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### **Author**

Trimble, A.J., Cranston, Neil, Allen, Jeanne M.

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## The impact of education law on school principalship: Challenges and emergent findings

Allison J. Trimble, Neil Cranston and Jeanne M. Allen  
*University of Tasmania, Australia*

### **Abstract**

*This article examines a number of environmental and organisational factors underlying the impact of education law on the professional practice of school principals. Following a brief examination of education law, the article discusses factors occurring beyond the school, as well as school-based considerations, that contribute to the impact of education law on the modern principalship. The external factors include political (international human rights and public decision-making standards), social (legalization), systemic (self-managed schools and professional standards) and professional (leadership and management roles of principalship) matters. The school-based factors, drawn from a 2011 Australian pilot study into education law, suggest the work of school principals is significantly impacted by education law, particularly when principals decide not to obtain expert legal advice. The research revealed that, in such circumstances, principals may rely on their own, or colleagues', knowledge and experience which may not always be legally accurate. Participants in the study also highlighted specific areas of their practice impacted by education law, including the overall operation of their school, risk assessment and their leadership role. While this article relates specifically to education in Australia, the factors influencing the impact of education law on the principalship may also apply to New Zealand and other Western schooling systems.*

**Keywords:** *Education law; school law; principals; legal; school leaders*

In commenting on the development of School Law in the United States, Shoop and Dunklee (1992) relate a story about a time when:

There was order in our schools and change occurred so benevolently that it was called progress ... The principal spoke without hesitation about what was appropriate behaviour. Dad and Mom told their children to go to school and 'mind the teacher', and students listened and learned and behaved themselves ... Parents left educational decisions up to the schools. The courts rarely got involved ... Then something happened ... (p. xix)

If this educational idyll ever actually operated within Western schooling systems, its time has passed. The 21st-century school principal practices in an educational environment thick with law. This article considers the impact of education law on the principalship, through the twin lenses of contextual developments occurring beyond the school boundary, as well as the in-school experiences of school principals reported in a recent small-scale exploratory research project.

The article provides an overview of education law, and discusses changes in the context of principalship, including: the movements for international human rights and procedural fairness in public decision-making; the implementation of self-managed schools and professional standards; and the leadership and management imperatives under which school principals work. The perspective then shifts to examine school-based factors contributing to the influence of education law on the principalship, drawn from a pilot study conducted in the small Australian state of Tasmania in 2011 (Trimble, Cranston, & Allen, 2012). Australia comprises six states and various territories. Tasmania is an island located to the south of the Australian continent. It is the smallest and

least populated of the states. In 2012 (Australian Bureau of Statistics, 2012) the education system in Tasmania consisted of 262 schools, of which 197 were government schools, and 65 were non-government (Catholic and Independent). Although the generalisability and transferability of the findings are limited by the study's small scale and non-probabilistic sampling, they do suggest that a principal's work may be most directly impacted by education law in instances where a legal issue arises and the principal deals with the matter by relying on his or her own knowledge and experience, or that of colleagues, rather than seeking expert legal advice. This differentiation made by participants between routine legally-related activities, and legal problems requiring expert assistance, has not previously been investigated within Australian education law research and may warrant further research. Further, the participants raised a number of areas of professional endeavour involving education law: the operation of schools within the law; minimisation of legal risk; as well as certain legal leadership issues within and outside the school. These factors, also recognised in previous Australian research, suggest that the impact of education law issues on the work of school principals is ongoing and may indicate a need for further professional development support. Although the findings of the pilot study relate specifically to a small, non-random sample of public school principals within one Australian jurisdiction, the factors affecting the impact of education law on the principalship are considered likely to resonate with school leaders in New Zealand and other Western schooling systems.

### **Background**

The term 'education law' is not one frequently discussed by either educators or lawyers and, accordingly, it warrants some explanation. Education law as generally used in Australia (see, for example, Mawdsley & Cumming, 2008) and New Zealand (Rishworth, 1996, 2012) equates to school law (Berlin, 2009; Zirkel, 2009), as used in the United States and Canada. As is the case with many terms within the social sciences, the literature discloses as many definitions of education law as there are commentators on the subject; most of these definitions, however, can be classified as narrow or wide. The narrow perspective is exemplified by the approach of Alexander and Alexander (2011) who describe education law as "those areas of jurisprudence that bear on the operation of ... schools" (p. 2). In contrast, definitions taking a wider view tend to be more information rich. For example, in the American context:

[Education law] includes the various sources of law (legislative, administrative and judicial as well as related secondary sources) dealing with schools Pre-K – 16 and beyond. It encompasses education-specific enactments and decisions, as well as labour, tort, First Amendment, family, juvenile and civil rights law as they arise in a school context. (Redfield, 2003, p. 612)

In Australia, there has been general agreement as to the legal areas that might constitute the field of education law. For example, Stewart (1996) and McCann (2006) have each focused on elements of negligence, employment law, education legislation, workplace health and safety, family law, crime, discrimination and copyright. This listing of constituent areas of education law is very similar to the topics addressed as 'Basic principles of law' by the New Zealand Ministry of Education (2009a), as well as the legal issues noted by Rishworth (2012; see also the New Zealand research by Wardle, 2006), underlining the strong links between education law in Australia and New Zealand (Cumming & Dickson, 2008). Before continuing, it should be noted that, as a consequence of its constitutional arrangements, the focus of education law in Australia is based, to a significantly lesser degree, on the recognition and enforcement of individual rights than in jurisdictions where Bills of Rights are enacted as supreme law, for example, in the United States (U. S. Const. amend. I–X) and Canada (Canadian Charter of Rights and Freedoms 1982), or indeed in New Zealand, which has adopted a statutory Bill of Rights (Bill of Rights Act 1990 (New Zealand [NZ])). There is, however, a strong element of rights-based legislation in Australian anti-discrimination law.

There are two strong themes running through the literature in this field. The first is that, apart from education-specific legislation, education law borrows its content from other legal fields (Mawdsley & Cumming, 2008; Rishworth, 1996), and, as such, is directly influenced by legal developments in those contexts. In Australia, education remains formally a State/ Territory responsibility, provided for in the following legislation:

- the Education Act 2004 (Australian Capital Territory [ACT]);
- the Education Act 1990 (New South Wales [NSW]);
- the Education Act (Northern Territory [NT]);
- the Education (General Provisions) Act 2006 (Queensland [QLD]);
- the Education Act 1972 (South Australia [SA]);
- the Education Act 1994 (Tasmania [TAS]);
- the Education and Training Reform Act 2006 (Victoria [VIC]); and
- the School Education Act 1999 (West Australia [WA]).

In New Zealand, with its single tier of government, education is regulated by the Education Act 1989 (NZ). The second, somewhat related, theme is that education law itself is “constantly evolving to meet the needs of today’s schools” (Zuker, 2001, p. 1). The range of education law matters is by no means closed; new issues are continually emerging which contribute to the body of education law – cyber-bullying (Goff, 2011; Nicol, 2012) is such an emergent area which comes readily to mind. It must, of course, be recognised that national legal arrangements will affect the manner in which education law develops in any jurisdiction. For example, in New Zealand the no-fault Accident Compensation Scheme, applying to all physical injuries, bars tortious claims for compensatory damages in relation to negligent injuries (Hay-Mackenzie & Wiltshire, 2002). This institutional arrangement has brought increasing focus onto other avenues for compensation in New Zealand, including the Health and Safety in Employment Act 1992 (NZ).

### **Environmental factors**

Many of the factors influencing the impact of education law on the principalship are located in the school’s external environment. Such factors include political commitments (such as the recognition of international human rights and the associated procedural fairness movement); the legalization of society; educational reforms (including self-managed schools); as well as developments within the principalship, including the introduction of Professional Standards, and the leadership and management roles required of contemporary school leaders.

### **Political factors**

The international human rights movement has had a substantial, ongoing impact on school-based education in Australia and New Zealand, reflected in, but not limited to, the right of children to a free education and the right to undertake that education free from discrimination. (*Right to an education*: International Covenant on Economic, Social and Cultural Rights (United Nations [UN], 1966b); Convention on the Rights of the Child (CROC; UN, 1989). *Right to be free from discrimination*: International Covenant on Civil and Political Rights (UN, 1966a); the Convention on the Elimination of all Forms of Racial Discrimination (UN, 1992); the Convention of the Elimination of All Forms of Discrimination Against Women (UN, 1999); the International Covenant on Economic, Social and Cultural Rights (UN, 1966); the Convention on the Rights of Persons With Disabilities (UN, 2006); the International Labour Organisation Convention on Discrimination (Employment and Occupation) (UN, 1979).) Both nations have enshrined a right to education within their education legislation and their national education goals (Ministerial Council on Education, 2008; New Zealand Ministry of Education, 2009b), although in both countries the right is subject to suspension and exclusion decisions by

school authorities. This limitation remains the subject of considerable debate by human rights commentators (Alderson, 1999; Quennerstedt, 2009). The CROC, signed and ratified by both Australia and New Zealand, has been legislatively recognised in both countries (Children's Commissioner Act 2003 (NZ); Human Rights and Equal Opportunity Act 1986 (Commonwealth [CTH])), but is not yet enacted with general effect in either.

The prohibition against discrimination in education has had an important impact in both countries, although the jurisdictions have adopted different legislative structures to address the subject. Discrimination is a key facet of education law for school principals. In Australia, legislation has been enacted at both Federal and State /Territory levels acknowledging individuals' rights to be free from discrimination (McCann, 2006). These laws protect students and educators from discrimination and harassment on the grounds of gender, pregnancy, sexual orientation, race, and perhaps the most far-reaching protection, disability. Legislation has supported inclusive education policies; enabled students, parents and advocates to overturn discriminatory educational practices and policies; and has provided the basis for education-specific standards for students with disabilities (Disability Standards for Education 2005 (CTH)). In New Zealand, anti-discrimination protection in education rests on a suite of legislation:

- the Bill of Rights Act 1990, empowering rights-based judicial review of governmental action;
- the Human Rights Act 1993, proscribing different treatment on the basis of specified characteristics (race, religion, sexual orientation and so on) in areas including education (Rishworth, 2004); and
- the Treaty of Waitangi (Treaty of Waitangi Act 1975 (NZ) Schedule 2), requiring the government to respect Maori autonomy and actively promote Maori language (Rishworth, 1996).

This development in Australasia, based on the recognition of individual human rights and their enforcement through legal mechanisms, has significantly increased the impact of education law on the professional practice of school principals.

A further matter contributing to the legal demands placed on public school principals in Australia and New Zealand has been the adoption, from the 1970s onwards, of a comprehensive system of administrative law. In Australia, the Commonwealth, and the States and Territories, have enacted legislation for the review of government decisions. As public sector employees, the principals of government schools in Australia have a legal duty to ensure their decisions, which affect the rights and interests of individuals and groups, accord with the rules of procedural fairness (Administrative Review Council, 2007). For example, a principal's decision to suspend or exclude a student, must satisfy the requirements of procedural fairness, including hearings, notice of adverse information, and bias, amongst other matters (Administrative Review Council, 2007). A person adversely affected by such a decision can apply to have it reviewed – through an Ombudsman, agency, tribunal or court – and if the decision-making process fails to meet the standards of administrative law, the decision may well be quashed (McMillan, 2000). This redress, for dissatisfied education stakeholders to challenge the decision of a principal under administrative law, represents another aspect of education law affecting the running of a government school.

The principles of administrative law also apply in New Zealand, both through Common Law and legislation, in particular the Bill of Rights Act 1990, and the Official Information Act 1982 that enables anyone affected by an administrative determination to obtain a statement of reasons for that determination (Elias, 2009). Although the systems of judicial review in Australia and New Zealand have diverged on certain important legal points (Saunders, 2012), the school-level impact of an administrative law challenge to a principal's decision is likely to be much the same in both countries.

### ***Social factors***

In recent decades, commentators have observed that Western societies are becoming more legally-complicated (Davies, 2009). Although it is not suggested that the situation within Australian or New Zealand society has

reached the stage of ‘hyperlexis’ identified in the United States (Manning, 1977), the volume and complexity of law in general, and the pace of legislative change, is increasing in Australia and other developed Western nations (Hayne, 2000). This process of ‘legalization’ impacting society at large is also reflected in education.

Williams (1995) has defined legalisation as a change in the external environment of schools, characterised by an increase in the number and scope of relevant legislation and court decisions, and a willingness in stakeholders to challenge educational decisions and practices using legal mechanisms. The process operates to change the educational environment within which school principals practise, on a number of levels. Firstly, the scope of education law is broadening. Like the chief executive of a small town, the school principal must deal with an ever-increasing range of matters, such as crime, employment law, personal and property safety, family and child welfare law, discrimination, and privacy and information issues, and the list of relevant legal areas shows no signs of decreasing. Secondly, the volume of law involved with the running of a school continues to grow; the Tasmanian education statutes provide a simple, but clear, illustration of this inexorable expansion. The Education Act 1885 (TAS) established public education in Tasmania, using 44 sections, that occupied eight pages of the statute book. In time, it was replaced by the Education Act 1932 (TAS), setting out the law of the day in 48 sections, covering some 26 pages. The current Education Act 1994 (TAS) contains 93 sections and three schedules, and takes up 54 pages.

The third element of the legalization process lies with the increasingly litigious nature of the community. Stakeholders in education, be they students, parents or interest groups, are increasingly cognizant of their right to institute legal actions against education systems, schools and school leaders for policies and decisions that they find unacceptable. Figure 1 illustrates the growth in significant Australian (High Court and State Supreme Court) cases involving schools since 1950, exemplifying this growth in litigiousness.

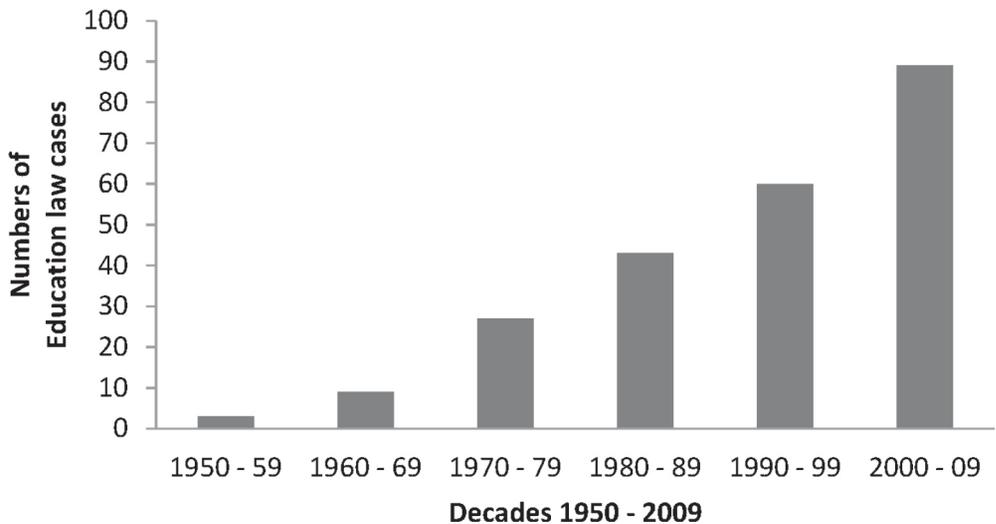


Figure 1. Australian High Court and Supreme Court cases reported 1950–2009, where the title of one party includes the term ‘school’ (from Trimble, 2011, p. 1)

The legalisation of education is a facet of a wider social trend whereby individuals, groups and the State look to legal avenues for the solution of problems. It results in the operation of schools being impacted by more law, in the form of legislation and case law decisions, over a wider range of legal areas, with an increasing possibility of legal challenge, all of which places greater legal responsibilities on principals.

### *Systemic factors*

School reform in Australia and New Zealand has shifted the locus of certain law-related activities from a central bureaucracy to the level of school management. In particular, this change has developed through the adoption of the ‘self-managed schools’ model, supported by the development of professional standards for educators.

Over the last three decades, in Australia, New Zealand and other Western nations, there has been a movement to decentralise bureaucratic control of education (Hattie, 2011). Individual school autonomy has always characterised non-government schools in Australia – especially within Independent Schools – but it has increasingly been adopted as a policy in government systems (Public Policy Institute, 2011). The ‘self-managed schools’ movement (Australian Government Productivity Commission, 2012; Caldwell, 2011) was initially adopted in Victoria and Queensland during the 1990s (Cranston & Ehrich, 2002; Victorian Department of Education and Early Childhood Development, 2012), and has been followed, to a greater or lesser extent, by other States and Territories. Most recently, the former Federal Government has instituted its Empowering Local Schools policy initiative to encourage all Australian schools (government and non-government) to move further down the autonomy path (Australian Government Productivity Commission, 2012).

Self-management for schools embodies the “subsidiarity principal” (Australian Government Productivity Commission, 2012, p. 84), requiring the responsibility for a particular public function to be exercised at the lowest possible level. Accordingly, educational decision-making on issues concerning staff, budgeting and infrastructure, are located at the level of the school leader (Cummins, 2012). This devolution of decision-making capacity to school leaders is accompanied by concomitant responsibilities in hiring, developing, evaluating, disciplining and terminating staff, negotiating and managing purchase and construction contracts, and overseeing the expenditure of public monies, to list some of the more obvious areas.

As recognised by Cranston and Ehrich (2002), the devolutionary school restructuring which has been undertaken in Australia “did not represent the same extent of devolution being experienced in other education systems, such as those in ... New Zealand” (p. 18). The reform of educational administration in New Zealand in the late 1980s under the Education Act 1989 (NZ) transferred the governance of every public school in New Zealand from a national and regional bureaucracy to locally-elected boards of trustees (Robinson, Ward, & Timperley, 2003) with general accountability for school performance and student outcomes, and specific responsibilities for financial management, human resources management and strategic planning (Fitzgerald, 2009). The school principal is a member of the school board and acts as its Chief Executive; the board may also delegate most of its functions to the principal (Robinson et al., 2003).

The adoption of the ‘self-managed school’ model in New Zealand, and to a somewhat lesser extent in Australia, has devolved a raft of responsibilities with legal consequences to the level of the individual school, thereby substantially increasing the impact of education law on the principalship.

Another aspect of education reform that has contributed to the legal demands on school leadership, is the introduction of professional standards for educators. Both Australia and New Zealand have developed standards for principals, which have explicitly linked education law knowledge to the principal’s role. The *Australian Professional Standard for Principals* (Australian Institute for Teaching and School Leadership [AITSL], 2012a) provides:

[Principals] have knowledge of relevant national policies, practices and initiatives as well as relevant federal and state legislation, agreements and policies. They understand the implications of child safety, health and well-being, human resource management, financial management and accountability and other legislative and policy requirements in relation to serving their community and broader society. (p. 7)

This connects to the standard for “management systems, structures and processes to work effectively in line with legislative requirements” (p. 10). Although this Standard has not yet been adopted nationally, it may be taken to exemplify the several sets of standards and capability frameworks which apply throughout Australian education (AITSL, 2012b). The New Zealand *Professional Standards for Principals*, drawn from the Kiwi Leadership for Principals policy (Macpherson, 2009), express the legal component of principalship practice in somewhat different terms, however, they address very similar areas of responsibility: safety, equity, diversity, finances, property, health, personnel management, community relations, together with the explicit requirement to “operate effective systems within board policy and in accordance with legislative requirements” (New Zealand Ministry of Education, 2009c).

These professional standards acknowledge areas of school operation giving rise to education law issues, and highlight positive duties of a legal nature attaching to the principalship in both Australia and New Zealand, thus increasing the impact of education law on schools in both jurisdictions.

### ***Professional factors***

Closely linked to the policy imperatives of school autonomy and principal competencies is the wider professional issue of the role of school principals in leading and managing their institutions. The literature reveals broad agreement that the 21st-century principal’s role has become substantially more complex in response to changes in the educational context (Russell & Cranston, 2012; Valentine & Prater, 2011), described by Cranston and his colleagues as “the problematic and complex nature of leadership in these challenging and changing times” (Cranston, Ehrich, & Morton, 2007, p. 11). As Leithwood and Riehl (2003) have observed:

Curriculum standards, achievement benchmarks, programmatic requirements and other policy directives from many sources generate complicated and unpredictable requirements for schools. Principals must respond to increasing diversity of student characteristics including cultural background and immigration status, income disparities, physical and mental disabilities and variations in learning capacities ... Rapid development in technology for teaching and communicating require adjustments in ... schools. (p. 1)

The changed context of schooling has demanded an expansion of the traditional “beans, buses and budgets” (Daresh, 2006, p. 28) managerial role played by school principals, to encompass a wider notion of leadership and management (Bush, 2011; Valentine & Prater, 2011).

It is generally recognised that the terms ‘leadership’ and ‘management’ refer to different, albeit related, bundles of organisational functions, both of which are required for the effective operation of a school (Lunenburg, 2010; Sweeney, 2005). Whilst the issue of what constitutes leadership remains somewhat contested (Yukl, 2002), the understanding promoted by Bush (2008, 2011), embracing vision, values and influence, may be considered useful. School leadership is fundamentally about change and the improvement of student learning (Bush, 2011; Leithwood, Day, Sammons, Harris, & Hopkins, 2006). During the last decade or so, the function of school leadership has been increasingly refined and contextualised, resulting in different leadership functions being adopted to meet different organisational leadership needs, including those that are instructional, transactional, transformational, cultural, ethical, distributed, political, relational, and technological in nature (Cranston et al., 2007; Daresh, 2006; National College for School Leadership, 2007). In contrast to the forward-orientation of school leadership, school management is about stability (Leithwood et al., 2006). Although not exhaustive, the functions set out in Table 1 (based on Cranston et al., 2007) indicate some of the management tasks undertaken by a contemporary Australian school principal. Research on educational leadership and management (Cardno & Youngs, 2013; Robinson, Hohepa, & Lloyd, 2009) suggest that these views regarding school leadership and management may apply to a similar extent in the New Zealand educational system.

Table 1. Indicative management functions of school principals

<b>Indicative school management functions within principals' responsibilities</b>	<b>Particular issues</b>
Human, financial and resource management	Equity, social justice, balance, fairness and collaboration
Sound knowledge of system-level expectations, policies, pedagogy, legislation, legal considerations/ implications	
Management of external relations	
Accountability and systematic requirements	Policy implementation; assessment and reporting of student achievement

Table 2 sets out a number of professional practices encompassed by the leadership and management activities of school principals in Australia, linked to areas of education law. Although there is contextual variation between Australia and New Zealand, the commonalities between the systems are considered sufficient to suggest that education law in both countries impacts on the capacity of school principals to fulfil their leadership and management functions.

Table 2. Linkage of education law areas with school principal's management and leadership functions

	Education issues	Criminal Law	Employment Law	Negligence (Duty of care)	Family Law	Child Welfare Law	Social Security Issues	Immigration Law	Anti-Discrimination Law	Privacy & FOI	Copyright Law	Administrative Law
<b>Management Functions:</b>												
Personnel			X	X					X	X	X	X
Site management		X	X	X								
Relationships			X		X	X	X	X	X	X		
Student conduct	X	X			X	X	X		X	X	X	X
Safety and security	X	X		X	X	X			X			
<b>Leadership Functions:</b>												
Political leadership	X											
Distributed leadership	X											X
School culture leadership									X			X
Values leadership									X			X

### **Pilot study**

Having considered some of the external factors that contribute to the impact of education law on the principalship, the focus now shifts to school principals' lived experiences of education law, and their perceptions of the impact that education law has on their professional practice. The data for this section of the article are drawn from a mixed-method pilot study conducted in 2011 (Trimble, 2011), which examined the working knowledge of education law held by a group of government primary school principals, the sources of their understandings and the implications for the principalship. The project utilised a written education law survey, broadly based on the questionnaire utilised by Stewart (1996), and adopted and amended by McCann (2006). Surveys were mailed to the principals of 36 primary schools in Northern Tasmania; 15 principals volunteered to participate, and returned completed survey forms – giving a response rate of 42.8%. The target population for the study was selected as an easily-identifiable, appropriately qualified group for a small-scale study of this nature, who would be geographically accessible for the researcher based in the region. Three of the survey participants indicated an interest in undertaking a follow-up interview; they were each interviewed by the researcher at their schools. Further information regarding the research design and methodology is reported in Trimble et al. (2012).

This study was small-scale in nature, and was not intended to produce representative findings (Stebbins, 2001). In light of the limited number of participants and their self-selection for the study rather than identification on the basis of probability sampling, no firm claims are made regarding the representativeness of the sample against the target population. It should further be noted that the study findings should not be generalised to other populations until they are replicated. Notwithstanding these limitations, the findings of the pilot study proved to be of sufficient interest that further research has since commenced on a national basis. This mixed-method study, undertaken through the University of Tasmania, will collect survey and interview data from Australian school principals from all levels of schooling, in the public and private education sectors, and include interviews with education system managers.

### **Direct involvement in education law**

Participants in the study reported that they had dealt with a broad range of education law matters:

- criminal law (including theft, vandalism, drugs, assault and searches);
- employment law, workers' compensation and occupational health and safety;
- duty of care issues (negligence);
- family law;
- child welfare law;
- anti-discrimination law (including disability and racial discrimination);
- privacy law;
- immigration law;
- educational issues (enrolment, home schooling and absenteeism);
- contract law; and
- transportation law.

The areas listed from criminal law to privacy law were pre-identified in the survey instrument, based on findings reported by Stewart (1996) and McCann (2006) in their earlier education law research in Queensland. The topics from immigration law to transportation (along with racial discrimination) emerged from the participants' survey and interview responses. The extent of this list is noteworthy; the small group of participants identified their involvement with 11 State statutes, four Commonwealth Acts and assorted civil matters. It is recognised that the scope of the participants' involvement in these areas was varied, and their dealings were described across their principalships and not focused on a particular moment in time, however, the responses indicate that education law matters impacted on the participants' professional practice across a wide range of issues.

The pilot study suggests that much may turn on the nature of the issue at hand, together with the principal's problem-solving approach. The open-ended survey responses provided by several participants drew a distinction between routine, legally-related tasks, and non-routine legal problems. As one participant commented, "*The legal stuff is just part of what I do. However when I get a specific case that involves any degree of complexity, I refer it*". The participants' responses indicated quite consistently that when a 'legal drama' arose (a non-routine education law issue), they tended to seek expert external assistance from, for example, the Department of Education Legal Support Unit, the Departmental Guidelines, Departmental regional staff, the union lawyer, or from experienced colleagues. The situation was less clear in relation to routine legally-related matters, with some suggestion that the principals relied on their own understanding and experience. This situation becomes problematic, in light of the study's finding that aspects of the participants' education law knowledge were not legally accurate. The findings of the pilot study support a need for principals to obtain an accurate basic understanding of education law, particularly in light of the fact that, in dealing with a broad range of predominantly routine, legally-related areas, participants tended to rely solely on their own, or their colleagues', knowledge and experience rather than seeking legally-qualified legal advice.

Previous Australian studies (McCann, 2006; Stewart, 1996) did not explicitly recognise a distinction between principals' education law knowledge for routine and non-routine problems, although a similar approach has been identified in certain Canadian research (Findlay, 2007; Leschied, Dickinson, & Lewis, 2000) regarding non-urgent and urgent legal problems. This aspect of legal problem-solving by school principals requires further investigation.

### **Indirect involvement with education law**

The participant interviews for the pilot study provided testament to the impact of education law on the principals' practise. For example, one participant commented that:

*Well, we know we're always working within the boundaries of what's legal and what isn't, so that's in a very broad sense, so that's how it impacts on our work.*

This suggests that a principal, like any organisational CEO, needs to understand enough about the legal framework governing that organisation to ensure compliance with the law. Secondly, participants raised the twin issues of legal risk and learning benefit. The interviewed principals all acknowledged that some educational activities, particularly excursions and school camps, present a level of legal risk. However, they also pointed out that in some circumstances the learning outcomes that would accrue to students were more valuable than the avoidance of all risk. This participant's comments are indicative:

*Basically, I think it's minimizing the foreseeable ... the biggest risk I think a principal can take is not to take any risk. To not allow kids to experience new things, new challenges, you're taking their childhood away from them. You've got to make sure they do it in a nice safe framework, as much as you can.*

A third area identified in the study concerning the impact of education law on the principalship was the school leader's role in resolving legal misconceptions. Participants noted that various people connected with the school, including teachers, staff, pre-service teachers and families, often held inaccurate views of their own, and others', legal rights and responsibilities, and that it falls to the principal to clarify misconceptions, and disseminate accurate information. Fourthly, and on a related point, it was suggested that such misconceptions may not be restricted to school personnel, but may also beset external stakeholders. As such, a principal may need to act to protect his or her students, staff, self and school against such inaccurate understandings. In one principal's words:

*You run the risk of having people push you around in a way, when they're claiming legal rights but the legal rights don't exist.*

The areas of the principalship identified by participants in the pilot study as being impacted by education law largely reflect issues raised by previous Australian researchers (McCann, 2006; Stewart, 1996), as well as internationally (Davies, 2009; Schimmel, Militello, & Eckes, 2011; Wagner, 2007), suggesting that the need for principals' professional development in education law may not be limited to the particular region examined.

### **Implications for the principalship**

In light of these factors, one might conclude that contemporary school leaders require legal qualifications to meet their job requirements. The literature, however, counsels that, provided appropriate legal support is available, school principals need not become lawyers; rather they need to obtain an accurate understanding of basic principles in relation to the legal issues which frequently arise in schools (for Australia, see McCann, 2006; Stewart, 1996; Trimble et al., 2012; for New Zealand, see Wardle, 2006). Attainment of this level of "legal literacy" (Taylor, 2010, p. 8) is considered a sufficient foundation for principals to deal with legal issues in areas of their practice, including:

- protecting the legal rights of students, parents, staff and the school (Eberwein, 2008);
- ensuring a safe and secure school environment (Trimble et al., 2012);
- assessing the legal risk involved in academic and co-curricular programmes to ensure that student learning is not compromised unnecessarily and personal safety is not put in jeopardy (Starr, 2012);
- developing the professional learning of teachers and staff about legal rights and responsibilities in the classroom (Schimmel et al., 2011);
- decision-making confidence (Mawdsley & Cumming, 2008);
- recognising the emergence of potential legal problems (Findlay, 2007), and structuring a response to meet legal obligations, minimise conflict and maximise party satisfaction (McSwain, 2012). This aspect may have particular relevance in schools where issues arise between the principal and law members of the board.

The approach to education law adopted by a principal is also likely to influence the culture and values of the school. This clearly applies to matters where the principal is legally accountable, and transparency is positively mandated, however the principal's influence may extend beyond compliance. As a participant in the pilot study commented:

*I think that, as a principal, I'm involved in legal-related work all the time – whether it's child protection or financial decisions, they are all legal-related. And I'm all the time aware of problems that could arise, and implementing Department policy, and modelling appropriate behaviour, and mentoring teachers and even other principals.*

Findlay (2007) has pointed out that school officials have a duty to promote and support the values of a democratic society, and to uphold the dignity and worth of all individuals in a school setting. An "orderly, productive and humane school" (Wagner, 2007, p. 6) that is operated within both the letter, and the spirit, of the law, is likely to contribute to the education of responsible and inclusive citizens (Shariff, 2004). It may also be posited that a school which does not meet the standards of fairness and due process is unlikely to instil respect for the law in its students (see Alderson, 1999).

### **Conclusion**

This article has considered the impact of education law on the professional practice of school principals. The discussion has been framed within the lenses of environmental developments occurring beyond the school boundary, and the in-school experiences of school principals reported in a small-scale exploratory research project conducted in Tasmania in 2011 (Trimble, 2011). Although the matters examined in this article relate largely to the Australian experience, the issues have resonance for other Western schooling systems, most particularly New

Zealand. External political, social, systemic and professional factors are increasing the impact of education law on schools and school principals, as are organisational demands for sound policy, transparent and fair decision-making, the balancing of legal risk, dispute resolution and democratic leadership. These functions do not require principals to become lawyers, but rather to attain a level of basic legal literacy. A forthcoming Australian research project may assist in clarifying ways to enhance the education law capabilities of principals.

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### Authors

**Allison Trimble** graduated in law from the University of Tasmania (UTAS) in Australia in 1983 and spent her legal career as a military legal officer, a parliamentary drafter and law reformer. In recent years, she returned to study at UTAS and qualified as a primary school teacher. She is currently a PhD candidate with the Faculty of Education at UTAS, combining her two professional interests in research on education law and its impact on the principalship in Australia.

Email: Allison.Trimble@utas.edu.au

**Neil Cranston** is Professor in Educational Leadership and Curriculum in the Faculty of Education, University of Tasmania and Honorary Professor, The University of Queensland. He is a Fellow of the Australian College of Educators, Fellow of the Australian Council for Educational Leaders and received the Nganakarrawa Award from ACEL in 2009 for his contribution to educational leadership.

Email: Neil.Cranston@utas.edu.au

**Dr Jeanne Allen** is a Senior Lecturer in Education Studies in the Faculty of Education, University of Tasmania. Before entering the university sector in 2005, Jeanne spent an extensive career in secondary teaching and school leadership, both overseas and in Australia. She is an Editorial Board member of *Linguistics, Culture and Education*, an Associate Editor for the *Higher Education Research and Development* journal and a regular reviewer for a number of international journals, including *Teaching and Teacher Education*.

Email: Jeanne.Allen@utas.edu.au