selection process took into account the quality, content and depth of the questionnaire responses while attempting to

achieve a range of school type and size. A further three schools were identified that could be approached if needed. Interviews were sought with trustees, the principal, the staff representative and any student representatives on the Boards of these schools.

The chairperson of the Board of Trustees at each of the three schools was approached by telephone and following their consultation with the remaining trustees and principals, all agreed to take part in the interview stage of the research. A formal letter of invitation to take part in stage two of the research was sent to each board chairperson. A copy of this letter is contained in Appendix 5. Interview timetables were drawn up with each school at times and places that suited each board. A second set of questions was developed for each individual school. These questions followed up on issues specific to each school and its completed questionnaire.

Before the interviews began, the participants were given a copy of the interview information sheet (a copy is attached in Appendix 6) and the interview questions and time was allocated to allow the participants to read through these documents and ask any questions. All participants agreed to the interviews being recorded. Each recording was transcribed into a word document and the voice file stored on a CD. Copies of the transcripts were sent to each participant for their editing and approval. No participant requested a copy of the voice file. Several participants requested minor changes to their transcripts and the original transcripts of these participants were destroyed.

The three schools who took part in the interview stage of the research were given an alias in order to protect their identity. As with the numbers allocated to the schools that completed the questionnaires, this alias was used consistently from that point on. Again, as the sample was small, the same manual spreadsheet approach was used to summarise and analyse the data. Information relating to the school's type, decile status and roll was recorded as well as the status of who had participated in the interviews (that is, board chairperson, trustee, principal or staff representative). The gender of each the participants was also recorded. Highlighter pens were used to code each set of summarised data with the relevant interview individual or group. Again, potential quotes were identified and the page numbers of the relevant transcripts recorded.

Each school's summarised data was analysed and recorded, along with comments at the end of their summarised data. Analysis of the data for each question was recorded in the space left at the bottom of the vertical columns. Highlighter pens were used to link themes emerging from the data derived from the interview questions. Sheets of A4 paper were then used to expand each of the identified themes.

3.3.2 Description of the three focus schools

Kaka School

Kaka School is a small full primary school in a rural setting. The 2003 roll was 63 and the school has a decile 8⁴ rating. The school is located in a small township that serves a farming community. The school is well resourced and maintained and is located in spacious grounds. The board and principal report that the community plays a large part in the school and that relationships between the school and its community are harmonious and supportive.

Two interviews were held at this school. The first interview was with the principal and the staff representative on the Board. The second interview was with the board chairperson, two parent representatives and the school/board secretary (who does not have voting rights on the board).

Tui School

Tui School is a large contributing primary school located in a moderate sized town. The school has a decile 10 rating and the 2003 roll stood at 548. The town has experienced significant growth in recent years and the school has a number of new classrooms. The school is well maintained and has moderate sized grounds. Trustees interviewed stated that the school plays an active part in the community and good relationships are maintained with the community.

A number of interviews were conducted with this Board. Individual interviews were arranged with the board chairperson and the deputy chairperson and a separate interview was held with the principal and the staff representative on the Board. In

⁴ The Ministry of Education allocates all state and state integrated schools a decile rating of 1-10. Decile 1 schools draw their students from areas of greatest socio-economic disadvantage, Decile 10 from areas of least socio-economic disadvantage.

addition, on the recommendation of the board chairperson, a further interview was conducted with a parent, an ex trustee who had just completed two terms on the Board.

Weka College

Weka College is a co-educational year 7-15 secondary school. The 2003 roll was 341 and the school is rated decile 7. The school's charter describes the school as spacious with well-maintained grounds. The college has a wide selection of sporting facilities, a boarding facility and hosts a growing number of international students. The college is situated in a small but growing rural town that serves a community with an agricultural base. The college is well regarded by the wider community which the charter describes as having a strong and active spirit.

One interview was conducted with the board chairperson and three parent representatives. The principal, staff representative and student representative chose not to be interviewed.

3.3.3 Supplementary interviews

Three supplementary interviews were conducted. The first was with the principal of Tui School who had completed the questionnaire. The aim of this interview was to clarify a matter raised in the questionnaire. This supplementary interview was carried out before the three schools were selected.

The second supplementary interview was suggested by the chairperson of the Board at Tui School when answering an interview question about how well the composition of the board reflected the community. Accordingly, an interview was held with a parent who was willing to speak on behalf of the Maori community.

The third supplementary interview was with the principal of a special school who had completed the questionnaire. Clarification was sought of an issue raised by the principal when answering the question regarding whether or not the Board's reasonableness had been challenged. These supplementary interviews were also recorded with the approval of the participants who received copies of their transcripts for editing and approval purposes.

3.3.4 *Document Analysis*

Bogdan and Biklen (1992, pp 136-7) refer to four types of official documents that are found in schools: internal documents; external communications; student records; and personnel files. This study examined documents in the category of external communications: "...materials produced by the school system for public consumption" (Bogdan and Biklen, 1992, p.136). These external documents provide useful qualitative data as they reflect how the school is defined by the trustees and principal who govern and manage the school.

The key document viewed in each of the three schools was the school charter and the undertaking individually negotiated by each of the schools with the Ministry of Education. As has been explained earlier in this thesis, the Education Act 1989 specifies that Boards of Trustees must 'take all reasonable steps' when implementing the goals and objectives of their charters. As individual schools are required to develop strategic plans, and goals and objectives that reflect their community and school context, the charter was a crucial document for this study.

The survey questionnaire had asked if the schools had any documents related to the processes used for decision-making or to the requirement 'to take all reasonable steps'. Copies of any documents were requested to be sent back with the completed questionnaire. While several schools said they had such documents including their charters, these schools did not send in copies as requested.

Kaka School had a comprehensive folder that contains all the school's documents, including its charter, strategic planning documents, policies and procedures. The contents of this extensive folder were sampled in order to find any references to the school's decision-making processes or the taking of reasonable steps. School policy and procedures provide guidelines for decisions made by the Board and staff, for example how staff appointments are made, however no references were found that specifically stated how the Board would make sure the steps it took to govern and manage the school were reasonable. The charter strategic plan for 2003-2005 contains a clearly detailed overview of how the vision statement and school values are translated into local goals that form the strategic plan and its implementation strategies for these

three years. While neither the charter nor school policy refer specifically to taking all reasonable steps, these documents establish how the charter goals and objectives are planned to be met.

Tui School provided a copy of the document that details the school's charter, development plan and policy base. As with Kaka School, a search through this document found that while Board policy and the development plan provide clear guidelines for many of the decisions the Board and staff make there was no specific reference to the instruction to boards in the Education Act 1989 to take all reasonable steps when implementing their charter goals and objectives. The charter sets clear direction for the Board and school through the mission statement, values and aims and goals contained in the charter.

As a visit was not made to Weka College, the school's documents were not able to be scrutinised. However, when requested, the board chairperson sent a copy of the school charter, requesting that it be photocopied and the original document returned. The charter's mission statement, philosophy and values lead onto the general goals that in turn become a set of annual objectives. The college's policy documents were not seen.

3.4 Limitations of the study

As indicated in the introduction to this chapter, a number of constraints impacted on the response to the survey questionnaire. These constraints may be grouped in three ways; (i) constraints linked to the disadvantages discussed in the section 3.2.1 of this chapter, (ii) constraints relating to the timing of the questionnaire distribution, and (iii) unexpected constraints.

(i) Eliciting an adequate response rate to the questionnaire. The response rate to the survey questionnaire was very poor. Despite tactful attempts to encourage the Boards to return the questionnaires, only nine of the forty questionnaires were completed and returned. Although the purpose of the survey was not to derive generalisations, a higher return rate would have enhanced the study.

(ii) Timing of the questionnaire. Two timing issues impacted on schools' willingness to take part in the research. Firstly, the questionnaires coincided with Board of Trustee elections and a number of schools reported that the workload for Boards at this time was very heavy. Several Boards also reported that they had experienced a high turnover of trustees and that these new trustees were struggling with their new role and the training for trustees and these Boards felt that the questionnaire was beyond their ability at the time. This issue will be returned to in Part Two.

The second timing issue related to a Government review of education in a particular district. By coincidence, eight schools in the sample were involved in the education review and all eight schools declined to participate. Reasons for declining included a high degree of stress operating on the Board and the staff, overwhelming work load and understandably, a complete lack of interest in participating in research at this time.

(iii) Unexpected constraints. The follow-up telephone calls highlighted an interesting issue of how schools disseminate mail addressed to the chairperson of the Board. For example, when questioned, a significant number of board chairpersons reported that they had not received the letter of invitation and questionnaire. Several school secretaries said they had judged the letter and questionnaire to be of no interest and had consigned them to the rubbish bin. Other board secretaries looked up the Board's record of incoming mail and were unable to find any reference to the questionnaire at all even though in one case, the questionnaire and letter of invitation had been hand delivered to the school.

A further unexpected constraint became apparent as the nine completed questionnaires were received and processed: that is, who had completed the questionnaires. The letter of invitation was addressed to the *Chairperson and members of the Board of Trustees at...School* and it was anticipated that the Board would consider the request at a board meeting or a meeting between the board chairperson and the principal and complete the questionnaire by whatever means if the request was accepted. However, the nine returned questionnaires were answered in a range of ways. In five schools, the questionnaire was completed by the Board or by specific trustees, in

one school the chairperson completed the questionnaire and in the remaining three schools, the principal took responsibility for completing the questionnaire. In at least one of these three schools, the Board was unaware that the questionnaire had been sent to the school and that the principal had completed and returned the questionnaire. For these four schools, the questionnaire data was not necessarily representative of the Board's views.

A further limitation impacted on the second stage of the research. The principal, staff representative and student representative at Weka College all declined to take part in the research. This meant that the data obtained from the chairperson and trustees at the college was unable to be triangulated. It also meant that the only opportunity available to include the opinions of a student representative on a school board was lost.

Conclusion

This chapter has described the theoretical underpinnings of this research and the methodologies and methods selected to gather data. The process of undertaking the research saw changes in direction and thinking that lead to modifications to the planned data gathering process. The poor response rate to the initial set of thirty questionnaires saw a further ten schools added to the sample. A continued poor response rate meant that follow-up contact was made to the schools who had not responded. Such contact had not been a part of the research plan. In addition to securing several additional responses, this follow-up action resulted in unexpected data that contributed to the thesis. The reasons given by the schools for not participating and the various ways the request for the boards of trustees to participate in the research was handled were very interesting and thought provoking and will be addressed in chapter seven.

This chapter concludes Part One of this thesis. The preceding chapters have set the scene for Part Two. The first chapter explored the historical perspectives in which the legal requirement 'to take all reasonable steps' was introduced into education legislation in 1989. The review of relevant literature has provided further research that informs this study and the third chapter explains how the research was conducted and analysed.

PART TWO

Introduction

Part two of this thesis contains the findings of the research and the conclusions drawn from those findings.

The analysis of the data gathered through the questionnaire, and possibly the poor response to the questionnaire, demonstrates that the research was seeking answers to difficult questions. For example, when answering questions about the legal requirement 'to take all reasonable steps', some respondents indicated that they had little or no knowledge of, or understanding of this particular requirement. Most respondents thought that the requirement had little or no influence on the way they governed and managed their schools.

However when, further on in the questionnaire they were asked how they knew about whether the steps they were taking were reasonable, the same respondents were able to describe various ways of knowing if they were taking all reasonable steps when governing and managing their schools (see figure 2). By the time the interviews were conducted at the three schools, all those interviewed appeared to be familiar with the topics under discussion and were able to discuss most of these issues quite freely and in an informed manner.

These discrepancies in the responses may be explained in several ways. The respondents may have been increasing their knowledge of the topics as a result of completing the questionnaire and reading the specific sections of the Education Act 1989 that were supplied in an appendix to the questionnaire. Another explanation may be that for the respondents who said they had little or no knowledge of the legal requirement 'to take all reasonable steps', completing the questionnaire highlighted for them that they were in fact working towards taking all reasonable steps as they governed and managed their schools. Some explained that they used other words or phrases such as 'common sense' or 'being practical' when thinking about their governance or management. A third explanation may be that the relationship developed

over time with external agencies such as ERO, MOE, STA or the Catholic Education Office had helped to inform them of the legal requirement ‘to take all reasonable steps’.

Figure 2 Ways Boards know if the steps they are taking are reasonable

External	Internal	‘Default position’
Education Review Office	Self review	“No complaints”
Ministry of Education	Staff consultation	“Never been told otherwise
Charter feedback	Curriculum reports	
School Trustees Association	Principal appraisal	
Catholic Education Board	BOT visits to school	
College of Education	Policy development	
Other principals	Team work	
Comparing student achievement with national guidelines		
Community consultation and parent feedback		

The major themes that emerged from the analysis of the data form two distinct sets of foci and themes. The first set of data falls into the category of internal assurance processes or ‘looking inwards’ and the second set the category of external assurance processes or ‘looking outwards’. The third set of data looks between these internal and external processes and examines issues relating to governance.

The following three chapters will interpret and discuss the findings according to these distinct sets of data. Pertinent quotations from the questionnaires and interview transcripts will be used in order to reflect the multiple understandings of those who participated in the research. These quotations are recorded in italics within double speech marks and each quote is directly attributed to the participant.

CHAPTER FOUR

LOOKING INWARDS: INTERNAL ASSURANCE PROCESSES

Introduction

This chapter will discuss the themes identified in the analysis of the data that fit within the category of 'looking inwards' or internal assurance processes relating to the key questions: what does the legal requirement 'to take all reasonable steps' mean to school Boards of Trustees; and if and how the requirement influences their work.

The issues of discretion, taking all reasonable steps and board decision-making are key aspects of the devolution of power to Boards of Trustees that was at the heart of the education reforms legislated in the Education Act 1989. The complete discretion given to each board to: "control the management of the school as it sees fit" (s75 Education Act 1989) and to principals who have, within board policy the: "complete discretion to manage as the principal sees fit the school's day-to-day administration" (s79, (2b), Education Act 1989) is at the heart of school self-governance. That discretion is legislatively described in relation to the legal requirement 'to take all reasonable steps'. Together, they give Boards of Trustees a great deal of autonomy to control their community schools and oversee the education of the children within their community.

4.1 Discretion and taking all reasonable steps

All respondents understood the significance of s75 of the Education Act that states: "Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school's Board has complete discretion to control the management of the school as it see fit." The respondents understood that they needed to exercise that discretion within the boundaries set by legislation and discussed how they worked to achieve this end. Factors discussed included: the quality of the relationship between the Board and principal; a good understanding of the need for the Board to govern and the principal to manage; open, regular communication; and consultation with the school's community. This finding echoes statements made about the importance of good quality relationships between a board and its principal highlighted in Walsh (1997) and Walsh and Bartley (1999). They note that relationships between Boards and principals are central to effective governance and

management and emphasise that the process must be co-operative and consultative in nature.

However, one respondent indicated that the boundaries set by legislation were too limiting and that the weight of legislation and regulation was overpowering. The principal of Tui School said:

“We have got a broad framework of rules and regulations...which go with everything right through from the curriculum through to aspects of safe children both inside and outside the school, through requirements of even how you undertake things like immunization certificates and recording which children have been immunized...you know, we just go on and on.”

Nearly all respondents listed factors or aspects of legislation that they felt impacted on the way they were able to exercise their discretion. These limitations included guidelines set by the Catholic Education Office and expectations established by the ERO and the MOE. The principal of Tui School commented that: *“The Ministry of Education has set up rigid structures for the operation of schools and Minister uses ERO to check that schools comply.”* (The issue of compliance will be addressed in the following chapter). One principal who completed the questionnaire on behalf of her board wrote: *“Within guidelines from MOE, Charter and Annual Plan/Targets require approval, Budget approval annually, ERO visits every three years checking policy/Proced./Stds of instruction – apart from all that YES”*, and for the discretion allocated to the principal she wrote: *“Within policy/procedures and the above named – YES”* (emphases in original).

Several respondents referred to the limiting factor of the level of school funding provided by government through the MOE on a board’s discretion. The chairperson of Tui School said:

“So to a degree we are empowered to do what we would like in the day-to-day running of the school but as far as wider issues such as classroom numbers, the school facilities and all, we are hamstrung by the Ministry and its budget but definitely in the day to day running then we can do basically (anything) within the requirements of education requirements.”

The chairperson of Weka College commented that she felt that school boards should have more discretion over their budgets. The principal at Kaka School wrote: *“Outside*

influences such as funding also have a huge impact, e.g. the requirement to provide a second language with no additional funding for ongoing P.D.”

For schools such as Tui School, the ability to raise significant funds locally goes some way towards providing the facilities and resources that the community desires for its children. The Board deputy chairperson commented that: *“the board was empowered financially because we do have a lot of money coming through, a lot more than some schools would have.”* The theme of funding limiting board discretion to make decisions on behalf of their students and community was found a number of years ago. Gordon (1994) discussed research that described how schools in ‘poor’ areas were experiencing difficulty in managing financially while schools in ‘wealthy’ areas were able to not only maintain, but in many cases, improve their financial standing. While both Weka College and Kaka Schools found their decision-making somewhat hampered by their level of funding, Tui School reported fewer concerns as a result of their community’s ability to provide significant financial support to the school.

The issue of competing priorities was brought up in connection with funding restraints. A trustee at Kaka School said:

“It’s always a juggling act, the money is certainly not enough and it never is and you have just got to juggle the money. You have to use discretion as to where you are going to spend your money. Is it on buildings or is it on books?”

Tui School’s deputy chairperson also used ‘juggling’ as a term to describe the dilemma: *“it’s always a juggling act between getting the education into the children and ...making sure the facilities are suitable for them as well.”*

When asked if the Board’s discretion had been challenged, three respondents replied in the affirmative. A board chairman reported that his board’s discretion had been challenged by a *“disgruntled parent”* but that school policy and the law was adhered to in dealing with this case. A second respondent said:

“Sometimes the lines between ‘controlling the school’ and the ‘day to day administration’ become blurred. It is then up to both the BOT and the principal to bring this to the attention of the other and discuss and resolve the situation. Communication between parties is essential.”

The third respondent referred to an issue when the Education Review Office challenged a decision made by the board. This issue will also be addressed in the following chapter.

4.2 Knowledge about the legal requirement ‘to take all reasonable steps’

A significant element of the participants’ understanding of this requirement relates to the requirement’s place within the governance and management of state and state integrated schools. Many respondents appear to have the attitude that this legal requirement is not so much an obligation on Boards of Trustees when governing or managing their schools as it is a phrase to be interpreted by courts of law. For example, the chairperson of a board wrote: *“to ‘take all reasonable steps’ is a Government term used in legislation which can only be interpreted by the courts when things go wrong.”* He went on to write: *“Again, I only see the need to start using this term when things start to go wrong i.e. when the wheels start falling off and the relationship between board and Principal starts to deteriorate.”* The principal of Tui School also sees this legal requirement as assuming importance if something happened in the school and he used as examples a serious accident during an outdoor education activity or financial mismanagement by office staff. An ex-trustee of Tui School believes that there are levels of reasonableness. She said:

“The reasonableness, it’s definitely weighted as it comes down through you. ...for some things (reasonableness) you have to prove in a court of law and others you just have to use your noggin.”

The respondents’ level of understanding of this legal requirement varied both in knowing of its existence and in understanding the scope of the requirement. Several responses indicate a lack of understanding of this requirement with one response including a comment that while their Board knew it existed, there had been no discussion about what it actually meant for them. A trustee at Weka College verbalised this dilemma when she explained: *“I think we probably do take all reasonable steps but we don’t necessarily think of it as being that when we are doing it.”* The principal of a special school wrote that, while he knew about the requirement, most trustees: *“hadn’t seen it.”*

Some respondents explained what they understood the legal requirement to mean. A principal who responded to the questionnaire on behalf of her Board defined it as: *“I understand it to mean, considering all restraints (law, policy and procedures) and considering the ‘best’ for the collective body, or at least considering everyone.”* A chairperson of a board said: *“I think it just comes down to common sense.”* The chairperson of a board defined reasonable as: *“sensible, not excessive, suitable and logical.”* He went to say, *“What an individual thinks is reasonable is totally up to that individual’s own interpretation. So on that basis then yes, the steps we take and the staff take to govern and manage the school are reasonable.”*

Other respondents understood the significance of the requirement to their school’s charter and explained: *“We understand it to mean following our charter and strategic plans, incorporating the NEGs and the NAGs to the best of our ability”*; and *“we follow our strategic plan and consult with and keep our community informed.”* The principal of Tui School said:

“A lot of this stuff about taking all reasonable steps is guided by policy and we are required to write them, consult with the community and staff in writing them and that would go a long way in ensuring that, in most of what we do, we do take all reasonable steps”, and “so things are built in there that assist the board in applying the legislation, knowing that that the steps that have been taken in doing things around the school are reasonable.”

Other respondents, while not being aware that the legal requirement ‘to take all reasonable steps’ applied to all the goals and objectives of the charter, knew about the requirement in relation to other quite specific parts of education legislation. For these respondents, this legal requirement was most commonly associated with managing potential risks in outdoor education activities and providing a safe physical and emotional environment at the school. When asked if there were any areas of the Board’s governance and management where the requirement was addressed more rigorously some respondents referred to the need to take all reasonable steps when dealing with stand downs, suspensions, exclusions and expulsions of students and aspects of managing staff.

4.3 Ways of knowing about reasonableness

As has been discussed in the introduction to part two of this thesis, there was a discrepancy between what respondents thought they knew about the legal requirement 'to take all reasonable steps', if and how the requirement influenced their work and how they knew if the steps they were taking to govern and manage their schools were reasonable. All respondents were able to provide a range of ways of knowing if their steps were reasonable despite most boards claiming little or no knowledge about, or reference to, this legal requirement. The ways that Boards knew internally whether or not the steps they took were reasonable were: self review; policy development; visits to the school and talking with the staff; and board reports.

The chairperson of Weka College believed that the school has a: "*robust school review process in terms of policy*" and "*we are monitoring what we are saying we are going to do.*" This chairperson had spent some time matching the legislative base as outlined by the Ministry of Education and the School Trustees Association with the board's governance systems and as a result believes that, "*if everything has been done you know we are right within these criteria.*" The deputy chairperson at Tui School talked about the school's self review cycle. She said:

"That was about....checking well, have we, and that doesn't say we are reasonable, that we are taking all reasonable steps, but questions ourselves as to whether we are still heading in the right direction; are we still doing what we want to do in our mission statement."

She then reported that the Board's cycle of self-review showed that: "*We had achieved actually probably at least 95% of what we set out to do three years ago.*" This school, should it continue to achieve this kind of result with its annual plans, would be going a long way towards meeting the Education Amendment Act 2003, that empowers schools to set their own strategic planning goals in their charters and to monitor their own progress towards achieving them.

The ways Boards knew if the steps the principal was taking were reasonable were: appraisal of the principal including peer review; parent feedback; principal reports; monitoring student achievement against national achievement guidelines; consultation; and visiting the school during school hours.

Principal appraisal was cited as an important way for the Board to monitor how well the principal was managing the school. Several responses referred to peer-appraisal as well as questionnaires distributed to the students, trustees and parents. Visits to classrooms and talking with teachers and students were used by several Boards. The Board at Tui School had: *“Regular contact with staff through monthly visits to the school that include visiting classrooms and talking 1-1 with staff.”* Kaka School trustees believed in: *“Keeping up good dialogue with the staff”* as a way of monitoring the principal’s level of reasonableness in managing the school.

4.4 Decision-making and taking all reasonable steps

The Picot report made it clear that co-ordinated decision making at the local level was a key aspect of the education reforms. Some respondents discussed the need to make decisions in a collaborative and consultative manner. They understood that their charter, and its attendant strategic plans and policies, is a conduit for transforming the wishes of the community into Board and school practice. A number of participants described the efforts their boards went to in order to make sure these documents reflected their community’s wishes. Consultation practices included open meetings at schools and smaller meetings in trustees’ homes. One trustee at Weka College described the Board’s internal decision-making process as:

“I think we always discuss things fully. (The chairperson) always asks, goes around the table and says ‘have you got anything to say about this’ and I think we discuss it and we never rush into making decision because you know, you can repent at leisure.”

The chairperson replied by commenting that she liked to operate in a consensual way. This stance would fit within Walsh’s statement that defining the legal parameters of the relationship between principals and trustees is important as “educational litigation seldom leaves anyone happy, with both parties normally left out of pocket, bitter, and with damaged reputations” (Walsh, 1997, p. 102).

However, this chairperson commented that, despite active encouragement and many opportunities to participate in consultation activities, they only heard from: *“the articulate.”* She went on to say:

“The consultation process can be as good as you like but it doesn’t necessarily mean that you have good consultation. I feel that significant sections of our Weka College community resources have not been heard.”

Likewise, the ex-trustee at Tui School commented that seeking consultation with the community was not always as successful as might be hoped. She said:

“We’d hold our meetings....maybe if something contentious was going on they’d come, but other than that, very few people, the same old, same olds come to have their input and away they’d go again.”

The role of the principal in helping the Board to make decisions and then to implement those decisions in the school was discussed as a vital component of the work of Boards of Trustees. Regular and open communication was cited as an essential factor in these relationships between the principal and the Board and especially between the principal and the board chairperson. Phrases such as: “good open dialogue”; “communication is a top priority”; “we try and keep the communication channels open”; and “we have an open door policy” were used as ways of explaining the place of communication in both making and implementing Board decisions. The chairperson of Weka College referred to the appointment of a principal as:

“If there is one decision a board has to get right, it’s the principal. ...the prospect of taking all reasonable steps for a board that has a principal that is honest, hard working and taking all reasonable steps is totally different than for a board that has a principal who is inept, incompetent and couldn’t care. I just don’t think that at the end of the day boards have got all of the tools they require to manage that situation.”

This comment supports the findings of Robinson, Ward and Timperley (2003) that many New Zealand Boards of Trustees lack the necessary expertise to establish and monitor the school-based policy as required through devolved decision-making at the local level.

The Board of Trustees, the principal and the staff representative at Kaka School talked about the place of mutual trust in the partnership that governed and managed their school. The board chairperson and the principal were described as having: “level heads” and: “being calm people who work things through rather than getting upset.” These were seen as factors that lead to the high level of trust that operated between and

among the board, the principal and the staff. This level of trust was described by a trustee as: *“The Board has confidence in the staff and the staff has got confidence in the Board.”* Another trustee said about the principal: *“I think we are very fortunate at the moment with (the principal) in that we can govern and she can manage.”* This trustee went on to say, *“We do trust her to do her job,”* and *“we are leaving her to manage the school, we are not getting personally involved with the students day-to-day.”* This Board and staff appear to have a clear understanding of their complementary roles of governance and management and the place of trust in making the right decisions for their school. Mutual support was also seen as important between a board and school staff when making and implementing decisions. The principal at Kaka School said, when discussing a student discipline issue, *“the Board has always supported the school fully in the stance we have taken.”*

The issue of trust raised by the Board and staff at Kaka School reflects the position taken by a number of writers who have addressed the tension apparent in educational institutions today between ethics and accountability in education. Writers such as Smyth (1996) Haynes (1998) and Snook (2003) and Court (2004) all address apparent conflicts between the desire and ability for individuals and educational institutions to act in ways that are both morally and ethically acceptable to the community but that, *at the same time*, meet stringent external accountability or compliance expectations. For example, Court (2004) discusses her findings into co-principalships that it is possible for Boards and principals to work from a collective base that acknowledges mutual accountabilities. When discussing how a partnership was built among co-principals and their Board of Trustees that the co-principal model acknowledged the importance of legal accountabilities but that the partnership was also built on:

collectively agreed aims and accountabilities that included ethical considerations and individual moral commitments to the practice of personal integrity, honesty and shared responsibility in the provision of education as a social good (Court, 2004, p. 187).

Court goes on to conclude that a shift towards a model of school leadership that acknowledges these mutual accountabilities and more democratic and inclusive practices could enhance the provision of education in New Zealand schools. The notion of mutual trust sits uncomfortably within the NPM climate of accountability and

compliance as do the notions of collaboration, common sense and consultation that pervade the data gathered during the conduct of this research. These notions fit more comfortably within a model of school governance and management that relies on ethical relationships.⁵

When asked if there had been any differences of opinion over what was a ‘reasonable’ decision the respondents gave a variety of responses. The chairperson of Tui School talked about the place of consulting about board policy and said:

“I would see for our policies for example, there is always staff consultation and generally there is a good cross section so everyone’s got different ideas. So where if someone thinks it’s not reasonable it will come out.”

The chairperson and trustees at Weka College discussed differences of opinion over reasonableness in relation to student discipline. This Board had discussed what constituted a reasonable step when considering student suspensions, stand downs, exclusions and expulsions. One trustee asked, *“Is it reasonable that we try four or five times?”*, and: *“When we try to do our best reasonably for the child then it just becomes....we have done enough and we think we have done enough to help the child.”*

The chairperson carried on with:

“And it is a balance....your response for the needs of all of the other children and the staff as well as this particular child who is rubbing up against the system. So it’s not just one set of responsibilities, it’s a whole set of responsibilities.”

This Board was concerned with balancing the needs of all in their school in that what may be reasonable for one student might not be reasonable for other students and staff members.

The principal at Kaka School summed up the issue of decision-making and taking all reasonable steps when she wrote:

“The BOT are very involved in all decision-making processes undertaken in our school. We work a very collaborative style of decision-making and nearly all of the decisions we make are made in the light of numerous

⁵ Refer to Chapter Six, where aspects of trust will be dealt with further. The notion of trust and other more ethically based management ideas versus accountability and compliance is a most significant matter and beyond the scope of this thesis.

peoples' opinions. We find this works well for us and I feel supported in the choices we are making for our students and community."

4.4.1 Common sense and decision-making ⁶

The use of the expression 'common sense' was used by participants on a number of occasions particularly when talking about the reasonableness of their decision-making. A respondent took a brisk approach when explaining what being reasonable meant to him when he replied succinctly: *"It's just common sense."* Another participant explained, *"found common ground of what we considered reasonable - found everyone's common sense isn't the same!"* As this participant discovered, 'common sense' has the same problems associated with its use as 'reasonable'. It is subjective in that it will mean different things to different people according to their ways of knowing. The staff representative at Tui School expressed this idea when he said: *"The idea of reasonableness is going to modify and it's going to change politically, socially and chronologically continuously."*

The trustees at Kaka School discussed their pragmatic approach to making decisions. With regard to safety issues and the induction of new staff, a trustee talked about the need for everyone to use their common sense and for the need for staff members to take responsibility for their own actions as a part of being aware of any hazards around the school. The board/school secretary contributed: *"rural communities are practical people: that's what we do for a living, so we're practical, common sense sort of people"*, and *"we are all similar type of people rather than having great differences."* A second trustee took up the theme by saying: *"we just don't work like that in the country. Normally in your everyday life you are 'taking common sense', to make sure you ensure your safety."*

With regard to how a court may view a Board of Trustees' use of 'common sense' as a synonym for 'reasonableness', it would be subject to the same scrutiny. That is, common sense is no defense against unreasonable or illegal behaviour. The legal requirement is that Boards of Trustees must take all reasonable steps to implement the goals and objectives of their school charters. Trustees who consider that they are

⁶ The issue of common sense led me to Antonio Gramsci (in Hoare and Smith, 1971) during the later stage of my thesis study. His theoretical framework is beyond the scope of this research.

meeting this requirement by using their common sense would be challenged in law. In each specific case, the courts would view the individual circumstances of the case and judge the actions of the Board in accordance with the law and those circumstances. As the Tui School staff representative said: *“So what we define as reasonable one day is going to be different depending on the situation.”* (See Chapter Six for a discussion on context).

4.4.1 Involving students in decision-making

The New Zealand Curriculum (1993) contains an objective that all students will participate in school decision-making as a way of learning to participate fully in New Zealand’s democratic processes. While the student representative on the Weka College board chose not to take part in the research, the board chairperson and the trustees explained that the successive student representatives on the Board were regarded as full board members and participated fully in Board decision-making. The chairperson added that the opinion of the student representative was especially valued when the Board was making decisions regarding student discipline.

Interviewees from both primary schools discussed how they involved students in their decision-making processes. At Kaka School, students are regularly listened to or consulted with over decisions that affect them. The principal said: *“Many changes or additions around the school have come about from student letters to the board. The BOT are particularly receptive to ideas from the students.”* For example, when the Board was considering its ‘sunsmart’ policy, the students were asked to contribute to the ideas being gathered by the Board. The large shade cloth covering part of the playground was installed as a result of student input. Other examples of involving students in board decisions included the design and installation of the smoke free signage around the school and the installation of new goal posts.

At Tui School, students are also contributors to the Board’s decision-making processes. Recent examples given include feedback from students regarding the use of computers in classrooms and about model classrooms that the Board and senior staff were trialing. The staff representative discussed a class’s request to have a turtle enclosure. The staff representative explained: *“They presented plans and designs and*

costings and the board approved the payment and construction of that.” These examples demonstrate how these Boards are taking steps to implement the New Zealand Curriculum (1993) objective that all students will participate in school decision-making as a way of learning to participate fully in New Zealand’s democratic processes.

4.5 What does influence the work of Boards of Trustees?

The questionnaire asked if the requirement ‘to take all reasonable steps’ influenced the way Boards of Trustees governed and managed their schools. None of the nine respondents to the questionnaire answered yes to this question, two answered no and the remaining seven were ambivalent in their responses. One Board thought that their policies and procedures implied that: *“Everyone would take all reasonable steps”*; another Board thought that they considered the requirement in relation to risk management and outdoor education and the principal said: *“I hope my decisions would include considering all issues/requirements.”*

However, three of the ambivalent responses revealed that these Boards were more aware of their obligations than they had stated. The first Board responded with: *“No – we provide the best possible learning outcomes that we can. The focus remains on the children – providing the best learning environment, resources etc. for the children.”* The second Board wrote: *“No, our charter, and planning requirements set by the MOE would most influence us.”* The third Board explained: *“Not particularly. This is an accepted fact of part of your responsibilities as a board member and is an integral part of any decision making or setting undertaken.”* These three responses indicate that while these Boards are not necessarily aligning the legal requirement ‘to take all reasonable steps’ with their actions, they are aware of their obligations and the power devolved to them as self-managing schools.

As a result of this analysis, a further question was developed in order to explore this issue further with the three schools who agreed to extend their involvement in the research by taking part in interviews. The question was asked:

The initial analysis shows that a number of boards do not think this specific requirement (to take all reasonable steps) influences or guides their school.

What do you consider has more influence over the way you govern or manage your school? (Question 6, Interview Schedule).

The ways the interviewees responded to this question were surprising for several reasons. Firstly, most interviewees found this question difficult to answer and further explanations were needed before the question could be answered. For example, these interviewees were referred to their Board's response to the questionnaire that asked if the requirement 'to take all reasonable steps' influenced the ways they governed and managed their schools. Secondly, even after providing such information, some interviewees needed further prompting before they were able to respond. Prompts include asking the interviewees to reflect on their charter mission statement or values or questions relating to why the trustees had considered standing for election to their school's Board. And thirdly, even when prompted with their charter, some interviewees were unable to talk about aspects of their charters such as their mission statement or school values without having the document in front of them.

These difficulties could perhaps have been overcome by providing the interviewees with more time to consider this question, for example sending the interview questions to them prior to the arranged interview times rather than distributing the interview questions on arrival and allowing time for the interviewees to read the questions before the interview began. The difficulty some interviewees experienced talking about the charter could have been avoided by ensuring a copy of the school's charter was on hand during the interview for reference purposes. However, the problems experienced by some interviewees could also indicate a more general lack of understanding about the centrality of their charter to their self-management of their schools or that they quite simply were not familiar with the actual content of their charters.

Once they had thought it through a little however, the interviewees gave a wide range of responses to the question of what did influence how they governed and managed their schools. The trustees, principal and staff representative at Kaka School discussed a range of influences with the needs of their children as the top priority. The principal referred to the board's strategic planning, saying that:

"We get down to our own direction for the school, the community's wishes for their children and the children's wishes for themselves. All those factors feed into what you choose to do in a school and how you choose to do it."

A trustee said: *"Everybody is here to make sure the kids here at Kaka have the best education they can....everybody pushes really hard for that and you know, that's the main thing."* The chairperson elaborated further by saying: *"I think we definitely do take all reasonable steps to run Kaka School and to give the children the best education we can to the best of our ability and to the best of our resources."* He went on to say:

"What the community wants is student achievement, I mean, that's what I think we are all here for. If we can foster that and really help the school to run easier, make the teaching process (enjoyable) and the students enjoy their time here and want to come to school, that's really the main aim that we have got at the end of the day."

These ideas, like the notions of trust, collaboration and cooperation discussed earlier in this chapter, reveal that ideas of practicality and altruism coexist in schools alongside the imposed discourses of NPM and legal frameworks such as accountability and the requirement 'to take all reasonable steps'.

Tui School interviewees provided more specific details about what influenced their decision-making such as providing the right resources to support children's learning. The principal specified the provision of resources such as a good library, plenty of reading materials for the junior classes in particular, sports gear and ensuring smaller class numbers by funding an extra teacher from locally raised funds as examples of what the board wanted for the students. The staff representative on the Board talked about the proactive approach of the Board. He said: *"They are very interested in creating innovation and trying to work out where we should be going, rather than catching up, which I think is insightful on their part. Not a reactive, but a proactive board."* The deputy chairperson talked about the needs of the children by saying: *"they are here to learn and they need to learn in the happiest possible way."* The board chairperson summed up Tui School's approach by commenting that: *"We are all parents and we are trying to do the best for our children's education."*

At Weka College, the maintenance of the culture of the school seemed to be a driving force for the Board, with the school's community spirit and its place in the

wider community being used as examples. One trustee described her desire to do something positive for the school and expressed a concern for equity for students by saying she was concerned with: *“making sure that all students are getting a fair go.”* This Board’s culture includes a strong sporting and outdoor focus with an increasing focus on cultural activities that the Board believes is providing students with an improved balance of learning opportunities.

The issue of what actually influences the ways Boards govern and manage their school is returned to in chapter six of this thesis during the discussion of the place of context for self-managing schools.

Conclusion

This chapter has described the findings of the research data that fit within the category of internal assurance processes or themes of how Boards of Trustees govern and manage their schools within the legal requirement ‘to take all reasonable steps’. These findings demonstrate how Boards of Trustees undertake self-management as devolved to them through the education reforms of the late 1980s. It seems that discretion is understood better as tool for self-management than the legal requirement ‘to take all reasonable steps’. That Boards felt this legal requirement played little part in their governance and management practices is a most significant finding and one that will be returned to in the following chapter.

CHAPTER FIVE

LOOKING OUTWARDS: EXTERNAL ASSURANCE PROCESSES

Introduction

This chapter will discuss the themes identified in the analysis of the data that fall into the category ‘looking outwards’ or external assurance processes relating to the key questions: what does the legal requirement ‘to take all reasonable steps’ mean to school Boards of Trustees; and if and how the requirement influences their work. As figure two demonstrates (Part Two, p.79) the questionnaire respondents identified more external ways than internal ways of knowing whether the steps they were taking to govern and manage their schools were reasonable. The interviewees provided further data in their interviews that supports this finding. The data that explains how the respondents and sample schools view the role of external issues in determining their level of reasonableness will be explored.

The respondents identified ten external ways of knowing whether the steps they were taking to govern and manage their schools were reasonable. The more significant findings related to the “default position” and to the work of the ERO and the MOE will be reported separately in this chapter. The remaining ways will be reported in section 5.6 of this chapter.

5.1 “Default position”

The Oxford English Dictionary defines *‘by default’* as “because of inaction” (2002, p. 372). I have used this term to describe a number of responses that indicate ‘inaction’ by the respondents as a way of knowing about their reasonableness. There were five questionnaire responses that fell into this category. These responses seem to indicate that some boards and principals may see the status quo in a positive light and thus be depending on receiving complaints or community initiated responses in order to find out if something is not working well. This stance may be a reflection of the low level of understanding boards have in general about the legal requirement ‘to take all reasonable steps’. None of the three sample schools’ self review processes specifically referred to this particular requirement.

In response to the question about how Boards knew if the steps they took were reasonable, two trustees from Weka College wrote: *"No complaints received. No incidents reported."* A principal wrote: *"I am sure they would let us know if not!"* in reply to the board's reasonableness and: *"They would soon be told!"* (emphases in original) about the principal's reasonableness. The Board at another school recorded the response: *"We've had no complaints"* to questions about how the Board knew their steps were reasonable and how they monitored the principal's reasonableness in managing the school.

Further comments that fit within this category were made during the interviews. The board chairperson at Tui School confirmed this stance when he commented that he was sure that if any member of the community thought the Board was being unreasonable with their policy development they would let the Board know. He also said: *"If you are not receiving complaints then you have got to be doing something well and if you are receiving compliments then you are doing something well."* There were several indications that Boards may also view poor attendance at consultation meetings in a positive light. For example, the staff representative at Tui School referred to a recent consultation meeting where there was a low turnout and commented: *"and that I think was a reflection of the fact that people were pretty happy with the way things were going."* These findings are a further example of Board and principal dependence on others outside the school to inform the reasonableness of their governance and management practices.

Boards who rely on the 'default position', that is not taking a proactive stance to evaluate whether or not they are taking all reasonable steps but relying on the fact that they have received no complaints or comments from their students, staff or community, could be seen as failing to comply with the obligation. Joseph (2001) states:

A public authority must not disable itself from exercising its discretion in individual cases. When an authority is entrusted with discretionary powers, discretion must be brought to bear in every case. Each case must be considered on its merits and decided as the statute and public interest may require. An authority must not:

- (a) Adopt a fixed rule of policy;
- (b) Act under the dictation of another;
- (c) Fetter its discretion by contract or representation;
- (d) Refuse or fail to exercise its discretion; or

(e) Subdelegate its powers.

An authority abdicates its statutory function if it does any of those things without Parliament's authorization. (Joseph, 2001, p. 801)

It is quite clear that boards who rely on the 'default position' are in fact abdicating their responsibility and that such a stance would be seen as grounds for judicial review.

5.2 Ministry of Education

Boards of Trustees are required to have their charters and strategic plans approved by the MOE. The process of negotiating and approving a charter has changed since the first charters were developed by Boards of Trustees. Charters, when viewed as a three yearly agreement were signed formally by the Ministry and the board chairperson. However, from 2004, charters and strategic plans must be updated annually and these documents are no longer signed by the Ministry of Education. (This may have been a pragmatic decision as from 2004, the process is now an electronic transaction between the MOE and Boards of Trustees).

This individually negotiated charter that includes strategic planning acts as an undertaking or a promise between the government and the Board of Trustees. By preparing, negotiating and accepting a charter, Boards of Trustees have agreed to accept the fundamental obligation to take all reasonable steps to implement the contents of that charter. This is a significant undertaking by school trustees, including the principals.

Three questionnaire respondents indicated that they thought that, by approving their charters, the MOE was tacitly endorsing that the Board must be taking all reasonable steps if the Board was implementing their charter and plans. Two principals who had completed the questionnaire on behalf of their Board wrote that a way they knew that they were taking all reasonable steps in their governance and management practices was: *"Through the charter. Ministry of Education feedback has indicated that our direction is reasonable"*; and the second principal said: *"Outside the school checking; MOE charter approval."* A Board generated response contained the comment that the trustees felt they must be taking all reasonable steps to govern and manage their school because they had: *"MOE approval for charter and planning requirements."*

The stance being taken by these respondents is confirmed by a personal communication from a Ministry of Education official who states: “Upon receipt of a charter, the ministry sends a letter of reply to the board stating whether (or not) the charter meets legislative requirements.” With regard to whether or not the Ministry is affirming the reasonableness of the board’s charter and strategic plans, the communication goes on to state:

The school is accountable to numerous stakeholders in terms of the quality of the plans (or in other words: the assessment of whether ‘reasonable steps’ are being taken.):

* The ministry is one of those stakeholders but formally does not tell schools what those reasonable steps are. Instead, only if the schools seek input will the ministry provide feedback. (And),

* The Education Review Office provides qualitative feedback on each school’s planning process by looking at the documents and discussing the process with the school’s governance and management. ERO will assess and provide recommendations of what reasonable steps are for the school in school management, organisation, and administration, and in responding to the NAGs (Ministry of Education official, personal communication, 18 October, 2004).

However, while this approach may explain how the MOE aligns the requirement ‘to take all reasonable steps’ with the charter plans, and how it expects the ERO to evaluate those charter plans against this alignment, this approach would not absolve a board should a case be brought before the courts to judge whether or not that board has taken all reasonable steps in performing its governance role (see section 5.1).

5.3 Education Review Office

As has been discussed earlier, a key aspect of the work of the ERO is the responsibility for monitoring school compliance with legislative requirements and performance against the undertakings agreed to in individual schools’ charters. Over time, as detailed in chapter one, the ERO has heightened schools’ awareness of, and knowledge about these obligations through the various methodologies employed by ERO since it was established as a government department in 1989. The drive for schools to meet these obligations was noted by an ERO employee when she said “We were saying that before you can do anything else, you have to act lawfully” (French, 2000, p.19).

The ERO's work in schools was a constant theme throughout the data gathering process of this study. While specific questions about the ERO were asked of the respondents, they also offered additional information about the ERO in the course of answering other questions. Five of the nine returned questionnaires listed the ERO as a way of knowing about whether or not the steps they were taking to govern and manage the school were reasonable. A Board wrote:

“Reviews are often carried out by independent qualified people. If there were shortcomings after these reviews, e.g. ERO, obviously governance and management would come into the spotlight. That is, the board would not be doing a reasonable job.”

The chairperson of Kaka School wrote: *“We have talked quite extensively with the ERO group who came through about how reasonable our policies and documentation are.”* One principal listed ERO reports, and a second principal listed the *“satisfactory outcome”* of an ERO visit as ways of knowing about their Board's reasonableness in the way their schools were governed and managed. The principal of a special school made the statement: *“Generally the Education Review Office is seen as the moderator, right, as to what is reasonable and what is not”* and *“The Education Review Office is the one that has the job of saying what's reasonable.”* This stance is confirmed in the personal communication from the MOE official described previously in section 6.3 of this chapter.

Further references to the work of the ERO were made during the interviews with the three sample schools. The trustees, principal and staff representative at Kaka School described the processes their school had gone through with ERO over a number of years as a result of ERO reports that highlighted a high level of non-compliance with the school's legal obligations. The board chairperson referred to the time he was first elected to the board saying: *“Things quite honestly were in turmoil and that was really management matters with the past principal sort of thing and it caused a lot of problems and for the board, it wasn't an easy thing.”* He also said that, at this time, the Board was: *“basically standing over the teachers and the principal and saying this is what needs to be done and doing a lot of that administration themselves which wasn't the right sort of thing.”* As a result of these experiences this school had gone through a

period where they were very compliance-driven and the Board had prepared a lot of school documents that for them represented meeting their obligations.

The Kaka School principal discussed the processes the Board followed as they slowly built up a partnership with her after her appointment first as acting principal and then as principal, that was based on clear, open and regular communication and mutual trust and confidence. The Board has now stepped back to its governance role and the principal is now firmly in charge of administering the school's day to day operations. The board/school secretary confirmed the Board's current high level of accountability when she quoted a member of the ERO team who said during the school's last ERO visit that: "*they were struggling to find fault with the school.*" Kaka school is now able to monitor its governance and management procedures closely while at the same time, look ahead by concentrating on the school's vision for their children through their charter values, local goals and strategic plan.

The early processes described by these participants at Kaka School as they struggled to meet ERO expectations of full compliance with the legislation follow closely the findings of Humes (2000) that "most energies are directed towards ensuring that new systems, structures and processes are in place" (Humes, 2000, p. 38). This Board went through a stage where they prepared documents for the purposes of meeting ERO and MOE requirements, rather than for the purposes of discharging their obligation for good and effective governance of their school. However, it is apparent from the comments made by the principal that the Board, and hence the school, is now firmly looking ahead rather than 'looking back over its shoulder'.

A number of references were made to differing views between schools and the ERO on what constituted a reasonable step. The chairperson of Weka College made several references to differing views or perceptions about reasonableness when she said: "*...expectations and interpretations from ERO ...because at the end of the day their interpretation is right and everybody else's isn't necessarily what is being measured at that particular time.*" At Tui School, the principal discussed the concept of reasonableness and differing expectations. He said:

“because any school worth its salt will be taking all reasonable steps to make sure its children are getting a good education. Where all reasonable steps fall down is that it mightn’t be enough to satisfy what people’s expectations are.”

The principal, when asked to explain further said: *“What ERO would say, call reasonable steps and what a court of law would call reasonable steps, I mean, would be two totally different things.”* An ex-trustee at this school indicated that she was less aware that a court of law may have a role in determining whether a board had taken all reasonable steps by saying: *“The only people who are going to tell you that you are not reasonable is ERO and that is really difficult for boards.”* These comments demonstrate a reluctance to question the authority of ERO and their understanding of what constitutes a reasonable step.

5.3.1 The ERO, their current methodology and compliance

As has been discussed in chapter one, in 2002 the ERO introduced a new form of evaluation, the Education Review. This methodology includes the BAS. Prior to a review taking place, Boards are required to complete the self-audit checklist provided by the ERO and then to attest the areas of their governance and management where they have taken all reasonable steps to meet legal requirements. The board chairperson and the principal are then required to sign the attestation that states:

The Board of Trustees and the principal have taken all reasonable steps to meet their legal requirements including those detailed on Ministry of Education Circulars and other documents. Where non-compliance has been identified, measures are being taken to remedy this (Education Review Office, 2002b, p.3).

The ERO uses the completed checklists and assurance statement to assist with planning the review and then, during the review, checks aspects of the Board’s attestation in order to verify the actual level of compliance with the legal obligations.

This study’s survey questionnaire asked Boards of Trustees if they had experienced any disagreements with the ERO over whether or not they had taken all reasonable steps when governing and managing their schools. Only one of the nine responses said yes. (This response will be discussed in the following section 5.5). Yet when these schools’ last two reports were checked on the ERO website it became

apparent that there had been issues with the ERO relating to most Boards' reasonableness in governing and managing their schools.

The analysis of these reports is complicated by a number of factors. First, the school reports on the ERO website include reports generated from several evaluation processes, for example, Evaluations Reviews, Accountability Reviews and Assurance Audits. These various reviews employ different procedures and different reporting frameworks. Secondly, two of the nine schools who responded to the questionnaire had yet to go through the latest ERO review method, the Evaluation Review. Thirdly, the various official ERO report formats over time do not consistently use the phrase, or derivatives of the phrase 'to take all reasonable steps'. Finally, writers of ERO reports on individual schools do not seem to use the legal phrase, 'to take all reasonable steps' consistently within the body of the school reports.

Of the two schools that had not experienced an Evaluation Review, one school had a statement in its 2001 report that ERO affirmed that the Board was taking all reasonable steps to provide a safe physical and emotional environment for students through effective board policies and procedures. Tui School, the second school in this category, had two previous reports on the ERO website. The 1997 report listed seven actions that the Board needed to take at that time to meet its legal obligations and undertakings. The 2001 report had a heading that states: *The board of trustees must take all reasonable steps in order to improve performance* and the report then lists five actions that the board needed to take in order to meet all its legal obligations and undertakings.

The remaining seven schools had an Evaluation Review report on the ERO website. The ERO agreed with four of these schools' board self-audit and attestation documents that all reasonable steps were being taken in governing and managing the schools. For three schools in this category, the ERO disagreed with the Boards' self-audit and attestation documents. For one Board, ERO found one area of non-compliance with its obligations and undertakings. The other two schools were Kaka School and Weka College and the ERO found three areas of non-compliance in each of these schools.

During the interviews with members of the Board of Weka College and with members of the Board, the principal and the staff representative at Kaka School, further questions were asked about these discrepancies between the Boards' assurance statements and self-audit documents and ERO's findings. Weka College trustees explained this discrepancy by reporting that: "*Prior to their coming we had a perception that we were meeting needs*" and that during the review: "*our perceptions of what we needed to do and ERO's perceptions were two different things.*" The Board accepted the ERO's judgments and has worked to meet their expectations with the board chair saying: "*You take it on your shoulders and get on with the business.*" However this Board did comment on how their ERO report read. The Board gave the example of a small change that needed to be made to the way the school was reporting health and safety incidents. The board chairperson, in a comment on the school's ERO report said: "*The reality is though it can sound very bald and big, it sounds huge.*" A second trustee contributed: "*It sounds like we've got wires hanging out everywhere and kids swinging off them and trying to stuff things in sockets*" and a third trustee finished with: "*but it's a sentence that needed to be added to our policy.*" The trustees were stressing that any reader of the report would not know about the context of this issue and could think that the ERO was highlighting a major failure of the Board's obligation to take all reasonable steps when in reality the extra step that the Board needed to take, that is adding one sentence to one policy, was very small.

The experiences at Kaka School were similar. This school's trustees discussed their 2002 Evaluation Review report that specified three areas of non-compliance that the Board had not identified in their self-audit and assurance documents. The three areas all related to the health and safety of students. One issue related to a hazard on a school boundary that was the responsibility of the MOE to remedy. The trustees reported that they had been trying to get the Ministry to act in regard to this hazard for quite some time. Work taken by the ERO during the review visit on behalf of the Board resulted in the appropriate action being taken by the MOE within two days. The remaining two issues related to minor amendments to board policy and the appropriate action was taken promptly by the Board. This school now has an ERO report in the public domain that implies that the Board is not taking all reasonable steps in order to meet its legal obligations and undertakings.

Further examination of randomly selected school reports on the ERO website reveals that all Evaluation Review reports viewed contain a section headed *Board Assurance on Compliance Areas*. This section reports the findings of the *Board Assurance statement and Self-Audit Checklist* that each board completes prior to an Evaluation Review taking place at the school. The wording in the reports appears to be fairly standard, with a small selection of standard phrases used to report the ERO's findings. Should there be a discrepancy between a board's assurance statement and the ERO's findings, the report could state either: *Through the course of this review, ERO found some issues that the board and principal take immediate action to address. These are:....or: Through the course of this review ERO found the following areas of non-compliance:* The ERO then listed the areas of non-compliance identified by the ERO. If however, the ERO agrees with a board's self-audit and assurance statement, the phrases used seem to be either: *Through the course of this review, ERO's investigations did not reveal any areas of concern;* or; *ERO's investigation did not reveal any areas of concern.*

5.4 Setting the standard of reasonableness in schools

These findings raise two interesting questions. The first is: does the ERO believe schools are taking all reasonable steps when they judge that those schools are complying fully with their legal obligations and undertakings? Certainly there are indications in ERO school reports that would suggest that this is so. For example, the use of the phrase as described earlier in this section where the ERO reported that a school was taking all reasonable steps to provide a safe emotional and physical environment. The ERO identified no actions in this school's report relating to safety issues and therefore must have made the judgment that the school was fully compliant with this safety legislation. The second question is: Are the ERO and the MOE setting the standard for reasonableness in the school context? The personal communication from the MOE (18 October, 2004) that states the MOE will provide feedback about what are reasonable steps should schools ask and that the ERO provide recommendations of what reasonable steps are for schools would certainly indicate that the ERO and the MOE are setting the standard of reasonableness for schools.

The ERO and the MOE rightly *link* the legal requirement ‘to take all reasonable steps’ with compliance with schools’ legal obligations and undertakings. That is what s63 of the Education Act 1989 intends. Boards of Trustees must take all reasonable steps, within any enactment or the general law of New Zealand, to govern and manage the school in accordance with the agreed undertakings in the school charter. However, it is not correct to say that schools are taking all reasonable steps if they are considered by the ERO to be fully compliant with the law.

The issue of whether all reasonable steps have been taken while discharging a duty (such as any aspect of governing or managing a school) will not depend solely on full compliance with any law that is related to that duty. Should the courts be required to intervene in a dispute regarding the reasonableness of any action, compliance with the law may not be enough to meet the standard of reasonableness as established by the court for that particular case.

Therefore if schools are relying on the ERO or the MOE to determine that they have taken all reasonable steps when governing and managing their schools they may find that a judicial review may lead to a judgment against these Boards even allowing for a positive ERO report. It is also possible that the ERO might be cited as a respondent in cases if that agency fails to pick up on compliance issues that are later challenged in the courts. The same could apply should a school, through following a MOE approved procedure or document, find itself subject to judicial review. The MOE, under these circumstances, could also be cited as a respondent.

5.5 Conflicting advice

A particular issue was highlighted by a response to the questionnaire from a special school. This school is required to work closely with a specific agency and with various other agencies and schools when undertaking its role. The principal, who had answered the questionnaire on behalf of his Board, referred several times to an issue that arose during an Evaluation Review. The Evaluation Review highlighted a discrepancy between the understandings of the ERO and the understandings of the Board and its closely associated agency over a particular issue. The Board believed it

had the discretion to manage the issue with the specific agency but the ERO had an opposing view.

The board remained dissatisfied with the ERO's stance and after the review was concluded, the issue was discussed on several occasions with the MOE. The principal wrote: "*Subsequent discussions with the Ministry of Education indicated that the Principal was correct in allowing these students to participate.*" However, the issue remains described in the school's Evaluation Review report from the stance taken by the ERO. This case illustrates that competing views may be held over whether compliance has been achieved and whether a Board of Trustees has taken all reasonable steps when working within its legal obligations.

5.6 External themes in general

These categories discussed briefly under this heading are: consultation or parent feed-back; NZSTA; a College of Education; and the Catholic Education Office.

While aspects of consultation were discussed in the previous chapter, there were two respondents who referred to consultation or parent feedback with the schools' communities as a way of knowing about whether their governance and management practices are reasonable. One principal wrote: "*Parents and school happy with decisions made.*" The second principal recorded: "*Discussions with other principals and parents helps to ascertain whether what we are doing in governance and management is reasonable.*" This principal, during a supplementary interview, referred several times to discussions with other principals as a way of sharing ideas and self-monitoring his management practices.

NZSTA was referred to by several respondents as a provider of advice and guidance on governance and management matters. For example, this organisation's hand book was referred to by the chairperson at Weka College when she was checking the Board's subcommittees' duties against the relevant legislation. Others referred to the initial training for newly appointed trustees and the ongoing training contracted by the MOE and offered by NZSTA, particularly in relation to board and principal decision making and reasonableness. The usefulness of the telephone Helpline was commented

on by several respondents as a way of checking the legality of school procedures or decisions such as managing student behaviour.

The only Catholic school which responded to the questionnaire listed visitors to their school from a College of Education and the Catholic Education Office as providing some indication if the school was being reasonable in its governance and management. One Board, when considering how it monitored the principal's reasonableness in managing the school wrote: "*We require that student achievement is monitored by comparing to the national guidelines.*" This was an interesting statement as this was the only questionnaire response that directly linked the taking of all reasonable steps with student achievement.

Conclusion

This chapter described the role played by individuals or groups outside schools who help Boards of Trustees to know whether or not their governance and management practices meet the requirement 'to take all reasonable steps'. Boards identified a range of ways external to the schools that inform them of the reasonableness of these practices.

The role played by the ERO and its focus on compliance may have contributed significantly to Boards' reliance on this agency to determine whether Boards have taken all reasonable steps. The stance taken by the MOE in informing schools whether or not their charter plans meet the requirement 'to take all reasonable steps' may also have contributed to the issue of Board of Trustees' reliance on external agencies. However, in a communication with the Senior Solicitor with MOE he stated: "*When applying the test of reasonableness, in effect the rules are the black and white framework. The colour is provided by facts in any individual case.*" In the framework of NPM, the ERO and the MOE are concerned with the black and white framework. The 'colour' is the concern of Boards of Trustees and this colour is provided through the context of self-management. The facts in any particular case could be provided by the 'black and white' framework or the 'colour'.

Boards of Trustees have an obligation to take all reasonable steps when implementing their charter goals and objectives by virtue of the fact that they have negotiated their charter with the MOE as an agent of the Government. Boards of Trustees need to consciously take account of this obligation as the obligation is on the Boards of Trustees to take all reasonable steps and not to take all the steps an agency says are reasonable.

The following chapter will describe the themes that formed the third set of data that both links and moves between the internal and external assurance processes described so far. The third set of data demonstrates the relationships between these two processes of internal assurance processes or 'looking inwards' and external assurance processes or 'looking outwards'.

CHAPTER SIX

LOOKING BETWEEN: GOVERNANCE ISSUES

Introduction

This chapter explores governance themes situated between the internal and external assurance processes relating to the legal requirement 'to take all reasonable steps' contained in the s63 of the Education Act 1989. The evidence presented in the previous two chapters reveals that board members generally lack knowledge about that requirement and lack awareness of the influences it should have on their governance and management practices. The themes discussed related first to the internal processes (e.g. principal appraisal, staff consultation and self review processes) and then to the external processes (e.g. those of other agencies such as the ERO and the MOE) that board members considered informed and assured them as to the reasonableness of their governance and management decisions.

This chapter will discuss general governance issues arising from the education reforms of the later 1980s, that is: the devolution of power to school communities; school contexts and Maori in school communities. Each of these issues has implications for the requirement that Boards 'take all reasonable steps' in their decision-making.

6.1 Education Reforms

The transfer of power from central government agencies to the school communities was a keystone of the 1989 education reforms. The rhetoric of the reforms was that decision-making and control of schools was devolved to the parents and school staff by means of a Board of Trustees. The results reported above demonstrate that the legal obligation 'to take all reasonable steps' plays little active part in the ways Boards of Trustees administer their schools. Many school Boards had only a limited understanding of the implications of the requirement and of the understanding that the discretion granted to Boards is closely linked to the requirement 'to take all reasonable steps'. That is, discretion is at the heart of autonomous or self-managed schools and that discretion is described in relation to the legislative requirement 'to take all reasonable steps'.

6.1.1 Governance and Management

Much has been written about the subject of governance and management since the education reforms were first mooted in the late 1980s. This section will refer to more recent writing as it relates to current thinking about these key aspects of the self-governing schools model and to the ways the respondents viewed their governance and management practices.

An analysis of recent ERO publications on their website demonstrates ERO's thinking about school governance in New Zealand schools. The ERO evaluation report *Good Schools – Poor Schools* (1998) compares the performance of 236 decile 1 schools and 231 decile 10 schools using the information contained in these schools most recent ERO reports. The performance of these schools was recorded against a list of 34 performance indicators as: “strongly evident, evident, inadequate, or not reported” (Education Review Office, 1998, p. 5) and the first two performance indicators listed are ‘compliance’ and ‘compliance with legal requirements’ (p. 33). The report goes on to describe the characteristics of effective decile 1 schools where the ERO (1998, p.33) records:

Like all good schools, effective decile 1 schools are well governed by boards of trustees who understand the nature of their role and achieve a high level of compliance with legal requirements.

While the report discusses other 34 characteristics, it is significant that the ERO lists and then discusses compliance first as an indicator of schools that they perceive to be performing well.

This theme of equating good governance with a high level of compliance with legal requirements continues in other ERO documents. For example, the *School Sector Report 2001: ERO's Contribution* (2002c) sees compliance with legal requirements as the key way of judging boards' governance responsibilities. This report finds that, in the year 2001, 85% of schools achieved a rating of a ‘satisfactory’ (as opposed to ‘unsatisfactory’) level of:

the extent to which the board met the legislative requirements of the *Education Act 1989* and other legislation and regulation about the safety and well being of both the children enrolled at their school and their employees. It also considered the extent to which boards met other obligations in their written charters, (that are

deemed to include the *National Education Guidelines*). (Education Review Office, 2002c, p. 2)

The ERO reports that this figure demonstrates an improvement of 8 percent from the same judgements made in the year 2000. The position taken by the ERO in equating compliance with good governance is reflected by respondents in this study and has been discussed in Chapter five of this thesis. All respondents commented on the ERO's drive to ensure schools' compliance with legal requirements. As reported by a participant at Kaka School in regard to their level of compliance: *"The ERO people really struggled to find anything negative to comment on."* The ex-trustee at Tui School expressed her opinion over the ERO's stance on governance when she said about the ERO that they expected boards to govern their schools but that: *"They will tell you if you are not doing it right."* It appears that the ERO is seen as setting both the model and the standard for good governance and management.

For the participants, compliance was an element of their governance and management. The chairperson at Weka College believes that the Board's policy framework provides clear directions for the Board's governance role and for the principal in his management role. The chairperson understands that the Board's accountability role is crucial and that the Board must be informed about how well the school is operating. She stated:

"Certainly at the end of the day, management manages the school, the board is accountable and whilst management is running smoothly and the things for which the board is accountable, you can say, yes...and tick."

She went on to say: *"When there is an issue that the Board feels concerned about in relation to accountability, then you (the board) are coming in to manage the management."* The chairperson gave as an example a financial matter their Board needed to deal with. She said:

"This question of the management of the managers again, and that's where it can be really difficult for Boards of Trustees as to where your governance role finishes and 'stepping over'. ...you do have discretionary power to step over that line with management...it is an area that is difficult to manage."

Kaka School acknowledged the need to comply with legal requirements but also saw that governance had additional elements that were most important for their school. They saw that their vision for the school and implementing their strategic plan was a

key function of the Board. The principal expressed this when she said the role of the board was: *“the looking forward rather than the confining stuff”* and added that a lot of the compliance issues, *“should be the focus of the principal.”* This Board acknowledged that they were developing a new governance focus on the direction provided by the entire school community through the consultation process.

All participants referred to the issue of Board of Trustee training in governance. The ex-trustee at Tui School was concerned that training was not compulsory for trustees and that not all trustees felt that they needed training in their role. She said that this stance was to the detriment of Tui School and that governance and management was: *“a cloudy issue”* at Tui School. Participants at Kaka School and Weka College referred to recent training in a ‘new’ model of governance and management provided by NZSTA. My investigations of this training included attending a NZSTA training session as a guest of a local school and a telephone call with one of the authors of the governance and management model. The NZSTA model, entitled the (School’s name) School Charter and Policy Framework was referred to by the NZSTA trainer as the ‘perfect governance model’. STA National Training Coordinators have developed a charter and policy framework that very clearly separates the dual roles and governance and management. This model encourages Boards of Trustees to take overall responsibility for true governance issues and to not interfere with what NZSTA sees as clear management issues. The introduction to the model states:

Governance. The board emphasises strategic leadership rather than administrative detail, has a clear distinction of board and staff roles, concentrates on the future rather than the past or present, and is proactive rather than reactive.

Management. The board delegates all authority and accountability for the day to day operational organisation of the school to the principal. (Moffat and Hines, 2003)

This model allocates the policy framework and operations index to the Board of Trustees. The operation of personnel, financial planning and condition, asset protection, health and safety and legal responsibilities are clearly delegated to the principal who then has a strong reporting function on the delivery of these operational tasks back to the Board.

One of the NZSTA national training co-coordinators who co-authored the model explained that the model was developed in response to increasing concerns over what they saw as “*over-managing and under-leading*” by many school Boards of Trustees. Other concerns included a lack of succession planning by Boards and the discovery that for many Boards, self-review had become a ‘wordsmithing’ exercise, where the contents of policies were reviewed rather than the effectiveness of, or the outcomes of the policies. The training coordinator explained that NZSTA believed that ERO encouraged this ‘wordsmithing’ as it reviewed the contents of documents rather than Board of Trustees’ actions. This opinion was verified by several research participants, including the trustees at Weka College who remarked on the emphasis ERO placed on the “*one small sentence*” that was required to be added to a policy in order for the policy to comply with the ERO’s expectations (see chapter five, section 5.3.1).

However, nowhere in this new NZSTA charter and policy framework is there any reference to the obligation on Boards of Trustees to ‘to take all reasonable steps’ in relation to their charter undertakings. (The framework does refer once to the specific requirement on Boards ‘to take all reasonable steps’ with regard to the provision of Tikanga Maori (Maori culture) and Te Reo Maori (Maori language). The training coordinator explained that NZSTA tries to encourage Boards to constantly consider their level of reasonableness when making governance decisions. She believed that all STA trainers emphasised the need for school Boards to know and understand the implications of the legal requirement ‘to take all reasonable steps’. While this may be the case, this research has demonstrated that a low level of understanding of the requirement remains among at least some of the boards.

6.2 Power and devolution issues

Muetzelfeldt (1992) described ‘devolved power’ as like a spider web, with control still being exercised not only at the centre but also radiating out towards the rim. Several participants described their experiences with ‘devolved power’ in ways that matches Muetzelfeldt’s description. The principal at Tui School said that he felt there was still a large degree of central control while acknowledging that his Board had complete discretion in some matters. The staff representative at Tui School commented that knowing about the extent of a board’s power was: “*a discovery*

process, you don't think about it until the issue arises and then you have to consider whether it is within the powers of the Board." The deputy chairperson at this school described her understanding of her Board's discretion and power as:

"It's only sort of half-pie handing it over I think. They (the MOE) do expect us to do all the work but only to a limited degree do we have control over what we can actually do. There is still the higher power there."

She gave several examples of these limitations by saying about the teachers: *"They are quite tightly reined in by the curriculum...controlled by the Ministry of Education,"* and with regard to property, legislation and the MOE: *"They do govern exactly to what extent we can do things."* This Board referred on several occasions to the need to seek clarification with the MOE as to the actual extent of their discretion or power to operate their school as they saw fit.

The board chairperson at Weka College saw the amount of power and discretion able to be exercised by her Board as more limited than the Board at Tui School. This chairperson said:

"I think there is a dramatic increase in a desire to pull back to centralisation. So we have been given empowerment but it has been taken away again. ...if you look at it on a continuum of these are the things the board is responsible for, we probably have a discretion that's around 10% and a 90 % that's pretty mandatory."

She went on to say that: *"Within that 10% it actually gives quite a lot of discretion."* No other participants attempted to apportion the amount of power held by either school Boards or the central agencies.

Wylie (1995) discusses the impact that 'decentralisation centralisation' has had on education. She reports that trustees focus on more accountability to children than on accountability to government. This stance is confirmed by several of the comments made by participants in this study. Trustees from both Tui and Kaka schools talked about their main focus being on the children and made references to the tensions they experienced between wanting to allocate funds to school based priorities (such as books for the junior reading programme) and needing to allocate funds according to government priorities (such as building maintenance). These parents were experiencing a mismatch between the rhetoric of decentralisation; expecting to be able to influence

the way their community's schools were being run, but were instead experiencing the reality of centralisation; central fiscal control.

The idea of a 'pull back to centralisation' can be considered in the light of one of the key findings of this research. Given that all participants believed that external agencies played a major role in informing Boards of Trustees of their level of reasonableness in governing and managing their schools, it may be considered that these Boards were either knowingly or unknowingly passing back some of their discretion and power to the centre. Therefore, it appears that the devolution of power to school communities may be being eroded in two ways: first through a reclaiming of that power by the centre as suggested by one of the participants, and second, through Boards' dependence on external agencies for judgments about the reasonableness of their control of their schools. This idea is beyond the scope of this thesis but is deserving of further research.

6.3 Power, knowledge and external agencies

As has been discussed in the previous two chapters, the ERO's focus on reporting Boards of Trustees' reasonableness in complying with their legal obligations and its policy of placing school evaluation reports in the public domain may give readers external to the school and its community a biased concept of the Board's level of reasonableness in governing and managing the school. Lee (1997), as discussed in the literature review, discusses the knowledge and power held by government education agencies in their school data bases. The MOE maintains an extensive data base on schools and collects information about schools in a variety of ways including: negotiating and retaining copies of charters and strategic plans; visits to schools; and various financial and asset management measures. As with OFSTED, the MOE's data base on schools informs its policy function. The ERO also maintains an extensive data base on schools through review officers' work in schools, individual school files, school reports and other extensive reports which the ERO produces for various stakeholders in education. Like OFSTED, the ERO and the MOE are also in a strong position as custodians of that knowledge and as such, have power over schools by utilising their data bases to inform government policy decisions.

A position of powerlessness was expressed by the participants in this research when they defer to the ERO and the MOE with regard to the reasonableness of their actions and plans and to how these government agencies impact on their work as trustees. In Foucault's terms, these trustees' knowledge, developed through consultation with their communities, is subjugated within the knowledge frameworks held by the ERO. A second example of this kind of disempowerment of Boards is the way the ERO focuses Boards of Trustees on becoming wholly compliant with legislation through repeat visits and publishing school reports first to boards and communities and then to the wider public domain. The ERO's ability to publish and distribute school reports widely throughout New Zealand is a powerful way to use their knowledge about schools. This public disclosure of information heightens the vulnerability of Boards and places them in a vulnerable and submissive position relative to the power of the state. Parents use these reports to inform choices they make about their children's education. It is entirely possible that school reports which indicate that Boards may not be taking all reasonable steps as they control their schools may negatively and needlessly influence these parental choices.

6.4 Power within boards and school communities

A number of respondents talked about how power relationships within their Boards and between their Boards and school communities impacted on their work. Some trustees discussed how they felt when they first began as a member of their school's Board. Two relatively new trustees at Kaka School talked about feeling overwhelmed with the amount of documentation. One trustee said:

"It took me twelve months to work out what a NAG and a RAM were, it's all this jargon. They (the board) have done a great job setting it up and once you've worked out how the whole thing flows...it's really not until two or three months ago that I really got my head around how the whole thing actually fitted together."

The second trustee commented that she thought it was very wordy and that she was not sure where she should start, but: *"that gets better and better."* The board chairperson acknowledged that: *"It takes a while to get your head around the Board of Trustee thing"* and: *"It's a growing process."* This Board is concerned with both making sure all trustees understand their role and work within board policy, and with making sure the school's purpose and policy and procedures base would serve future trustees and

provide continuity for the school's community. The board chairperson summed it up by saying about the school's documentation:

"There was a lot of work went into it, fine tuning it and also making it very workable and very easy for incoming boards to take over. ...I am always looking ahead and thinking, well how is this going to affect the school and affect incoming boards in three or four years?"

This Board understands that the power vested in Boards of Trustees is a collective power on behalf of the school's community, irrespective of which individuals are serving as trustees at any one time.

The principal and staff representative at Tui School talked about power and school Boards. The staff representative said: *"There are certain members of the board who feel they have certain strengths that they wish to bring to the board in certain areas and sometimes those can be expressed in sort of power relationships."* The principal continued with:

"different schools will have different amounts of power within their boards and it's a lot to do with, I guess, the school management itself, the school management of the senior staff, as to how much they feel comfortable with the board.. And there are times when some of the decisions made by the board will be decisions that would not necessarily have been made by my self if I had the final word, but if you give the board power then you have to accept that sometimes things will happen in ways that aren't quite what you want them to be."

The board chairperson at this school acknowledged that a lot of the Board's power was vested in the principal by saying: *"It's critical that for us to achieve what we want to achieve out of the board and school and to meet legal requirements is that the principal is actually doing his job first and foremost."* He concluded by stating that his Board was: *"really fortunate"* that the school's principal made sure that happened. These statements demonstrate that the board chairperson and the principal at Tui School have a good understanding of how effective governance and management depends on sharing the power given through the self-managing schools model.

6.4.1 Power, gender and the 'to take all reasonable steps' requirement

The issue of power and gender in New Zealand schools has been addressed by many authors (see Strachan, 1993, Court, 1994, Hawk, 1997, Middleton and Jones, 1997, and Brooking 2003). These writers discuss gender and leadership in schools and

reflect on the differing leadership styles of men and women. The ex-trustee of Tui School discussed her experiences of gender issues while on the Board of Tui School for two terms. This ex-trustee had recently moved to Tui from Auckland and she commented several times on the significant differences between the two communities. She referred to the Board, at that time, as “*the old boys’ network*” given the preponderance of men on the board, including the principal. She said: “*there was a power/gender thing.*” This comment provides confirmation of Brooking’s (2003) findings that boards are maintaining a masculinised culture within schools.

This ex-trustee explained that during her time on the Board there were many discussions about student and staff safety on outdoor education experiences (and the need to take all reasonable steps to ensure that safety). She remembered times when her higher level of concern over safety issues resulted in her being referred to as “*hysterical*” and being advised “*to calm down.*” She said: “*That was being overly anxious as far as they were concerned. But that was a male thing, I really struck that gender thing.*” She explained that she coped with her feelings of isolation at Board meetings over her higher levels of concern by saying things like:

“Well you are going to laugh at this you know, maybe because one, I’m an Aucklander and two, because I am a female but I am just going to have to say it, you know I don’t like the way this is happening, or, I’d prefer it to be the other way or whatever.”

This ex-trustee was experiencing considerable disparity between what she considered were reasonable steps and what she perceived the male trustees on the Board at that time considered was reasonable. As has been highlighted above the objective standard of reasonableness, that is *who* measures reasonableness and against *what* standard, is at the heart of the ‘reason’ debate. The ex-trustee’s view of what was reasonable did not match the views held by male members of this school Board of Trustees. That they used words to describe her views and behaviour as ‘hysterical’ and that they suggested that she ‘calm down’ as quoted by the ex-trustee, confirms the traditional philosophical approach to reason where such so-called ‘female attributes’ are seen as undesirable; that is female/emotions and male/rationality. This ex-trustee understanding of what is reasonable is more in alignment with the ethic of care (that promotes women’s approach to reasoning based on care, responsibility and the

reduction of conflict) referred to in the literature review section of this thesis. The gender balance on this Board at that time ensured a biased view of what was considered reasonable. These experiences highlight the importance of Boards of Trustees achieving a gender balance of trustees and the significance of Boards' ability to co-opt trustees in order to address any gender imbalance on their Board. As Hawk (1997) found, despite the equity provision in the Education Act 1989, women are under-represented on school Boards.

6.4.2 *Maori and 'to take all reasonable steps'*

s61(3) Education Act 1989 requires Boards of Trustees to include in their charters a section that states:

A school charter must contain the following sections:

(a) A section that includes-

- (i) The aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of Maori culture; and
- (ii) The aim of ensuring that all reasonable steps are taken to provide instruction in tikanga Maori (Maori culture) and te reo Maori (the Maori language) for full-time students whose parents ask for it;

NAG 1 also requires boards of trustees to foster student achievement, and to:

- (v) In consultation with the school's Maori community, develop and make known to the school's community policies, plans and targets for improving the achievement of Maori students;

All three Boards who took part in the interviews, when answering a question about how successful they had been in representing the views of their communities, discussed how they went about consulting with their Maori communities. Who may speak for a school's Maori community was raised as an issue by interviewees at these three schools. Their Maori communities were made up of two distinct groups: Maori who are not tangata whenua but who had moved into the geographical area and Maori who were tangata whenua. For all three schools, this presented a complicating factor into their attempts to consult with their Maori community. While the schools understood that their Maori community comprised all who saw themselves as Maori, those who were not tangata whenua were reluctant to speak on behalf of the Maori community. Efforts made to consult with Maori who are tangata whenua were not

always successful. A second complicating factor is a Board of Trustees's ability to identify who in their community is Maori or who wish to be identified as Maori.

The chairperson at Weka College described her Board's attempts at encouraging Maori to become members of the Board. Despite at least four attempts during her time in the chair, and other attempts prior to this, the Board remains unable to achieve their objective of having Maori representation on the Board. The trustees at Weka College also reported that they were frequently unsuccessful at canvassing the opinion of Maori during their consultation exercises and that Maori were among the community voices that had not been heard.

At Kaka School, the board chairperson reported that their efforts to consult with the Maori community when the Board was redeveloping its charter were very successful. This Board elicited the help of an advisor on things Maori and their Maori community: *"were very happy and it certainly helped to put things in perspective with that whole legislation side of the Treaty of Waitangi."* However, this Board has also been unsuccessful in achieving Maori representation on the Board. These findings could be explored in future research.

The Maori community of Tui School has had different experiences. There have been issues within the community and between the community and the school regarding things Maori. The Board of Trustees does not currently have a Maori representative on the Board. At the last elections, a parent who is Maori stood for the Board but was unsuccessful in his bid to be elected to the board. The Board chose to fill two positions on the Board by co-opting the two next highest polling parents. The parent who is Maori was the third highest polling parent who was not elected and was not therefore co-opted onto the Board. The board chairperson explained that: *"As a Board we looked pretty closely at bringing someone (Maori) on the board but with these issues, these things simmering away we felt....perhaps, best to leave it."* (The chairperson was referring to the issues within the broader Maori community at the time). The board chairperson felt that the Board was aware of its legal obligations regarding Maori and that the school was successful at canvassing Maori opinion but said: *"At this stage we don't have any Maori representative on the board."*

These findings support Johnston's (1997) research that reports that a lack of consultation is an ongoing issue for Maori. Maori interests and aspirations were expected to be met in the new system outlined in *Tomorrow's Schools* through Maori participation on Boards of Trustees. Johnston's findings include that Maori have not been empowered as anticipated by *Tomorrow's Schools*. The findings of this current study suggest that, in areas of New Zealand where there has been a migration of Maori into areas away from their iwi base, it may be more difficult for Boards of Trustees to meet their obligations to share the partnership of their school with Maori.

On being asked if there was someone in the school's community who could assist with the question of what Maori may consider to be reasonable steps within the context of school governance and management, the board chairperson of Tui School provided the names of two members of the school community. The principal of Tui School considered that either parent may be prepared to speak on behalf of the school's community. Accordingly, an interview was arranged with one of these parents (who nominated the alias of 'George').

6.4.3 *Interview with a parent who is tangata whenua at Tui School*

The questions asked during this interview were the same as the questions asked of Boards of Trustees but modified slightly in order to acknowledge that a Maori opinion was being sought rather than the opinions of trustees on a school Board. A copy of this questionnaire is appended as Appendix 7.

For George, the question of how a Board of Trustees might take all reasonable steps in regard to Maori children and education involved taking: "*a better overall holistic view to things other than seeing the students just as a number or names.*" He thought that a better management technique would be for Boards to: "*take an issue through and to use all reasonable steps just following that issue through.*" George believed that tikanga Maori and te reo Maori were: "*pigeon-holed' for a while until something happens and then it gets pulled out.*" As an example he discussed Tui School's skilled kapahaka group and how they would be asked to perform for visitors and to represent the school in the community on special occasions such as international conferences held in the community but that, after these occasions, the group and what

they represented would be placed back in the ‘pigeon-hole’ until the next time someone considered it an appropriate occasion for the group to perform.

George also discussed how tikanga Maori and te reo Maori was taught in schools. He described how a school his children attended had asked him to help the teachers with their basic te reo programmes. He felt that the teachers just wanted him to:

“go and get the folder or the book on colours and do colours and if you tried to relate it to the bigger picture, it was not what they wanted. They just wanted to be able to show that they were meeting that need. For me, it was about whatever knowledge I had: it was about passing it on.”

For George, a Maori perspective on what constituted a reasonable approach to teaching te reo Maori would see teachers implementing meaningful and holistic Maori language programmes as an integral part of their teaching programmes while, in his experience, the teachers were merely fulfilling a requirement to include elements of tikanga Maori and te reo Maori in their class programmes.

With regard to the question of Maori representation on the Tui School Board of Trustees, George acknowledged that he had stood unsuccessfully for the Board. When the Board then co-opted the next two highest polling applicants, the Maori community had approached the Board and formally asked the Board to take the opportunity to co-opt George as a Maori representative. The Board however, made the decision to not co-opt George and as a result, among the Maori community: *“there was quite a bit of bitterness.”* George said that the Board was strong and:

“a very good Board and I am very supportive of Tui School and they make it easy for the school to run, they provide a nice clean safe environment, a really great learning environment and they are obviously not afraid to, and have the ability to tackle issues but as soon as it was a Maori issue, everyone backed off and ran for cover.”

George said that he was dismayed at the response of the Board and that he considered the Maori issues engaging the Maori community were part of the reason behind this decision. He stated that he believed himself to be a person of moderate Maori views and would never stir things up in the community.

George believes that with regard to school Boards exercising their discretion, fear may be a factor that limits the use of that discretion. George would like to see Boards of Trustees working in partnership with Maori to move schools ahead in meeting their

obligations to Maori under school charters. He believes that schools could use their influence and play an active role in helping the wider community to move ahead on things Maori, first through their students and then their families. He said:

"I just think it is a symptom of society at the moment, you know, everyone has that fear about what they are doing, whether they are doing the right thing or whether it is just some lark that people are on."

A number of steps were discussed during this interview that George considered would be reasonable steps for Boards to take in meeting their obligations to Maori. These include: an holistic approach to tikanga Maori and te reo Maori; embracing things Maori in a positive rather than negative way; the demonstration of growth and change in Boards' attitudes over time to things Maori; and Boards and schools proactively working with their communities to help improve Maori achievement. This last step matches the 1993 NEG's that state:

- (9) Increased participation and success by Maori through the advancement of Maori education initiatives, including educating in Te Reo Maori, consistent with the principles of the Treaty of Waitangi.
- (10) Respect for the diverse ethnic and cultural heritage of New Zealand people, with acknowledgement of the unique place of Maori, and New Zealand's role in the Pacific and as a member of the international community of nations (National Education Guidelines, 1993).

George concluded his interview by saying:

"The MOE and the ERO do a good job of promoting all reasonable steps within things Maori but I think that boards need a stronger commitment. I would hate to force boards into doing something because it would always be a negative....but, they need to be stronger."

This interview demonstrates that George believes Maori may have a very different perspective of what constitutes reasonable steps for Boards as they govern and manage their schools. The interview also reinforces that Boards of Trustees should create and take every opportunity to have Maori representation on their Board as a way of demonstrating this commitment to things Maori. As Johnston, (in Olssen and Matthews 1997) argues, effective consultation and participation in decision-making is essential to the empowerment of Maori as anticipated by *Tomorrow's Schools*. It is interesting to speculate as to whether the Board of Tui School had taken all reasonable steps to increase the participation of Maori in education initiatives when they made the conscious decision not to co-opt a Maori representative onto their Board, especially

given that the school's Maori community had specifically requested that they do so. Members of this Board had discussed using their common sense when making decisions in general. In this case, what may have been considered a 'common sense decision' for the Board has resulted in discrimination against Maori.

6.5 Context

This research has highlighted the place of school context for the requirement 'to take all reasonable steps' in Board of Trustee governance and management practices. The data analysis established that school contexts may be viewed in two ways. First, schools, and therefore Boards of Trustees, operate within contexts that have been predetermined by others and that are not subject to Board of Trustee discretion. This context can be called 'imposed contexts'. Second, Boards of Trustees have the discretion to make choices that reflect the desires of their school communities; this context can be called 'selected contexts'. This section will discuss school contexts within these 'imposed' and 'selected' contexts and will then look at the significance of school context in two cases that have come before a court of law. The tensions among these contexts will be explored.

6.5.1 Imposed contexts

Contextual elements that are imposed on schools and on Boards of Trustees include; legislation; regulation such as the NEGs and NAGs; the National Curriculum; charters and strategic planning; and deciles and therefore funding levels. While aspects of these matters have been addressed in the two previous chapters, it is relevant to re-examine some of this data from the 'imposed' contextual perspective.

The board chairperson and the principal of Tui School independently discussed the impact on the school of its decile 10 status. They reported that the 10 decile was not necessarily an accurate reflection of the school community and that the school is experiencing an increasingly high turnover of students, enrolling more students for whom English is a second language, and working with more students with challenging behaviours. The reasons for this changing profile of the school were reported as including the rapid growth of the community, an increase in the numbers of service

workers to support that growth and the increasing numbers of families who enrol their children at the school for short periods as a result of seasonal work and activities.

In addition to financial restraints experienced by the Board in providing for the needs of these students without the benefits of additional funds as a result of the school's top decile status, there was a flow on effect from the ERO during the last review. The board chairperson and the principal reported that the ERO had an expectation that the students at the school should have attained higher achievement levels commensurate with that decile 10 status. The principal considered that the actual reality of the student community or context should inform achievement standards rather than achievement linked with an imposed decile decided according to the methods selected by the MOE. The principal considered that:

“given some of the restraints we work under, like a high pupil/student turnover, some rather difficult students who come through here, that we are taking reasonable steps to ensure they get a good deal.”

The principal of a special school also referred to the significance of his school's context and the experiences he and his Board had during an ERO visit. The principal felt that he and his staff had to spend far too much time explaining to the ERO the context of the school and the special relationship the school had with other agencies, organisations and schools. This principal thought that the ERO should have already understood their special character and been able to consider how that special character or context impacted on the way the Board governed and managed the school. He said: *“What we consider reasonable in our circumstances may seem not to be reasonable from what (name of a nearby school) you know?”* The principal reported that he felt the ERO failed to take the context of the school into consideration when they made their judgments as to whether the Board had taken all reasonable steps when meeting their contractual obligations.

These examples of how ‘imposed’ contexts impact on the ways Boards of Trustees control their schools expands on and supports data relating to Boards and how they exercise their discretion when making decisions. These examples also contribute to how Boards know about the reasonableness of those decisions that is discussed earlier in the previous two chapters.

6.5.2 Selected contexts

The second form of school context recognises the ability of Boards to make choices, to exercise the discretion given to Boards of Trustees in the Education Act 1989. Elements of choice include: the shaping of the school charter to reflect the desires of the community; the strategic direction Boards may take through their planning; the appointment of staff; and the co-option of additional trustees to the Board. All respondents discussed in some detail how they felt their schools reflected the individuality of their school communities.

The participants from Kaka School were very clear about what made their school special and the importance of community consultation and participation in decision-making as a key element in maintaining that special character. The board chairperson talked about their Board's ability to govern and manage the school as: *"You really have to engineer it suit your school"* and *"we have found the happy balance in that sort of thing."* The board/school secretary explained:

"The real shining light for Kaka is that the reasonable steps are what suits Kaka. It's not a national thing, you know, it's not the same as what you would do if you were governing in the middle of high class Auckland. The reasonable steps that you have to do to educate your children, protect them and encourage them and all those things are specific to this rural school."

A trustee added:

"But we are even different than (a neighbouring school). And that's only five minutes away. We are particular to here. I think that's the thing. They have different problems over there than we have here, different strengths than we have here. And I mean they are quite close and a similar type of area. Each one is quite different."

This Board and principal were unanimous in their desire to implement their vision statement, values, local goals and strategic plan as they provided the best education they could for their students as they governed and managed their school.

Weka College Board participants talked about their school culture, citing the focus on outdoor education, the many international students, the retention of senior students and therefore staff with the ability to teach a wide range of subject options at both junior and senior levels and the ability for senior students to undertake independent living in the school's apartments that are managed by a trust. A trustee explained the

significance of difference by saying: *“a school like ours that has quite a distinct flavour, you have to try and maintain thatbecause that’s what makes us different....it attracts other students as well.”* With regard to its ability to use its discretion, the chairperson commented: *“that does enable schools to have their own flavour and to meet the needs of their own target market.”* These features of Weka College are the direct result of decisions made by the Board through its ability to use its discretion in the way the school is controlled. The Board is actively targeting the market for students seeking a focus on outdoor education and for international students. In this way, the board is utilising the market component of the 1989 education reforms.

Two respondents introduced the issue of Boards needing to be flexible in their governance approaches. The staff representative at Tui School said:

“the ideal of reasonableness is going to modify and it’s going to change politically, socially, chronologically, continuously. So what we define as reasonable one day is going to be different depending on the situation you know a board finds itself in somewhere the next day.”

The chairperson at Kaka School commented:

“As each group of new children come through and come through the different age groups, different things arise and if you are not flexible enough to say, well change our programme a bit here, and do this, do that, well, you are not really meeting the needs of your school.”

The need to be responsive to identified needs is a crucial element of working within the framework expected of school Boards, including the requirement for Boards of Trustees to take all reasonable steps when so doing.

6.5.3 *The significance of context to taking all reasonable steps*

As already discussed elsewhere in this thesis, a dispute over whether or not the steps taken by a board are reasonable when governing and managing the school may end up before a court of law. In such cases, the context in which the dispute arose would be a key element in any decision made through the courts. While no case law has been found that specifically addresses the reasonableness of any Board of Trustee’s actions, other cases have been brought before the courts in relation to the closely allied element of Boards of Trustees exercising their discretion.

For example, in a case over the discipline of two students, where one was suspended indefinitely and the other expelled, the parents of both boys issued proceedings to judicially review the decisions of the school's Board of Trustees. Judicial reviews are concerned with the decision-making process rather than the decisions that have been made. The judgment given in the High Court of New Zealand in 1990, *M and R v S and Board of Trustees of Palmerston North Boys High School* (paragraph 3) states:

principals must pause and consider whether, in all the circumstances of a particular case, suspension for an unspecified period is warranted as a matter of discretion. Boards of Trustees too must consider whether, in all the circumstances of a particular case, uplifting of suspension (conditionally or otherwise) or extended suspension or expulsion is warranted as a matter of discretion. At each of the latter discretionary stages, special circumstances and considerations of humanity and mercy may be brought into account.

The judicial review of this case emphasises the importance of context, or as worded in this case as the circumstances of a particular case, when Boards of Trustees are exercising their discretion to act in a particular way.

A second case, also concerning the discipline of a student was heard in the High Court at Auckland in 1998. The judgment, *D v M and Board of Trustees of Auckland Grammar School* (paragraphs 2 and 3) states:

- (2) School rules and the setting of boundaries or consequences before an event could not lawfully dictate the inflexible outcome of an event.
- (3) The discretion to suspend a student was not to be fettered by preconceived policy considerations or a perceived necessity to maintain discipline.

This judgment found that the Headmaster's decision to suspend the student for an unspecified period of time was invalid because he had not considered all the particular circumstances and that he had acted on incorrect information.

These two cases clearly demonstrate that Boards of Trustees must carefully consider the context of any decision that they make on behalf of their school and community. That the legal requirement 'to take all reasonable steps' as contained in s63 of the Education Act 1989 sits over all other legislation and regulation that applies to Boards of Trustees means that school Boards must always be aware of this obligation as they govern and manage their schools. At all times, when considering the

reasonableness of a Board of Trustee's actions, a court would look at the particular set of circumstances and what would be judged to be reasonable would always have to be considered in the light of those circumstances.

Conclusion

This chapter has explored the themes relating to school governance that are situated between the internal and external assurance processes relating to the obligation on school Boards 'to take all reasonable steps' as they control their schools. The discussion has ranged among the themes of school governance, as established by the education reforms of the late 1980s, and of power relationships between and among Boards of Trustees, their communities and external agencies. Finally, the significance of context to school Boards as they make decisions that impact on their schools and communities has been explored.

The themes discussed in this chapter address key issues of how New Zealand schools are governed and managed under the administrative arrangements established as a result of the education reforms of the late 1980s. Tensions have been identified that have developed over the fifteen years since the policy document *Tomorrow's Schools* and the Education Act 1989 were implemented. These tensions will be discussed in the following chapter.

CHAPTER SEVEN

CONCLUSIONS

Introduction

This final chapter summarises the first six chapters of this thesis and then draws together this study into what the legal requirement ‘to take all reasonable steps’ means to school Boards of Trustees and if and how it influences the way Boards control their schools. The first section will briefly summarise Part One of the thesis; that is the first three chapters which describe the historical perspectives to the research, the literature review and the research methodology. Part Two, the three chapters which discuss the research findings will also be summarised briefly. The second section of this chapter will then pull the research findings together and draw overall conclusions from the research.

7.1 Summary

It was necessary first to examine the premises behind the educational reforms that took place in New Zealand during the late 1980s. Accordingly, the political ideology of NPM and in particular its tenets of devolution, contractualism and accountability, were explored as they related to education. It was also necessary to look at the legal requirement at the centre of this study and to explore its meaning in law in order to determine what it might mean in the context of education given that it was first introduced into education legislation with the Education Act 1989. That it has been used at least forty times in subsequent education legislation is interesting in itself. The two agencies at the center of the reforms, the MOE and the ERO were examined and the ERO’s focus on schools’ compliance with legislation and regulation and its various methodologies were looked at in more depth.

The review of the literature that informed this research revealed that this study was pioneering in that, despite extensive research, no literature was found that addresses the issue of the reasonableness of Boards of Trustees’ actions in governing and managing their schools in New Zealand. The review of the literature was therefore wide ranging, addressing the topics of: the concept of reasonableness in law; education and law; NPM; concepts of power and empowerment; decision-making; and

compliance. These themes informed and shaped the research as it progressed from inception to conclusion.

This small scale case study takes a phenomenological and qualitative position. The survey method followed by interviews was selected as the most appropriate method for undertaking the research. Two key research questions shaped the inquiry: what does the legal requirement 'to take all reasonable steps' mean to Boards of Trustees; and if and how does this requirement influence their control of their schools? First, a survey questionnaire was developed around the two key research questions and this questionnaire was distributed to the forty schools that comprised the sample. These forty schools matched the full range of sizes and types of state and state integrated schools available in New Zealand. The second stage of the research was a series of interviews conducted with members of the Boards of Trustees of the three schools selected from among the respondents to the questionnaire. Document analysis provided an additional method of data gathering.

To a certain extent, the pioneering nature of this research shaped both the research methodology and the actual journey undertaken as the study progressed. This research was asking difficult questions at what transpired to be difficult times for the school Boards that comprised the sample. The data gathering stage of the research coincided with Board of Trustee elections and with an education review being carried out in a district by the MOE on behalf of the Minister for Education. These events were all consuming for the school Boards who cited them as reasons for not participating in the research.

As a result, the first stage of the research, the survey questionnaire, elicited only nine replies from forty distributed questionnaires. However, it was decided that the data gathered from these nine responses was sufficiently interesting and relevant to allow the research to progress to the second stage. The first three schools selected to approach for the second stage of the research all agreed to participate. The trustees, principals and staff representatives on the Boards who took part in the interviews provided an extensive range of data that was further supplemented by a parent who gave a Maori perspective and an ex-trustee from one of the three schools. Analysis of the key school

document, the charter, provided additional data. The data gathered from the questionnaire, interviews and school documents was analysed and the resulting themes were reported in Part Two of this thesis.

Part Two explored the themes identified during the analysis of the data. Chapters four and five reported themes that were grouped under the headings of internal and external assurance matters or 'looking inwards' and 'looking outwards'. Chapter six reported the themes that fell into the third category, that of governance issues or 'looking between'. This sixth chapter, while discussing findings of the research, is in many respects a conclusion in itself. However, it was treated as a findings chapter as the participants made many relevant points that contributed to this theme and their words, as they strove to explain how they governed and managed their schools, made a significant contribution in themselves.

7.2 Conclusions drawn from the research

This study highlights tensions that have arisen within the educational context since the major educational reforms were instituted in the late 1980s. The ensuing fifteen years has seen further major changes to education in general, including ongoing fluctuations to the budgets of education agencies, extensive developments to the national curriculum framework, and the introduction of the NCEA (National Certificate of Educational Achievement) at senior school level. Ongoing changes have continued to impact on the ways New Zealand state and state integrated schools are controlled. Amendments to the Education Act 1989 now require Boards of Trustees to develop, implement and report annual (and longer term) strategic plans that form part of the modified charter framework. These charters, containing the annual plans, must be submitted annually to the Ministry of Education and the requirement to consult and report annually to the community remains an obligation on Boards of Trustees.

These 'tensions' may be grouped under the three broad headings, however, the conclusions reported under each heading weave together to form an integrated whole that answers the two key research questions that initiated this study: what does the legal requirement 'to take all reasonable steps' mean to Boards of Trustees and if and how it influences their work.

7.2.1 *'To take all reasonable steps'*

A major finding of this research demonstrates that the legal requirement 'to take all reasonable steps' as specified in s63 of the Education Act 1989 acts minimally, if at all, on the ways the school trustees and principals govern and manage their schools. Very few participants, prior to taking part in the research, had actively considered either the meaning of, or the implications of this requirement for their control of their schools. Given that the use of this specific legal requirement provides Boards of Trustees with the authority to self-manage their schools this is a most interesting and significant finding.

The reasons for this lack of understanding about or knowledge of the requirement may be interpreted in several ways. First, participants indicated that the ongoing work of governing and managing schools absorbed their attention and that they were in fact addressing the burden of legislation and regulation that sits beneath the overarching requirement 'to take all reasonable steps' in s63 of the Education Act 1989. One principal expressed the effect such a surfeit of legislation and regulation has on school boards by exclaiming: "*We just go on and on.*" Concerns expressed by participants over the frustration of needing to 'reinvent' the wheel that resulted from the self-governing schools model contributes significantly to Boards of Trustees attending to what may be regarded as the minutiae of governing and managing today's schools.

Secondly, this requirement is too complex a legal phrase to be operated effectively by some 2,600 individual Boards of Trustees. The words the participating trustees and principals used as they struggled to explain what they understood this legal requirement to mean demonstrate clearly the impreciseness of this phrase. That the intention of the phrase was to allow individual Boards of Trustees to exercise discretion in the ways they govern and manage their schools contributes to the dilemma. The legal debate outlined briefly in the literature review section of this thesis demonstrates that the concept of reasonableness in law has preoccupied the legal profession since at least the 16th century. Realistically, what chances do some 2,600 individual school Boards comprised of parents or volunteers from those schools' communities have of 'getting it right' especially given that this research highlights the poor level of knowledge and understanding of this particular legal phrase?

Thirdly, it can be hypothesised that the intent or meaning of this legal requirement as introduced in education legislation has become reconstructed over the fifteen years the education reforms have been in place. Two reasons can be given for this possible reconstruction. As postulated in chapter five, the ERO's focus on making schools act lawfully through their various review and audit methodologies may have had the effect over time of setting the standard of reasonableness in schools. In particular, the ERO's current methodology, the Education Review, which requires schools to attest through a self-review process that they are taking all reasonable steps to comply with their legal obligations, links full compliance with all legislation and regulation with the taking of reasonable steps. Each individual school's ERO team makes the final judgment as to whether or not the steps the Board is taking to control the school are reasonable. As a MOE official explained:

ERO will assess and provide recommendations of what reasonable steps are for the school in school management, organisation, and administration, and in responding to the NAGS (MOE official, 18 October, 2004).

The MOE would seem to be supporting the ERO in its stance that schools it judges to be compliant must therefore also be meeting the legal requirement 'to take all reasonable steps'.

The research also demonstrated clearly that Boards of Trustees were depending to a certain extent on external agencies to provide assurance of the reasonableness of their governance and management practices. School trustees and principals were stating quite categorically that the ERO and the MOE would inform of their reasonableness, and indeed that this was part of the role of these agencies. In a similar way, some school Boards were taking the 'default position' in that they were considering that not being told that their actions were not reasonable or, not being in receipt of any complaints or comments was an acceptable way of knowing about the reasonableness of their actions. This dependence on external assurance or taking this 'default position' would not excuse a Board of Trustees should a case come before the courts. The courts would expect the school trustees to explain and to demonstrate what steps *they* had taken in any particular instance as *they* defended any judicial review of their actions. The obligation 'to take all reasonable steps' sits on Boards of Trustees and not the school's community or on any external agency.

7.2.2 *Devolution or decentralisation*

The Education Act 1989 had the effect of devolving responsibility for the control of schools from the state to individual school Boards of Trustees who were also given the power of discretion to control their schools as they saw fit. The requirement ‘to take all reasonable steps’ was the operationalisation of that discretion into law. Several participants considered that the government had taken back some of that control to the centre. However, a more interesting issue is whether or not Board of Trustees dependence on external agencies to inform them of their level of reasonableness results in those school trustees and principals self-imposing a limit on their discretion, and therefore their power, to govern and manage their schools. This raises an interesting question. That is: are Boards of Trustees either intentionally or unintentionally handing back some of their control and discretion to the state? The answer to this question lies beyond the scope of this thesis but it does bear further research.

A further tension identified through this research relates to the expectations of some trustees of their role in governing their community’s school. Several trustees talked about their reasons for becoming school trustees and used words and phrases that indicated their altruistic desires to “*hand something back*” to their community or to “*do their best*” for their children and hence for all children in their community. There is a tension or potential conflict here between these ethically-based expectations of the trustees and the strict accountability expectations of the state through the self-governing school model. This tension is clearly demonstrated by the time and efforts spent by school Boards and principals attending to their externally-based accountabilities at the expense of their internal expectations expressed in the school’s mission statement, values and principles that result from consulting with their community. This finding supports an increasing base of research that compares the differing expectations on schools by the various stakeholders in education. The state, with justification, requires accountability by schools for the tax payer funds that are spent on schools and for the quality of education provided to children by those schools. On the other hand, principals, staff, trustees, parents, and other members of any school’s community may also have expectations based on ethical issues such as altruism. It appears that the NPM tenet of accountability through devolution or decentralisation may have evolved further over the intervening years. It would be interesting to explore this issue further.

7.2.3 Governance and management

This research contributes to the knowledge and understanding of what constitutes governance in New Zealand schools fifteen years after the self-managing school model was introduced. By not understanding what is a fundamental obligation agreed to through the school charter, this research shows that Boards of Trustees are not starting from the right base. By working first with the legislation that lies beneath that overarching and fundamental obligation, it appears that Boards are working more as a management group that is managing tasks such as employment, finance and property rather than giving full effect to their charter obligations as first and foremost, the governors of the school. Boards of Trustees need to develop an increased awareness of, and knowledge about the significance of the fundamental obligation to exercise their discretion to control their schools through the requirement ‘to take all reasonable steps’. As this awareness and understanding develops, Boards would become more focused on their ultimate role of governance and less on managing the day-to-day requirements of implementing legislation and regulation.

As reported elsewhere in this research, the NZSTA is aware of this issue and is attempting to encourage Boards of Trustees to examine their governance and management practices and to adopt a style that focuses the Board on governance and ‘looking ahead’ and to delegate managing all on-site operations, including compliance with legislation and regulation, to the principal. One principal, when discussing what she had learned from NZSTA about governance and management talked about the importance of strategic planning versus compliance and referring to planning as:

“...the looking forward rather than the confining stuff. I think it’s important to have the confining stuff, there are certain things that need to be happening in schools, you know, for example appraisal systems that I think are a really important part of what goes on in a school. But, they shouldn’t be the focus of the board they should be the focus of the principal.”

As with the standard of reasonableness in schools, it is entirely possible that the ERO and the MOE have also set the standard for school governance and management which has developed over the fifteen years since the inception of the education reforms. The ERO’s focus on Board of Trustee compliance with their legal obligations has firmly established accountability as a key task of Boards of Trustees. The MOE, with its new focus on strategic planning written amendment to the Education Act, 2001 is

now working to encourage Boards of Trustees to focus more on looking ahead and making sure schools achieve the goals and objectives established through consultation with their communities. ERO, through their monitoring of school compliance with this amendment are now also helping schools to achieve this new board focus. Thus does the process of evolution impact on the NPM tenet of devolution and its model of self-governing schools.

The issue of Boards of Trustees becoming immersed in the minutiae of governing and managing schools was indicated also in the reasons given by a number of schools for declining to participate in the research. It is perhaps not surprising that schools which were unwillingly part of a government review of compulsory education in their district declined to participate. However, the schools which cited the work associated with Board elections, the lack of knowledge of new trustees of their governance role and the need for new trustees to undertake training and to have time to come to grips with their new role indicates problems with the self-governing schools model. After fifteen years, it could be assumed that all schools would have firmly embedded their 'institutional knowledge' of the way their particular school was governed and managed into both documentation and practice. This finding indicates that that may not be the case. It is a worrying concept that schools' governance and management may be subject to ongoing cycles of 'reinventing the wheel' that further detract from the primary purpose of schools, that is the education of the children in their communities.

A further and unexpected finding of this research concerned the chain of leadership in the schools. The various ways that the forty schools handled my request to participate in this research were most interesting. While accepting that a request of this type may be perceived to be a low priority for many schools (as indicated by the poor response rate to the survey questionnaire) the analysis of the ways schools managed the request was revealing. In all cases, the envelope containing the letter of invitation and a copy of the questionnaire was addressed to the Chairperson of each school at the school's address. The ways the request was handled by the schools included: passing the envelope directly to the chairperson who then dealt with the request; passing the envelope to the principal who, in several cases, handled the request without consulting with the board chairperson; and the office staff opening the envelope

and judging the contents to be of no interest to the board, placed the request in the rubbish bin. On several occasions a follow-up telephone call to several schools revealed that the letter to the board chairperson had not been listed in the record of the board's incoming mail and that no-one at the school was aware of the arrival of the request to participate in the research.

This chain of leadership reveals how the role of the Board of Trustees is perceived within schools and can be interpreted in several ways. That mail addressed specifically to a chairperson of a board was considered unimportant by office staff could indicate that this method was a way of protecting the Board from unsolicited mail or that the Board may have requested that they be protected in this way. That several principals dealt with the request without consulting their Boards may indicate that those principals regarded themselves as having the authority to reply given that they are members of their school's board. However, it may also be interpreted that as the principal, they had the right to choose whether or not to involve their Board in the request. Perhaps these principals saw the request as a management issue rather than a governance issue. This finding may simply indicate that a review of their internal office management systems may be in order to ascertain if those systems are not, by default, acting as 'gate-keeping'.

7.2.4 Legal issues

The final group of issues may be grouped under the heading of legal issues. The overwhelming interpretation of the data questions the use of the legal requirement 'to take all reasonable steps' in s63 of the Education Act, 1989. As has been discussed elsewhere in this thesis, this legal phrase was the way of operationalising the discretion given to Boards of Trustees in the s75 of the same Act. That this legal requirement has so little influence on the ways Boards reported that they governed and managed their schools leads to questioning whether 'to take all reasonable steps' provides a suitable constraint to inform the self-governance of some 2,600 state and state integrated schools around New Zealand. This research would suggest that it is not.

The lack of judicial challenge to Boards of Trustees' reasonableness in governing and managing their schools leaves many issues unresolved. That the courts are

reluctant to intervene is supported by case law quoted in Rishworth and Walsh (1999) where in the case *Maddever v Umawera District School* Justice Williams is quoted as saying “that the remedy of judicial review ought to be sparingly utilised in the context of the Education Act 1989” (Rishworth and Walsh 1999, p. 13). This belies the reassurance of Parliamentary Counsel who, when questioned by the Education and Science Committee at the time the education bill was being developed, advised the committee that the notion of reasonableness would be a matter for the courts should the question ever arise (Chairperson of the Education and Science Committee, 24 May 2003).

The expectation of some school Boards that external agencies have the authority to judge schools’ level of reasonableness and the taking of the ‘default position’ as discussed earlier in this chapter is not ‘legally safe’ for those Boards. As Joseph (2001) discusses, the abdication of a board’s statutory authority without the authorisation of Parliament is against the law. It is quite clear that Boards of Trustees who rely on external agencies’ judgments concerning the reasonableness of their action or on the ‘default position’ are in fact abdicating their responsibility and that such a stance would be seen as factors influencing the outcomes of a judicial review. Many issues pertaining to school governance could have resulted in a judicial review. This research demonstrates that community goodwill possibly plays an ongoing role in averting such legal challenges. The issue highlighted in the interview with the Maori parent regarding his school Board’s decision to not accept the Maori parents’ request that he be co-opted to the Board is a case in point. This decision could have been subject to judicial review but for the goodwill of those Maori parents. Would this Board’s decision not to co-opt a Maori parent onto their Board when they had both a specific request that they do so and a parent who was willing to be a trustee stand up to judicial review? How would the ‘fact and degree’ of the reasonableness of this decision be judged? A moot point given that the Maori parents chose not to pursue the matter but it is interesting to ponder the meaning of the legal requirement ‘to take all reasonable steps’ for this Board and to consider if and how it influenced their decision-making in this particular case.

7.2.5 Concluding statement

This research set out to discover what the legal requirement ‘to take all reasonable steps’ meant to a small sample of Boards of Trustees in New Zealand schools and if, and how it influences the way they govern and manage their schools. That this legal requirement is neither well known nor well understood by the Boards in this study has been established. That this legal requirement has limited influence on these Boards of Trustees’ control of their schools has also been established. The additional finding that establishes a high level of dependence on external assurance that school trustees are in fact taking all reasonable steps in their control of their schools is of further concern. Other tensions that have been identified in the current self-governing schools’ model, including the possible setting of the standard of reasonableness in education by the ERO and the MOE and the potential conflicts between the accountability and ethically-based models of governance all indicate that the NPM model of self-governing schools may not be the best solution for New Zealand schools. It is now time for the policy makers to evaluate the effectiveness of this model of self-governance and to evaluate its impact on the delivery of education to New Zealand children.

APPENDICES

Appendix One:	Survey questionnaire
Appendix Two:	Information sheet
Appendix Three:	Summary chart shown to interviewees
Appendix Four:	Interview questions for three selected schools
Appendix Five:	Letter of invitation to participate in interview stage of research
Appendix Six:	Information sheet for interviewees
Appendix Seven:	Interview questions for parent providing a Maori perspective

Appendix One: Survey questionnaire

Please refer to the appended information sheet when considering these questions.

Please note you are not obliged to answer all the questions. Feel free to leave any questions that you may not want to answer or feel that you can't answer. Please continue on the reverse if you need more space.

1. Does your board believe that it has "complete discretion" to control your school "as it sees fit"? (See Appendix, 1.)
 - 1.1 Does your principal believe she or he has "complete discretion" to manage the school's day to day administration? (See Appendix, 2.)
 - 1.2 Do you think that this discretion been challenged by anyone or group? If yes, please explain.
2. Has your board undertaken any training in decision-making? If yes, please note any details.
 - 2.1 Do you have a documented policy or procedure that guides your decision-making? If yes, please attach a copy to the completed questionnaire.
3. Is your board familiar with the legal requirement "to take all reasonable steps" in the Education Act 1989 and in subsequent legislation? (See Appendix, 3). If yes, please provide a brief account.
 - 3.1 Have you had any training or assistance regarding this requirement? If yes, please record the details.
 - 3.2 Do you have a policy or procedure related to the requirement "to take all reasonable steps" and if so, is it documented? If so, please send in a copy with the completed questionnaire.
4. Does this requirement influence the way you govern and manage your school? If yes, please provide a brief description.
 - 4.1 Can you describe any particular instance when your board discussed how it was going to make sure the steps it was taking were reasonable?
 - 4.2 Are there any areas of your governance and management of the school where this requirement is addressed more rigorously? If yes, please explain.

- 4.3 Have you discussed this requirement with your community? If yes, how and when?
5. How do you know whether or not the steps you are taking to govern and manage your school are reasonable?
- 5.1 Does anyone on the board have responsibility for overseeing this requirement?
- 5.2 Do you monitor the principal's 'reasonableness' in managing the school? If so, how?
6. Has your board experienced any disagreements over what constitutes a reasonable step, within your board, with your staff or with your community?
- 6.1 If yes, how did you resolve the disagreement?
- 6.2 Have you experienced any disagreement with the Education Review Office over whether or not you have taken 'all reasonable steps' in governing and managing your school?
- 6.3 If yes, was it resolved and how?

Appendix

1. s75 of the Education Act 1989 states:

s75. Boards to control management of schools

Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school's Board has complete discretion to control the management of the school as it sees fit.

2. s79 of the Education Act 1989 states:

(1) A school's principal is the Board's chief executive in relation to the school's control and management.

(2) Except to the extent that any enactment, or the general law of New Zealand, provides otherwise, the principal-

(a) Shall comply with the Board's general policy directions: and

(b) Subject to paragraph (a) of this subsection, has complete discretion to manage as the principal thinks fit the school's day to day administration.

3. s 63 Education Act, 1989 states:

s63 Effect of school charter

A school charter has effect as an undertaking by the Board to the Minister to take all reasonable steps (not inconsistent with any enactment, or the general law of New Zealand) to ensure that:

(a) The school is managed, organised, conducted, and administered for the purposes set out or deemed to be contained in the school charter; and

(b) The school, and its students and community, achieve the aims and objectives set out in the school charter.

Please note, in addition to this charter requirement, the phrase "to take all reasonable steps" is used more than forty times in current education legislation.

Appendix Two: Letter of invitation that accompanied the questionnaire

INVITATION TO PARTICIPATE IN RESEARCH

**The Education Act 1989 and the requirement
“to take all reasonable steps.”
What does this mean for school Boards of Trustees?**

Dear Chairperson and members of the Board of

My name is Trisha Niven-Simpson and I am a distance student studying with Massey University. As part of my Master of Education degree, I am undertaking research into the legal requirement “to take all reasonable steps” as contained in Section 63: Effect of the Charter, of the Education Act, 1989. This requirement acts as an “umbrella” requirement over the goals and objectives of school charters and therefore impacts on all aspects of the work of trustees, that is: board procedures; curriculum management; management of Maori education and the management of student support, finances, personnel, property and assets; and any attached units and/or teachers. The research will investigate how this requirement influences the ways boards of trustees govern and manage their schools.

The research aims to include information from a range of school types, including state, state integrated, full and contributing primary, intermediate, secondary, area, kura kaupapa and special schools across a range of decile rankings. It involves two stages of data collection, firstly a survey questionnaire to a wide range of schools and secondly, follow-up interviews with boards members in up to three selected schools.

I would be grateful if your board agreed to participate, as your views about these issues are important. If you agree this would involve you in completing the attached questionnaire and returning it to me in the stamped addressed envelope that I will post to you. Your return of the questionnaire will be taken as your informed consent to the following procedures in accordance with the Massey University research policy and ethical procedures.

1. Stage One, Survey questionnaire

The completed questionnaires will be allocated a code for confidentiality purposes. The questionnaires and their codes will be kept in a secure place while the thesis is being written. The data obtained through the questionnaires will be an important component of the thesis. I undertake to send you a summary of the findings when the project is concluded.

I will maintain confidentiality throughout by:

- changing any details that could identify any individual, your school or the location of your school;
- being the only person dealing with the completed questionnaires; and

- storing the completed questionnaires in a secure place for five years. After that time, I will shred the questionnaires.

2. Stage Two, Case studies (NB. Only selected schools would participate)

Should your school be selected for the second stage of the research and your board agrees to participate further in the research, I will interview the trustees, including the principal, staff representative and student representative (if appropriate) in order to obtain further information about how the requirement “to take all reasonable steps” affects the way your school is governed and managed. For these face-to-face interviews, the trustees may choose to have either individual or small group interviews (with no more than three people in each group).

You will have the choice as to whether the interview is recorded. You may choose to receive either an electronic copy of your recorded interview or a paper copy of your interview. You will have the opportunity to indicate any material in your interview that you do not wish me to use.

I will maintain confidentiality by:

- allocating the case study schools a code for confidentiality purposes. The interview data and their codes will be kept in a secure place while the thesis is being written;
- changing any details that could identify any individual, your school or your location;
- being the only person dealing with the data gathered during the interviews;
- storing the information obtained through the interviews in a secure place for five years. After that time, I will destroy any voice files and shred the interview files.

You are under no obligation to accept this invitation. If you decide to participate, you have the right to:

- decline to answer any particular question;
- withdraw from the study at any time before the thesis is completed;
- ask any questions about the study at any time during participation;
- provide information on the understanding that your name will not be used unless you give permission to the researcher; and
- be given a summary of the research findings when it is concluded.

My contact details are:

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Please contact any of us should you wish to discuss this project or if you require further information.

Committee Approval Statement

This project has been reviewed, judged to be low risk, and approved by the supervisors under delegated authority from the Massey University Human Ethics Committee. If you have any concerns about the conduct of this research, please contact Professor Sylvia Rumball, Assistant to the Vice-Chancellor (Ethics and Equity), telephone 06 350 5249, email humanethics@massey.ac.nz.

Thank you for considering my request. I understand that you may wish to discuss this at a board meeting, but your response would be appreciated within two weeks of receiving the questionnaire.

Yours sincerely

Patricia Niven-Simpson

Appendix Three: Summary chart shown to interviewees**External**

Education Review Office
 Ministry of Education
 Charter feedback
 Catholic Education Board
 College of Education
 Other principals
 Comparing student achievement with
 national guidelines
 STA

Internal

Self review
 Staff consultation
 Curriculum reports
 Principal appraisal
 BOT visits to school
 Policy development

Ways boards know if the steps they are taking are
 reasonable.

Community

Parents
 Community
 Consultation

“Default position”

No complaints received
 Not been told

Combined effort

All working together

Appendix Four: Interview questions for three selected schools

INTERVIEW QUESTIONS

1.

Section 75 of the Education Act 1989 states *Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school's Board has complete discretion to control the management of the school as it sees fit*; and likewise section 79 of the same act gives principals, under the same conditions *complete discretion to manage as the principal thinks fit the school's day to day administration*. (see the appendix to your information sheet). My initial analysis of the questionnaires returned to me indicates that some boards/principals believe that their discretion is moderated by legislation, government agencies and other issues such as funding. So my first question is;

Do you believe that this section of the legislation empowers you as a board? Does anything limit that power, or act as a moderator on your discretion to control or manage your school?

2.

Still thinking about your discretion to control or manage your school. Boards of trustees were established as a mechanism for returning power to school communities, a way of empowering first parents and then communities so:

Do power relationships impact in any way on your board, either within the board and its community or between the board and external agencies such as MOE, ERO, and if so, how?

3.

Thinking about your community, the composition of your board and about your charter:
How successful do you think you have been in representing your community and their views?

3a

Do you involve your students in decisions that may impact on them?

4.

With regard to the legal requirement "to take all reasonable steps" (commonly known as TARS) my initial analysis of the data gathered so far demonstrates a range of opinion over whether or not boards have discussed this particular and quite specifically worded requirement and in what context they have discussed it, for example in training sessions or when writing charters:

In any discussions you may have had, have you experienced any differences of opinion over what may be considered a reasonable step? If so, how did you resolve this difference of opinion?

5.

Thinking about how a board knows whether the steps it, or the principal takes are reasonable, have a look at this summary of the responses to date.

What do you think?

6.

The initial analysis shows that a number of boards do not think this specific requirement influences or guides their work so:

What do consider has more influence over the way you govern/manage your school?

7.

With regard to the research topic of boards and reasonableness:

Are there any issues, matters or questions that are relevant or important to your board that we haven't addressed?

Other.

Are there any questions or issues that you would like to return to?

Do you have any questions or comments?

Would you be receptive to any follow-up phone calls or requests for further interviews if necessary?

Appendix Five: Letter of invitation to participate in interview stage of research

INVITATION TO PARTICIPATE IN RESEARCH

The Education Act 1989 and the requirement “to take all reasonable steps.” What does this mean for school Boards of Trustees?

Dear Chairperson of,

Thank you for completing the survey questionnaire that was stage one of my research.

I would like to invite you and your board to be part of the second stage of the research into the legislative requirement “to take all reasonable steps.” This stage of the research involves interviews with the chairperson and other available trustees, the principal and the staff and the student representative (if appropriate) in order to obtain further information about how the requirement “to take all reasonable steps” affects the way your school is governed and managed. For these face-to-face interviews, the trustees may choose to have either individual or small group interviews.

Should your board agree to participate in this stage of the research, you will have the choice as to whether the interview is recorded. If you agree to the interviews being recorded there should be no more than three participants in order to facilitate the transcription of the recording. You may choose to receive either an electronic copy of your recorded interview or a paper copy of your interview. You will have the opportunity to indicate any material in your interview that you do not wish me to use.

I will maintain confidentiality by:

- allocating the case study schools a code for confidentiality purposes. The interview data and their codes will be kept in a secure place while the thesis is being written;
- changing any details that could identify any individual, your school or your location;
- being the only person dealing with the data gathered during the interviews;
- storing the information obtained through the interviews in a secure place for five years. After that time, I will destroy any voice files and shred the interview files.

By deciding to participate, you have the right to:

- decline to answer any particular question;
- withdraw from the study at any time before the thesis is completed;
- ask any questions about the study at any time during participation;
- provide information on the understanding that your name will not be used unless you give permission to the researcher; and
- be given a summary of the research findings when it is concluded.

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I look forward to hearing from you,

Yours sincerely

Patricia Niven-Simpson

Appendix Six: Information sheet for interviewees

INFORMATION SHEET

**The Education Act 1989 and the requirement
“to take all reasonable steps.”
What does this mean for school Boards of Trustees?**

My name is Trisha Niven-Simpson and I am a distance student studying with Massey University. As part of my Master of Education degree, I am undertaking research into the legal requirement “to take all reasonable steps” as contained in Section 63: Effect of the Charter, of the Education Act, 1989. This requirement acts as an “umbrella” requirement over the goals and objectives of school charters and therefore impacts on all aspects of the work of trustees, that is: board procedures; curriculum management; management of Maori education and the management of student support, finances, personnel, property and assets; and any attached units and/or teachers. The research will investigate how this requirement influences the ways boards of trustees govern and manage their schools.

The research involves two stages of data collection, firstly a survey questionnaire to a wide range of schools (now completed) and secondly, follow-up interviews with board members in up to three selected schools.

This second stage of the research involves interviews with the chairperson and other available trustees, the principal and the staff (and the student representative if appropriate) in order to obtain further information about how the requirement “to take all reasonable steps” affects the way your school is governed and managed. For these face-to-face interviews, the trustees may choose to have either individual or small group interviews.

You have the choice as to whether the interview is recorded. If you agree to the interviews being recorded there should be no more than three participants in order to facilitate the transcription of the recording. You may choose to receive either an electronic copy of your recorded interview or a paper copy of your interview. You will have the opportunity to indicate any material in your interview that you do not wish me to use.

I will maintain confidentiality by:

- allocating the case study schools a code for confidentiality purposes. The interview data and their codes will be kept in a secure place while the thesis is being written;
- changing any details that could identify any individual, your school or your location;
- being the only person dealing with the data gathered during the interviews;
- storing the information obtained through the interviews in a secure place for five years. After that time, I will destroy any voice files and shred the interview files.

By deciding to participate, you have the right to:

- decline to answer any particular question;
- withdraw from the study at any time before the thesis is completed;
- ask any questions about the study at any time during participation;
- provide information on the understanding that your name will not be used unless you give permission to the researcher; and
- be given a summary of the research findings when it is concluded.

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Appendix

1. s75 of the Education Act 1989 states:

s75. Boards to control management of schools

Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school's Board has complete discretion to control the management of the school as it sees fit.

2. s79 of the Education Act 1989 states:

(1) A school's principal is the Board's chief executive in relation to the school's control and management.

(2) Except to the extent that any enactment, or the general law of New Zealand, provides otherwise, the principal-

(a) Shall comply with the Board's general policy directions: and

(b) Subject to paragraph (a) of this subsection, has complete discretion to manage as the principal thinks fit the school's day to day administration.

3. s 63 Education Act, 1989 states:

s63 Effect of school charter

A school charter has effect as an undertaking by the Board to the Minister to take all reasonable steps (not inconsistent with any enactment, or the general law of New Zealand) to ensure that:

(a) The school is managed, organised, conducted, and administered for the purposes set out or deemed to be contained in the school charter; and

(b) The school, and its students and community, achieve the aims and objectives set out in the school charter.

Please note, in addition to this charter requirement, the phrase "to take all reasonable steps" is used more than forty times in current education legislation.

Appendix Seven: Interview questions for parent providing a Maori perspective

INTERVIEW QUESTIONS

1.

Section 75 of the Education Act 1989 states *Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school's Board has complete discretion to control the management of the school as it sees fit*; and likewise section 79 of the same act gives principals, under the same conditions *complete discretion to manage as the principal thinks fit the school's day to day administration*. (see the appendix to your information sheet). My initial analysis of the questionnaires returned to me indicates that some boards/principals believe that their discretion is moderated by legislation, government agencies and other issues such as funding.

From a Maori perspective, how do you think boards should or could exercise this discretion?

1a. Do you think anything limits that power, or acts as a moderator on that board/principal discretion to control or manage a school?

2. Boards of trustees were established as a mechanism for returning power to school communities, a way of empowering first parents and then communities so:

From a Maori perspective, could power relationships impact in any way on a school board of trustees, either within the board and its community or between the board and external agencies such as MOE, ERO, and if so, how?

3. How successful do you think school boards are in representing Maori and their views?

4. With regard to the legal requirement "to take all reasonable steps" (commonly known as TARS) my initial analysis of the data gathered so far demonstrates a range of opinion over whether or not boards have discussed this particular and quite specifically worded requirement and in what context they have discussed it, for example in training sessions or when writing charters. In addition to all the charter goals and objectives, the Nags and the NEGs, school boards are specifically required to take all reasonable steps to provide instruction in tikanga Maori and te reo Maori for full-time students whose parents who request it. (see attached sheet).

In your opinion, what do these requirements mean for Maori?

4a. What would count as "all reasonable steps" for Maori?

5. Thinking about how a board knows whether the steps it, or the principal takes are reasonable, have a look at this summary of the responses to date.

What do you think?

6. The initial analysis shows that a number of boards do not think this specific requirement influences or guides their work so:

What do consider could have more influence over the way boards govern/manage schools?

- 7. Are there any issues, matters or questions that you think are relevant to Maori that we haven't discussed?**
- 8. Are there any questions or issues that you would like to return to?**
- 9. Do you have any questions or comments?**
- 10. Would you be receptive to any follow-up phone calls or requests for further interviews if necessary?**

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