

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 238
5411897

BETWEEN STEPHEN HOVELL
 Applicant

A N D THE COMMISSIONER
 PAMAPURIA SCHOOL
 Respondent

Member of Authority: James Crichton

Representatives: Bryce Quarrie, Counsel for Applicant
 Richard Harrison, Counsel for Respondent

Investigation Meeting: 17 and 18 April 2013 at Kaitaia

Date of Determination: 10 June 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Hovell) alleges that he was unjustifiably dismissed by the respondent (the Commissioner or Mr Forbes). The Commissioner resists that claim.

[2] Mr Hovell was the Principal of Pamapurua School until his summary dismissal on 21 February 2013. He had commenced his teaching career at Auckland in 1967 and had been Principal of Pamapurua School since 1989.

[3] In 2012, the Deputy Principal of Pamapurua School (Mr James Parker) was charged with the indecent assault of a number of boys who were students or former students at Pamapurua School, and Mr Parker was subsequently convicted of that offending.

[4] Shortly thereafter, following on from the resignation of the Board of Trustees of Pamapurua School, Mr Forbes was appointed the Commissioner of the school. The effect of that change was to make Mr Forbes the employer of Mr Hovell.

[5] Mr Forbes, immediately on his appointment, commenced a management audit of the school which raised some concerns for him. Consequently, he initiated a full independent investigation conducted by a former member of the Employment Relations Authority, Mr Robin Arthur, whose report will be referred to throughout this determination as the Arthur Report.

[6] Mr Arthur conducted a wide ranging inquiry based on explicit terms of reference and, amongst other things, interviewed a large number of members of the school community. Mr Hovell was, by agreement, suspended from duty during the review process. Mr Hovell was invited to participate in Mr Arthur's investigation but, on advice, declined to involve himself.

[7] On the report's issuing, a number of failings were identified in the management and operation of Pamapurua School. A disciplinary process was initiated by Mr Forbes against Mr Hovell based on the findings of the Arthur Report and after various meetings between the parties and their representatives, a tentative conclusion was advised to Mr Hovell's representative on 19 February 2013 and at a final meeting between the parties on 21 February 2013, the decision was made by the Commissioner to dismiss Mr Hovell.

[8] The essence of the justification for that decision was Mr Forbes' conclusion that Mr Hovell had failed in his professional duty as the professional leader of the school to ensure the safety of the school's students.

[9] In particular, it is alleged that Mr Hovell failed to appropriately deal with a 2009 complaint about Mr Parker's activities, that Mr Hovell sought to protect Mr Parker rather than protect students, that Mr Hovell failed to engage with the parents of the affected students after the 2009 complaint, that Mr Hovell failed to deal appropriately with the consequences of the retraction of the 2009 complaint, that Mr Hovell failed to ensure the safety of students by dealing with Mr Parker's out of school contact with students, despite widespread community knowledge that was continuing, and that Mr Hovell failed to seek appropriate external advice as to the appropriate course of action.

[10] Mr Hovell promptly raised a personal grievance alleging unjustified dismissal and seeking both interim reinstatement and substantive remedies as well.

[11] For the avoidance of doubt, the Commissioner resists all of the remedies sought and, in particular, in relation to the claim for interim reinstatement, maintains that interim reinstatement would be neither practicable nor reasonable in all the circumstances and that because of the history of this distressing matter, the Commissioner would be unable to guarantee Mr Hovell's personal safety.

Issues

[12] It will be convenient if the Authority deals with the broad issues for decision and then considers the range of remedies, including the claim for interim reinstatement.

[13] That being the position, the Authority needs to inquire into and decide the following questions:

- (a) What happened in 2009; and
- (b) What are a school Principal's obligations?
- (c) What remedies (if any) are available?

What happened in 2009?

[14] To set the scene, it is necessary to provide a little history of the events prior to 2009. Mr Parker had been a teacher at Pamapurua School with provisional registration during 1999. Mr Parker was only provisionally registered to teach because his previous Principal had declined to support his full registration apparently because of concerns about Mr Parker's behaviour then. Mr Arthur was unable to establish whether Mr Hovell was aware of those earlier difficulties, or not, and it was that limited state of knowledge that informed Mr Forbes' consideration of the issues. Having heard additional evidence, the Authority is satisfied Mr Hovell knew, or ought to have known that there were some concerns prior to 2009.

[15] In any event, Mr Hovell supported Mr Parker's full registration at the end of 1999 and after a period of absence from the school, Mr Parker returned in June 2003 and by May 2005 was the staff representative on the Board of Trustees. Later that

same year, Mr Parker was appointed the Deputy Principal of Pamapurua School after a recruitment process which included only internal applicants.

[16] In March 2009, Mr Parker was placed on leave while Police investigated a complaint of indecent assault where the complainant was a student at the school. Three students were named in the complaint to Police and all of those students were subsequently interviewed by social workers from Child Youth and Family. When Mr Parker attended at the Kaitaia Police Station to confront the allegations, he was supported by his Principal, Mr Hovell.

[17] During the course of the Police inquiry, the principal complainant withdrew his allegation and Police eventually concluded that they were unable to take matters any further in respect to a prosecution of Mr Parker.

[18] During the Police investigation, Mr Parker was placed on special leave. Mr Hovell sought advice from the School Trustees Association, notified the school's insurer and told the Chair of his Board, but not the other Board members.

[19] In a board meeting held on 6 May 2009, the in-committee portion of that meeting considered the issue further. The Minutes record Mr Hovell telling the Board that a letter had been received from the Kaitaia Police indicating that the allegations initially made against Mr Parker had been retracted.

[20] There is some debate about whether the actual text of that letter from Detective Dean Gorrie of the Police at Kaitaia, was ever made available to all of the members of the Board of Trustees of Pamapurua School. For the avoidance of doubt, the Authority is satisfied that the text of that letter, in its totality, was not made available to all Board members. The Authority is satisfied that the evidence confirms that all that happened was that Mr Hovell read parts of the letter to the Board and did not provide Board members with a copy of the Police letter.

[21] It is important to set out in full three paragraphs from Detective Gorrie's letter. In a very real sense, it is the response of Mr Hovell to these three paragraphs in Detective Gorrie's letter that brought about Mr Hovell's dismissal from his position. It is not clear whether the text of these three paragraphs were read in their entirety, or at all, to the Board of Trustees, but the Authority is satisfied on the balance of probabilities that both the Chair of the Board at the time (Mr Griffiths) and Mr Hovell were fully cognisant with the three paragraphs in question.

[22] Those three paragraphs from Detective Gorrie's letter are in the following terms:

One thing that became abundantly clear as a result of my investigation is that Mr Parker has been inviting students from the school over to his house to stay overnight, and it appears this has occurred numerous times and on a reasonably regular basis.

In my view it is clearly inappropriate for a school teacher to invite young children to their residence, outside of school hours, and have them sleeping over, and I would suggest that this practice must stop immediately, and protocols be initiated to discourage them from occurring in the future.

Given that Mr Parker holds the position of Deputy Principal, I believe this is highly unprofessional and has obviously called Mr Parker's reputation into question in this instance.

[23] Although the Authority did not hear from Detective Gorrie, Mr Hovell maintained in his evidence that Detective Gorrie had spoken with Mr Parker and indicated to him that he must stop the practice of allowing children to sleepover at his home. The then Chair of the Board of Trustees, Mr Peter Griffiths, did give evidence to the Authority and he confirmed that he also had spoken to Mr Parker and indicated to him that he must stop the practice of allowing "sleepovers".

[24] Finally, Mr Hovell gave evidence directly to the Authority that he had spoken to Mr Parker and indicated to him that he must stop allowing sleepovers. However, the Authority observes that Mr Hovell could not point to any record of that conversation that he might have made at the time, nor was there any documentary follow-up of the purported conversation. In particular, the Authority notes that there was nothing in the documentary evidence before it that gives any confirmation that Mr Hovell did as he claimed to have done in his oral evidence. In particular, the Authority was surprised that there was no reference in performance appraisal documentation after the events of 2009 which would have supported Mr Hovell's evidence on the point. The Authority would have thought that on a matter as significant as this, if Mr Hovell had spoken to Mr Parker in the terms in which his oral evidence suggested, good professional practice would have suggested first that the discussion be reduced to writing by way of file note, second that it be followed up by way of letter, and third, that the behaviour change sought should have been subject to regular monitoring including by way of performance appraisals.

[25] Mr Hovell's evidence on this point was far from convincing. He indicated that he did not regard performance appraisals as the appropriate place for dealing with this sort of behaviour modification and he was equally unconvincing about why there was no written contemporaneous record of his engagement with Mr Parker on the subject.

[26] Although Mr Hovell's evidence was directed at the claim that he had given Mr Parker a lawful and reasonable instruction to stop the sleepovers, save for Mr Hovell's bare assertion, and the support from his Board Chairman and the Police, there is nothing to suggest that Mr Hovell gave this matter the degree of earnest consideration that it warranted. He told the Commissioner that he had given Mr Parker "a stern talking to" but the Authority would have imagined that if that were the position, and in particular if Mr Hovell accepted that he needed to make that discussion the context in which he gave Mr Parker an instruction, there would have been more formality, more structure, and particularly, more follow-up.

[27] The next issue in sequence is the question of how Mr Hovell managed the returned to school both of the Deputy Principal Mr Parker, and of the students who had initially complained about him. It is apparent on the evidence the Authority heard that Mr Hovell took no particular steps, and seems to have expected someone else to manage the effective reintroduction of the complainant students to their complained about teacher.

[28] It is also apparent to the Authority that, despite having an interview with the mother of one of the complainants, Mr Hovell did nothing other than ask her to keep him informed.

[29] In his evidence to the Authority, Mr Hovell consistently asserted that it was not his role as the principal to deal with the interface between the complainant students and their complained about teacher. However, it is equally evident to the Authority that there was no intimation from Mr Hovell that he had himself taken the initiative and sought the intervention of Child Youth & Family in respect of the interface between the complainants and Mr Parker in the school system. Nor is there any evidence that he sought advice from the School Trustees Association about that aspect. Indeed, the evidence before the Authority suggests that School Trustees Association had no further involvement with the School after 2 April 2009, which date predates Mr Parker's return to teaching duties after the complaints against him in that year collapsed.

[30] Again, the Authority must conclude that the professional leader of a school has obligations to ensure that relationship issues between students and staff are appropriately managed. It cannot be the correct position that the principal of a school can, as it were, wash his hands of responsibility to deal with the outcome of failed allegations about sexual offending by a teacher against his students. Whatever one thinks about the fact that those allegations did not proceed to prosecution, the fact remains that the allegations were made, were the subject of an initial Police investigation, and then for whatever reason collapsed, leaving the complainant students returning to the classroom of the teacher about whom they complained. The Authority is satisfied that, in those circumstances, the principal has a professional duty to manage the reintroduction of those parties to each other and that that duty cannot be delegated to outside agencies, as Mr Hovell seemed to want to suggest.

[31] The Authority has already foreshadowed its concern about Mr Hovell's following up of his initially expressed concern and instruction, immediately after the March 2009 complaint was withdrawn. Mr Hovell properly conceded that the complaint about Mr Parker was serious and that the steps he needed to take as principal were themselves important ones. But as the Authority has already noted, despite that apparent understanding of Mr Hovell, there is no formality whatever about his approach to the issue.

[32] For present purposes, nor is there any evidence at all that Mr Hovell took any steps at all to follow up on the instruction that he claims to have made to Mr Parker on the latter's return to school after the failed 2009 complaint. It is the essence of the Commissioner's anxiety about this whole issue that if Mr Hovell had taken proper steps to ensure that the instruction he claims to have given Mr Parker was actually followed by Mr Parker, then a whole body of sexual offending in the period from March 2009 to the middle of 2012 would not have happened.

[33] Despite that self-evident proposition, there is no evidence at all before the Authority that Mr Hovell did anything to monitor Mr Parker's behaviour after the purported discussion with Mr Parker on his return to school in 2009. And that is for the entirely extraordinary reason that Mr Hovell maintained not just to the Authority but previously to the Commissioner throughout the latter's disciplinary process, that he had no idea that Mr Parker had disobeyed his 2009 instruction.

[34] The Authority refers to that contention as entirely extraordinary because every single person that the Authority spoke to in connection with its investigation knew that Mr Parker was disobeying the instruction he was apparently given in 2009 by Mr Hovell, except, it appears, Mr Hovell. In other words, the Commissioner, in his decision-making role on the disciplinary consequences for Mr Hovell, is asked to accept that the one person who needed to know what Mr Parker was up to did not know and yet everybody else in the community did. In the Authority's considered view, Mr Hovell's continuing to maintain that he knew nothing about what Mr Parker was up to strains credibility to breaking point.

[35] The Authority heard evidence that Mr Parker would bring his vehicle to the front of the school at the end of the school week and would drive away with a vehicle full of young boys for the weekend. A neighbour of Mr Parker's who also was on the staff of Pamapurua School, told the Authority that she was aware of Mr Parker's continuing sleep-overs. A parent and former member of the Board of Trustees of Pamapurua School gave evidence to the Authority that she would frequently see Mr Parker in town getting petrol and:

... his car would be full of boys who were students of the school. Kaitaia is not a large place and if I saw James [Mr Parker] driving around town with boys, I find it hard to believe Stephen Hovell never once saw the same over the course of several years.

[36] Another member of the staff of Pamapurua School who has worked for the School for a significant period of time, gave evidence to the Authority that she had told Mr Hovell that Mr Parker was taking boys home after April 2009 and accordingly she felt able to give unequivocal evidence to the Authority that "*Stephen Hovell knew that James Parker continued to take boys home with him after April 2009*".

[37] Yet another staff member of Pamapurua School gave evidence to the Authority that students would openly say they had spent the weekend with Mr Parker and that they would frequently borrow the school phone to ring their parents to see if they could spend the weekend with Mr Parker. That school phone is situated immediately outside Mr Hovell's office.

[38] Yet another parent gave evidence to the Authority that she had "*a number of face-to-face conversations with Stephen Hovell*" about Mr Parker's sleep-overs and she also gave evidence of being with Mr Hovell at the front door of the School when boys were loading gear into Mr Parker's car. The witness asked Mr Hovell why boys

were still going with Mr Parker and his response allegedly was something to the effect that it was good for “*troubled boys*” to spend time on Mr Parker’s farm.

[39] For the sake of completeness, the Authority needs to make clear that Mr Hovell, in his evidence to the Authority, had no recollection of ever seeing Mr Parker taking boys away from the School in his vehicle, but the difficulty for the Authority is that there is so much evidence from so many people and from a number of different angles, that it is just inconceivable to the Authority that Mr Hovell did not know what was going on. The Authority heard evidence from people who worked at the School who knew, from parents who had seen Mr Parker in town with students at the weekend or at the petrol station, from people who had spoken to Mr Hovell complaining about Mr Parker’s activities and yet Mr Hovell asks the Authority to accept that he had no knowledge of Mr Parker’s apparently flagrant breach of Mr Hovell’s clear instruction of 2009.

[40] Accordingly, the Authority’s findings of fact in relation to the events of 2009 are:

- (a) That Mr Hovell was warned about Mr Parker’s behaviour in respect of sleep-overs before the events of March 2009 (although that finding was not available to Mr Arthur and thus to Mr Forbes, because that evidence was not heard by Mr Arthur);
- (b) That Mr Hovell spoke privately to Mr Parker after the latter had been exonerated from the March 2009 complaint but that Mr Hovell took no steps to formalise his discussion with Mr Parker, either by file note or by follow up letter;
- (c) That the reason Mr Hovell spoke to Mr Parker was because of Detective Gorrie’s letter making it clear the practice of allowing sleepovers was inappropriate and “...*must stop immediately...*”
- (d) That Mr Hovell took no subsequent steps to ensure compliance with his April 2009 instruction;
- (e) That Mr Hovell knew or ought to have known that his instructions to Mr Parker were being comprehensively ignored in the period from

April 2009 down to the disclosure of further criminal offending in 2012;

- (f) That Mr Hovell failed to make any proper arrangements for the return to school of the putative complainants after the March 2009 complaint had been withdrawn.

What were Mr Hovell's obligations?

[41] Mr Forbes alleges that Mr Hovell failed absolutely in his fundamental duty to ensure that the students under his care were protected from harm. Mr Forbes told the Authority that the evidence available to him suggested:

... a serious dereliction of Mr Hovell's obligations as principal and professional leader of the school, responsible for the day-to-day management of the school. I did not see these as minor performance issues but were serious enough to call into question my confidence in Mr Hovell to continue as the school's principal and professional leader.

[42] It is plain on the evidence that Mr Forbes reached that conclusion based on the findings of the Arthur Report. Those findings broadly were summarised earlier in this determination at para.[9].

[43] Having developed a sense of disquiet as soon as he took over his role as Commissioner, Mr Forbes pursued that anxiety by commissioning the Arthur Report, the result of which was generally to confirm in his mind that he had a reason to be concerned. However, Mr Forbes readily acknowledged that because Mr Hovell had not participated in any way in the Arthur Report, it was incumbent upon the School to give Mr Hovell the opportunity to respond appropriately to the issues of concern identified in that document. While there are a number of concerns, the Authority is absolutely satisfied on the evidence that the fundamental area of concern for Mr Forbes was Mr Hovell's handling of the 2009 incident with Mr Parker. The Commissioner himself distils those concerns down to four issues which are set out in his letter to Mr Hovell's counsel dated 19 February 2013.

[44] For the avoidance of doubt, those issues are:

- (a) That Mr Hovell failed to adequately address the 2009 complaint or advise his Board appropriately;

- (b) That Mr Hovell failed to act appropriately on the Police warning about the 2009 incident and give appropriate direction to Mr Parker and staff generally;
- (c) That Mr Hovell failed to monitor Mr Parker's behaviour so as to both ensure compliance with a lawful and reasonable instruction and ensure the safety of students; and
- (d) That Mr Hovell failed to put in place arrangements for the return of the children who were subject to the 2009 complaint.

[45] Because Mr Hovell had chosen not to engage with Robin Arthur in the preparation of the Arthur Report, it was incumbent upon Mr Forbes to ensure that Mr Hovell had an opportunity to first understand the nature and extent of the allegations made against him, and secondly have an opportunity to respond to those allegations in order that Mr Forbes could consider those responses and allow them to inform his subsequent decision-making. For the avoidance of doubt, the Authority is absolutely satisfied that Mr Forbes gave Mr Hovell every reasonable opportunity to engage with him in the process.

[46] In relation to the first issue just identified, Mr Hovell's position is that because some of the evidence which the Authority heard was not available to Robin Arthur, it somehow followed that Mr Forbes went too far in concluding that Mr Hovell did not know that students were still being taken to Mr Parker's home for sleep-overs.

[47] It is true that two of the witnesses who gave evidence to the Authority and who indicated to the Authority that they considered that Mr Hovell knew about Mr Parker's activities post-2009, had not specifically given that information to Mr Arthur. But Mr Arthur's conclusions are based on more than the evidence of two witnesses. Indeed, as the Authority has already made clear, the whole community knew what Mr Parker was doing in relation to sleep-overs and the Authority is satisfied that Mr Forbes is entitled to think that Mr Hovell's credibility on the point is somewhat limited when he appears to be the only person available to comment on the matter who does not know what is going on.

[48] In terms of issue 1, the Commissioner formed the judgment that Mr Hovell's response to the 2009 complaint was inadequate. In essence, Mr Forbes concluded that what Mr Hovell did was insufficient to ensure the safety of students and, as a by-

product, to ensure compliance with the instruction which the Authority is satisfied Mr Hovell gave.

[49] The Authority does not accept Mr Hovell's submission that the Commissioner's conclusion that he knew the children were being taken home to Mr Parker's residence was "*pure conjecture*". The Commissioner's determination of that matter was based on the weight of evidence and in the Authority's opinion the weight of evidence is overwhelming that Mr Hovell either knew and ignored the matter, or if he did not know, that he ought to have known given that everybody else in the small community seemed to be very clear about what Mr Parker was doing.

[50] The second issue related to the actual action which Mr Hovell took in relation to the Police's letter. The Authority accepts that Mr Hovell did speak to Mr Parker but as the Authority has already indicated, it does not accept that that is enough and the Commissioner reached the same conclusion. If Mr Hovell had documented his discussion with a file note or followed the matter up with a letter setting out the position, that would have assisted in emphasising his sincerity of the matter. Further, Mr Hovell might have circularised teaching staff about the issue to make clear what the requirements of the School were. The fact that none of those extra actions were taken is a factor which the employer is entitled to take into account in assessing the efficacy of Mr Hovell's action.

[51] Issue number 3 is the allegation that Mr Hovell failed to monitor Mr Parker's behaviour having given the instruction. Despite the efforts of his able counsel, Mr Hovell had to accept that he took no steps whatever to monitor Mr Parker's behaviour or at least if he did, he could not remember any of the steps that he took and there is no documentary evidence to support a conclusion that he monitored Mr Parker's behaviour. As Mr Forbes rightly pointed out in his correspondence, not only is the effect of monitoring performance beneficial to the protection of students but it is also beneficial to ensure the safety of the teacher.

[52] Issue 4 concerns the arrangements for the return of the students to Mr Parker's classroom after the complaints had been made. Mr Hovell maintained that this was a job for Child Youth & Family but there is no evidence that he asked Child Youth & Family to assist and on the face of it, it is a matter to do with the operation and leadership of his school and you would have expected him to take responsibility for that.

[53] Having engaged appropriately with Mr Hovell, the Commissioner set about formulating his view. Mr Forbes formulated the issue in these words in the evidence he gave to the Authority:

I was satisfied that from the 2009 complaint and information that Stephen Hovell was made aware of at the time, including the Police letter, there was a sufficient signal to any school principal to take steps to ensure the practice of taking boys home stopped ...

In my experience it would have been reasonable to expect a principal in this situation to, at the very least, put in place formal measures for addressing the behaviours with Mr Parker followed by a plan for monitoring compliance. It was woefully inadequate to simply have a discussion with Mr Parker and take no further steps, not even record the discussion which would have given it a degree of formality and in turn put him on notice that this practice had to cease. ...

I did not accept Mr Hovell's actions post 2009 to be anywhere near sufficient to meet the expectations of his position. Furthermore I did not accept that he could not possibly have known of this practice continuing and it appeared to be common knowledge in and around the school that James Parker was taking boys home and having them for sleep overs. ... Mr Hovell is the only staff member to know that the Police have given a direction that this must stop and I cannot understand how a principal could be so out of touch with what was happening in his school not to know that this practice was ongoing. ...

If I was to accept his assurances that he knew nothing of the sleep overs, the difficulty with this response is that it inevitably calls into question Mr Hovell's level of engagement as principal in the day-to-day life of the school ...

[54] The Authority is satisfied that those excerpts from Mr Forbes' evidence provide a reasonable summary of the Commissioner's conclusions. Having reflected on the matter since hearing the evidence and having had the benefit of studying the helpful submissions filed by both counsel, the Authority's considered view is that the Commissioner's conclusions are supported by the overwhelming weight of the evidence.

What remedies (if any) are available?

[55] The Authority is satisfied on the balance of probabilities that a fair and reasonable employer could, after conducting a diligent inquiry, conclude that it was available to decide that Mr Hovell was guilty of serious misconduct and thus able to be dismissed from his employment. It follows from that conclusion that no remedies are available.

[56] In reaching the conclusion it has, the Authority first has given consideration to whether Mr Forbes has sufficiently investigated the allegations of concern before dismissing Mr Hovell. In that regard, it is difficult not to see the Commissioner's investigation as a "*belt and braces*" review of the areas of concern. Not only did Mr Forbes commence his own inquiries and form some tentative views, but as soon as he reached provisional conclusions about the extent of the inquiries that might be required, he took the step of commissioning an independent person to conduct the exercise. The Arthur Report is the result and the Authority is satisfied that that report provides an extremely thorough inquiry into the management and operation of the School at the relevant time and Mr Hovell's culpability (if any) in respect of those concerns.

[57] Moreover, the Authority is satisfied that the Commissioner properly raised its concerns with Mr Hovell. Given Mr Hovell's decision not to engage with Robin Arthur, the Arthur Report was not informed by any input from Mr Hovell. But, as soon as the report issued, Mr Forbes provided a copy to Mr Hovell, sought engagement with him and gave him an extended period to engage such that any input that Mr Hovell sought to make was available to the employer.

[58] Further, Mr Hovell was given a reasonable opportunity to be heard. He was afforded the opportunity to respond through counsel, both in correspondence and in meetings, and he was provided with all the documents that he sought.

[59] Finally, the Authority is satisfied, having heard the principal protagonists give their evidence, and assessed the documents that are before the Authority, that the Commissioner genuinely considered Mr Hovell's views before reaching a conclusion in the matter.

[60] Mr Hovell refers the Authority to the decision of *Lewis v. Howick College Board of Trustees* [2010] NZEmpC 4. While Chief Judge Colgan does quite properly emphasise the effect of the additional impost on professional employees of the loss of registration, *Lewis* cannot be taken to mean that employers of professional employees cannot dismiss for misconduct. It is true that teachers, as an example of a professional workforce, have registration obligations in order to continue practising their profession and that the statutory framework requires an employer to notify the Teachers' Counsel where a teacher is dismissed for misconduct.

[61] *Lewis* is authority for the proposition that employers of professional staff must take additional care in reaching an adverse finding. The Authority is satisfied on the balance of probabilities that that additional care was taken in this case.

[62] At its core, the Commissioner is inviting the Authority to accept its judgment that the single most fundamental obligation of a school principal is to ensure the safety of students and that where that obligation is within the principal's power, every proper step ought to be taken to ensure that safety. It will be remembered that the Authority has accepted that Mr Hovell did speak with Mr Parker once the letter from Police had been made available, but on the evidence before the Authority, that is all that Mr Hovell did. He did not fully inform his Board about the nature and extent of the Police letter, nor did he ever disclose to the rest of the staff that Police had written to him requiring him to ensure the practice of sleep-overs ceased. So Mr Hovell was the only member of the staff (other than Mr Parker) who knew about the Police letter.

[63] Mr Hovell also did not seek any advice from any outside agency about what steps (if any) he should have undertaken to ensure the safety of his school. He could have spoken with the School Trustees Association, with Child, Youth & Family, with the Police itself, with the Ministry of Education or any other body or agency that any of those primary agencies might refer him to. He did none of those things.

[64] Nor did he take any proper professional steps to ensure that the young people who had complained about Mr Parker were adequately re-integrated into Mr Parker's classroom. He also took no steps in respect of the parents of the complainant students; he met with one mother but did not accept any obligation to take any action on her behalf.

[65] Mr Hovell undertook no monitoring whatever of Mr Parker's activities after the initial discussion and, at its most charitable, seems to have simply assumed (against the weight of evidence), that his instruction would be followed, notwithstanding all the evidence available to the rest of the School community that his instruction was not followed. And of course, Mr Hovell accepted without reservation that the allegations made against Mr Parker in 2009 were serious and that the Police's letter was a serious matter that he himself had to treat as serious. So having accepted the seriousness of the situation, it is very difficult to understand why Mr Hovell would have taken no steps whatever to satisfy himself that his instructions were being followed.

[66] That last mentioned failure, the failure to monitor, ultimately led inexorably to further abuse of these young people, abuse which could so easily have been avoided by Mr Hovell taking some very straightforward steps to ensure his instructions were being followed.

Determination

[67] The Authority is satisfied that Mr Hovell has not demonstrated that he has suffered a personal grievance and as a consequence, the remedies that he seeks, including reinstatement, are not available to him.

[68] In the Authority's opinion, Mr Hovell was dismissed from his employment for the serial failures of good professional practice analysed in this Determination.

Costs

[69] Costs are reserved.

James Crichton
Member of the Employment Relations Authority