



AUCKLAND DISTRICT LAW SOCIETY

PUBLIC ISSUES COMMITTEE

Chancery Chambers
2-8 Chancery Street
P O Box 58, Auckland
DX: CP24001
Telephone: (09) 303 5270
Internet: <http://www.adls.org.nz>
Facsimile: (09) 309 3726

This paper is issued by the Public Issues Committee of the Auckland District Law Society. Its views are its own. It cannot and does not necessarily represent the views of all lawyers nor has the subject under discussion necessarily been considered by the Council of the Auckland District Law Society. The paper was accurate at the time of its preparation.

If the Committee is not described by its actual name then it should be described as “a group of Auckland lawyers appointed by the Council of the Auckland District Law Society to consider public issues”, and not given too broad an attribution such as “Lawyers say...” or “Lawyers consider...”.

The Committee was formed to encourage its members to consider and comment on public issues, for the public benefit, it is hoped, particularly public issues with a legal element. The Committee’s standing must stem solely from the quality of the papers it releases and the comments it makes.

If a precis or abstract of this paper is published, or reference made to its content, please advise your readers that the full text of the paper issued by this Committee will be available at the Auckland District Law Society’s Internet website,

<http://www.adls.org.nz/media/pubiss.html>

Spokespersons:

John Hancock

PRECIS – STRIP SEARCHES IN SCHOOLS

Auckland District Law Society - Public Issues Committee

1. The problem of illicit drugs in schools, and the corresponding efforts of schools to counter this problem, has been one of the paramount issues confronting our education system of late. For the past two years, school suspensions for drugs have outnumbered any of the other categories reported by the Ministry of Education. The efforts of schools in attempting to counter this problem have often involved police assistance of some kind. An example of this was publicised earlier this year concerned the strip-searching of students by police at an Auckland school.
2. The attached paper of the Public Issues Committee of the Auckland District Law Society addresses the issues that arose from this incident. The Committee believes that whilst drugs are an undoubted problem at our schools, it is important that their policing is balanced with due consideration for the legal rights of the students concerned.

ADLS Public Issues Committee

7 December 2001

STRIP SEARCHES IN SCHOOLS

Auckland District Law Society - Public Issues Committee

1. The problem of illicit drugs in schools is one of the most pressing and challenging issues facing the pre-tertiary education system of late. This was reflected in the Ministry of Education's suspension statistics for the year ending July 2000, where the suspension of students for drugs comprised 31% of all suspensions, the highest of all the categories reported by the Ministry. The issue was noted on the Ministry of Education's report as a specific area of concern.
2. Some schools, with the assistance of the Police, have been taking firm measures to attempt to counter this problem. These measures have included the Police conducting school-wide searches at the invitation of Boards of Trustees. These searches usually involve the Police entering the school (with a search warrant), under the School Board's authority, and conducting a bag search at a school assembly, often with the assistance of drug dogs.
3. However, up until the publicised incident (June 2001) at an Auckland secondary school, the Committee understands that there had been no reported cases of Police strip-searching students on the school premises following a drug-related incident, despite the now common intervention of Police in schools with regards to the drugs issue. There are a number of laws that are relevant to strip searches in schools. Section 21 of the Bill of Rights Act provides protection against unreasonable search and seizure. In addition, section 23 of the Bill of Rights Act sets out the rights of people detained or arrested, including the right to be treated with respect for dignity and humanity.

4. However, section 18(3) of the Misuse of Drugs Act gives Police the power to search without warrant or consent, if they have reasonable grounds to suspect that the detainee has restricted drugs on his or her person. Section 18(4) of the Act requires that the Police inform the detainee that they are going to conduct the search under the above sub-sections of the Misuse of Drugs Act, prior to searching. Furthermore, section 18(6) of the Act requires a police officer, who undertakes a search through the exercise of his or her powers under section 18(3) of the Misuse of Drugs Act, to furnish the Commissioner of Police with a written report within 3 days of the date that the search occurred. The report must detail the exercise of the power under the Act and the circumstances in which it came to be exercised.
5. The Children, Young Persons and Their Families Act specifies the requirements for the conduct of Police Officers when questioning young people aged 16 or under (section 215) and who a young person can choose to have present during police questioning (section 222). This includes the right of the young person to have an independent adult of their choice present during this process. If this person is unavailable, then the Police must organise someone from the young person's list of Independent Nominated People to be present. The same protection is available for under-seventeen year olds when being questioned by Police at a police station subsequent to arrest or in relation to the possible commission of an offence (section 229).
6. In addition, Article 16 of the United Nations Convention on the Rights of the Child (which applies to young people below the age of eighteen) provides that no child shall be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence and shall have the right to the protection of the law against such interference or attacks.
7. The Committee considers that recent events highlight concerns about the manner in which schools and the police are presently dealing with drugs in schools and

the processes (or lack thereof) that they have in place when dealing with these matters.

8. Procedures such as the strip search of students clearly degrade and humiliate. Case law has indicated that a Police search can be deemed unreasonable under the Bill of Rights irrespective of the legitimacy of the legal grounds under which it was authorised. It is a matter of context. As the Court of Appeal stated in **R v Ririnui**¹, *‘the intrusiveness and invasion of privacy involved in any search of the person is such that it ought to be conducted to no greater extent than the circumstances reasonably require.’*
9. The Committee acknowledges that whilst drugs are causing undoubted problems for our schools, it is important that policing is balanced with due consideration for the legal rights of the students concerned. Strip searches are amongst the most invasive practices that the state can apply to the civil liberties of its citizens. The threshold for its use is therefore necessarily high. This is particularly the case with young people, who are accorded additional legal rights in their dealings with the Police in acknowledgement of their inherent powerlessness. Furthermore, unreasonable searches are likely to instill disrespect for the law and those who enforce it amongst people at an impressionable age. For these reasons the Committee hopes that police and school administrators will act with respect for the legal rights of students when dealing with drug allegations in schools.

7 December 2001

¹ [1994] 2 NZLR 439