

***Kennedy v Boyle* [2015] NZHC 530 [23 March 2015]**

The actions that led to this particular case hit the national headlines, and its resulting judgment has been subject to much scrutiny (see for example M B Rodriguez Ferrez “School Disciplinary Decisions, Judicial Review and Interim Relief” NZLJ June 2015 178-181), so commentary on this case in relation to the issue of interim injunctions is undoubtedly of interest.

The background to this case is that 10 students of St Bede’s College, Christchurch, were selected to compete in the Maadi Cup, a national rowing regatta, at Lake Karapiro in the Waikato. At Auckland airport, two students, Jack Bell and Jordan Kennedy, rode, without authorisation, on the baggage carousel in to the secure baggage area. The boys were spoken to by the police and security offices, with no further action being taken. The Rector of the College, Justin Boyle, decided to suspend the two boys, and required them to return to Christchurch. This prevented the boys from being considered for selection in trials for the national rowing team.

An urgent application was sought by the applicants, the 2 boys, represented by their litigation guardians, to restrain the school from implementing the decision to prevent the boys from rowing at the 2015 Maadi Cup.

Due to the urgency of the situation, which included the fact that the first race was due to start at 11.28 of the morning of the application, Dunningham J heard the matter via telephone at 09.00 and made oral orders at the conclusion of the hearing, with the written decision being delivered as soon as practicable. The result being that her Honour granted an interim injunction restraining the Rector of St Bede’s College and the Board of Trustees from implementing the school’s decision to prevent the applicants from rowing at the 2015 Maadi Cup.

In relation to the matter of the granting of the interim injunction, Dunningham J noted that the relevant considerations were well settled: whether there is a serious question to be tried, and if that is answered in the affirmative, then a Court must consider where the balance of convenience lies. Her Honour acknowledged the very valid point that where the consequence of granting an interim injunction would be effectively permanent, in other words, depriving the school of its disciplinary powers to prevent the students from representing their school at the regatta, then the merits of the case should be investigated with more rigour. However, the Judge noted that she did not actually deprive the school of its right to discipline the students by granting the interim injunction. Rather the decision merely deprived the school of its right to carry out a specific punishment, that of denying the boys the right to participate in the Maadi Cup.

With regard to the first consideration, that of the serious question to be tried, Dunningham J set out clearly the relevant matters, finding that there was a serious question to be tried. Firstly, the school made the decision based on the emailed report of the head coach, who was not present when the incident at the airport took place; and without interviewing the two boys, or the other participants; and without gathering information as to the consequences of the decision so as to assess whether the decision was proportionate to the alleged misbehaviour. Secondly, there was a serious question to be tried as to whether the school had regard to all relevant considerations, which included the consequences of the decision on other team

members, parents and sponsors. Unless that was undertaken adequately, then the disciplinary action proposed by the school may have been disproportionate to the misconduct.

Having concluded that there was indeed a serious question to be tried, her Honour then turned to wherein the balance of convenience lay.

She was satisfied that this favoured the applicants in this matter. If the decision was invalid, but the interim injunction was not granted, then the applicants could not be adequately compensated for the lost opportunities. Additionally, the potentially affected third parties, which included the parents, sponsors and team mates, could also not be adequately compensated. Further, the effect of the school's decision would be that the boys would not be able to compete in the main event of New Zealand's school rowing calendar, which would adversely impact on the boys' trialling for rowing team. In particular, Jordan's only opportunity to attend the Junior World Championships would be prevented.

It was argued that the school would not be impacted significantly if the interim injunction were granted because it would still be able to punish the students appropriately after a full and fair investigation of the matter. Her Honour did however acknowledge that the school would suffer adverse consequences if the injunction were granted when its decision might be vindicated in subsequent proceedings. The granting of such an injunction is a public process and the school has publically been prevented from implementing a strict disciplinary tool, which would send a message that such poor behaviour from students representing the school will not be tolerated.

Such matters were therefore of great importance to Dunningham J when deciding where the balance of convenience lay. In this case, she was satisfied that the balance favoured the applicants. This was partly because the harm that would be caused to them if the decision was unlawful could not be compensated in any other way, and partly because the decision impacted on third parties in such a way that also could not be compensated for if the decision were found to be unlawful. In contrast, if the school were to have its decision vindicated in the subsequent proceedings, the consequences of the interim injunction for the school would not be irreversible as they would be for the applicants, and others. As a result, the balance of convenience fell in favour of the applicants and the interim injunction was granted.

Whilst this case might have been subject to criticism, the reality is that it is a well thought through and well-reasoned decision, that accurately underpins the law pertaining to interim injunctions.