IN THE HIGH COURT OF NEW ZEALAND AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA TĀMAKI MAKAURAU ROHE

CIV 2023-404-473
[2023] NZHC 3782

UNDER	Judicial Review Procedure Review Act 2016
IN THE MATTER OF	An application for review of a decision of the Board of trustees to authorise the issue and service of a notice under s 4 of the Trespass Act 1980
BETWEEN	RHYS MICHAEL CULLEN Applicant
AND	PAUL JUNIOR PA'U First Respondent
	BOARD OF TRUSTEES OF MOUNT ALBERT GRAMMAR SCHOOL Second Respondent

Hearing:	19 June 2023
Appearances:	The applicant in person The first respondent in person P Robertson and K Griffiths for the second respondent
Judgment:	19 December 2023

JUDGMENT OF CAMPBELL J

This judgment was delivered by me on 19 December 2023 at 12.30 pm pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

CULLEN v PA'U [2023] NZHC 3782 [19 December 2023]

Introduction

[1] The applicant, Mr Cullen, provided tutoring and other services to a group of students at Mt Albert Grammar School (**the School**). In the course of doing so, he visited the School's buildings and grounds.

[2] The second respondent, the Board of Trustees of the School (**the Board**), considered that Mr Cullen was entering the School's building and grounds without permission and without complying with the School's policies. The Board decided to prepare a trespass notice under the Trespass Act 1980 and serve it on Mr Cullen. The first respondent, Mr Pa'u, communicated the Board's decision to Mr Cullen. Mr Pa'u is an education and employment consultant who advises the Board.

[3] Mr Cullen applies to judicially review the decision of the Board to prepare and serve a trespass notice.

Background

[4] Mr Cullen was a medical practitioner. His registration was cancelled in 2006 by the Health Practitioners Disciplinary Tribunal. He has no teaching qualifications and has never taught at a New Zealand School. However, he says he has had an interest in Māori and Pacific education for more than forty years.

[5] From 2020, Mr Cullen provided tutoring and other youth development services to a group of ten Pasifika and Māori students at the School. Mr Cullen conducted this work alongside an organisation with which he is involved, the Pro-Pare Athlete Management Trust (**PAMT**).

[6] As part of the PAMT program, Mr Cullen picked students up after school or after school sports trainings, took them to a "Hub" in Onehunga where they could train or be tutored, and then took them home. Mr Cullen also transported students to

Saturday sports games, some of which Mr Cullen would watch. He would then take them to the Hub and then to their homes after dinner. Mr Cullen would also transport students to swimming lessons run by PAMT at the Mt Albert Aquatic Centre (**the Aquatic Centre**) during school holidays. The Aquatic Centre is on the School site.

[7] Mr Cullen considers that his tutoring led to a marked improvement in the academic achievement of his group of students. Mr Cullen also believes that institutional and personal racism is embedded at the School. He says that behind the School's streaming system is a prerequisite system that acts as an "ethnic filter", denying Pasifika and Māori students access to courses approved for University Entrance.

[8] Mr Cullen has, in his dealings with the respondents, accused the School and certain teachers at the School of being racist. The School rejects these allegations. It says Mr Cullen has never provided any credible evidence to support his allegations. The School says the outstanding results for students, including Māori and Pasifika students, and the glowing assessments of the School by the Education Review Office have not altered Mr Cullen's views.

[9] Further, the School considers that Mr Cullen is not acting in the best interests of the students that he tutors. The School says that Mr Cullen questions and challenges educational decisions made by staff. This means that straightforward issues, such as placing a student in a subject or refusing entry to a subject because a student lacks sufficient credits, end up taking significant staff time responding to Mr Cullen's challenges. The School is also concerned that Mr Cullen is encouraging students to defy the instructions of teachers and to breach the School's policies. The School says Mr Cullen does so without the knowledge or approval of the students' parents.

[10] In addition to those disagreements (which are not for the Court to resolve in this judgment), the School says that when Mr Cullen visits the School he does not comply with health and safety protocols or sign-in requirements. The School says that Mr Cullen wanders around the School having meetings with students (sometimes at the Aquatic Centre), and sometimes collecting them while the School is open for instruction, without the knowledge or

approval of teachers.

[11] As well as unannounced visits to the School to meet with students, Mr Cullen visits the School to support students at their meetings with teachers and senior staff. Those staff have found Mr Cullen's presence to be unhelpful. The School says that if Mr Cullen does not secure an outcome he is happy with, he will accuse the teacher

or staff member of being a bully or being racist. He will sometimes make these accusations by email to the staff member, in a tone that staff members have found combative and aggressive. Mr Cullen will sometimes follow up by complaining to the Board or the Ministry of Education about the staff member or about the decision made.

[12] The School's concerns with Mr Cullen began in 2020. The School asked Mr Pa'u to assist in its dealings with Mr Cullen. Mr Pa'u was asked to manage the communications with Mr Cullen so that staff did not have to engage with him.

[13] Matters reached a head in March 2023. On 14 March 2023, Mr Cullen accompanied one of the students he tutors to a meeting with the Year 12 Dean and Corey Todd, a Deputy Principal of the School. Mr Todd terminated the meeting as he found Mr Cullen to be unreasonable and combative. The next day the student sent an email to the Ministry. Mr Cullen assisted the student to write the email. The email raised an issue relating to the student's attendance. In the email, the student recorded Mr Cullen's view that Mr Todd had lied to the student and was a bully. The student copied his email to his local Member of Parliament and indicated he intended to approach the New Zealand Herald.

[14] The student's email was also copied to Patrick Drumm, the School's Headmaster. Mr Drumm says he was seriously concerned by the email. Rather than raising the attendance issue with him first, the email to the Ministry was the first time he had become aware of the issue.

[15] Mr Drumm asked Mr Pa'u to send an email to Mr Cullen. Mr Pa'u did so on 16 March 2023. The email, the contents of which Mr Drumm approved, set out the School's concerns with Mr Cullen's behaviour, and then said:

> **TRESPASS NOTICE**
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> **The school is preparing a Trespass Notice that will be**

served on you. This means that you cannot enter onto any school property without the prior written permission of the Headmaster. I have been asked to inform you that you are not to enter school property effective today. This includes the school pool where we understand you have been meeting some of the students.

(bold in original)

[16] Mr Cullen responded to this email by sending three letters, each dated 16 March 2023, to the presiding member of the Board. In one of them, he accused Mr Todd of lying and being a bully and said that an Assistant Principal (who he said he had never met) had been described to him as an "awful human being". In one of the other letters, he said that any trespass notice would be met by an urgent injunction application to the High Court, that his application would be supported by affidavits from several students, and that he would be taking those students out of school at various times to prepare their affidavits.

[17] On 20 March 2023, Mr Cullen began this proceeding, seeking judicial review of the decision to issue a trespass notice.

[18] On 22 March 2023, the Board met. The Board resolved to support Mr Drumm's actions in banning Mr Cullen from School property and to approve Mr Drumm issuing Mr Cullen with a trespass notice. Mr Drumm then sent a letter to Mr Cullen, dated 23 March 2023, saying that the Board had resolved to support his decision to issue a trespass notice banning Mr Cullen from entering School property.

[19] On 21 April 2023, the operator of the Aquatic Centre, Belgravia Health and Leisure Group (**Belgravia**), wrote to the Board supporting the decision to include the Aquatic Centre in the trespass notice to be served on Mr Cullen.

Procedural history

[20] Mr Cullen's initial statement of claim, dated 20 March 2023, contained three causes of action. These included that s 13 of the Trespass Act prevented the issue of a trespass notice in respect of some areas of the School, including the Aquatic Centre.

[21] On 3 April 2023, Mr Cullen filed an interlocutory application for an order setting aside any reference to the Aquatic Centre from any trespass notice issued by either Mr Pa'u or the Board.

He amended his statement of claim on 24 April 2023. His causes of action remained essentially the same, with some added details.

[22] In a minute dated 17 May 2023, Jagose J directed that both the interlocutory application and the substantive claim be heard together.

[23] The issue raised on Mr Cullen's interlocutory application is subsumed within the issues raised in his substantive claim for judicial review. It therefore suffices for me to address his substantive claim.

Mr Cullen's claim for judicial review

Mr Cullen's claim against Mr Pa'u

[24] Mr Cullen's first cause of action alleged that Mr Pa'u had no authority on behalf of the Board to issue the notice contained in his email dated 16 March 2023. By way of relief, he sought an order setting aside the "notice" issued by Mr Pa'u. Mr Cullen sought the same relief against Mr Pa'u on the second cause of action (which alleged that the Board had acted inconsistently with Mr Cullen's and his students' rights under the New Zealand Bill of Rights Act 1990 (**the Bill of Rights Act**)) and the third cause of action (which alleged that s 13 of the Trespass Act prevented the issue of a trespass notice in respect of some areas of the School).

[25] Affidavits filed by Mr Pa'u and on behalf of the Board in May 2023 showed that Mr Pa'u was authorised to send the email. Mr Cullen acknowledged in his written submissions, filed on 6 June 2023, that the respondents had provided evidence as to the existence of appropriate delegations and authorities. His written submissions said that the first cause of action was not going to be argued "today", though he did not amend his claim to remove that cause of action.

[26] At the start of the hearing, Mr Cullen said that he abandoned the first cause of action. He pursued the second and third causes of action, but did not address me on why, even if the grounds in those causes were made out, the Court should grant any relief

against Mr Pa’u.

[27] Mr Pa’u said the claims against him were an abuse of process, as he was not a decision maker and had not exercised any statutory power of decision. He said it was plain from his email of 16 June 2023 that he was simply conveying the instructions

of the School and Headmaster. He said that, in any case, there was no merit to Mr Cullen's judicial review claims against the Board.

Mr Cullen's claim against the Board

[28] Mr Cullen pleaded his second and third causes of action against the Board (as well as against Mr Pa'u).

[29] As noted, the second cause of action alleged that the Board had not acted consistently with Mr Cullen's and his students' rights under the Bill of Rights Act. Mr Cullen alleged that five rights were breached: the right to freedom of expression in s 14; the right to freedom of peaceful assembly in s 16; the right to freedom of association in s 17; the right to freedom from discrimination in s 19; and the right to the observance of the principles of natural justice in s 27(1).

[30] The third cause of action alleged that s 13 of the Trespass Act prevented the Board from issuing a trespass notice in respect of some areas of the School, with the Aquatic Centre being a particular focus.

[31] The Board said that the decision to issue a trespass notice was not an exercise of a judicially reviewable statutory power.[1] Even if it was, the Board said the Bill of Rights Act was not engaged, because the Board was not exercising a public function and the School premises and grounds were not a public space. If the Bill of Rights Act was engaged, the Board said it complied with that Act. The Board also said that it is entitled to issue a trespass notice in respect of all areas of the School property, including the Aquatic Centre.

Issues

[32] The issues to be determined are:

1 The Board pleaded, in its amended statement of defence, that its decision to issue a trespass notice did not involve "the exercise of a statutory powers [sic] of decision and therefore this matter is not judicially reviewable". At the hearing the Board sought leave to amend that pleading to say that its decision did not involve "the exercise of a reviewable statutory power of decision and therefore this matter is not judicially reviewable". Mr Cullen did not raise any opposition and I saw no prejudice. Leave to amend is granted.

(a) In deciding to issue a trespass notice, was the Board exercising a judicially reviewable power?

(b) If so:

(i) Was the decision subject to the Bill of Rights Act?

(ii) If the decision was subject to the Bill of Rights Act, did the Board make its decision inconsistently with Mr Cullen's and his students' rights?

(iii) Is the Board entitled to issue a trespass notice in respect of all areas of the School?

(c) Is Mr Cullen's claim against Mr Pa'u an abuse of process?

[33] During the course of submissions, a dispute arose as to whether the email sent by Mr Pa'u on 16 March 2023 was a trespass notice in terms of the Trespass Act. Mr Cullen said it was such a notice. The respondents said it was merely a notice that a trespass notice was to be issued and served, but that such a notice had yet to be issued. It is not necessary for me to resolve this dispute. There is no dispute that the Board decided to issue a trespass notice. It suffices for me to determine whether that decision is reviewable and, if so, whether it should be reviewed.

[34] The Board acknowledged that Mr Cullen is entitled, by virtue of the Local Government Official Information and Meetings Act 1987 (**the LGOIM Act**) to attend Board meetings. The Board said that, as the proposed trespass notice would prohibit Mr Cullen from entering the School to attend those meetings in person, they would facilitate his attendance by video conference. Mr Cullen's response was that the LGOIM Act requires attendance to be in person. This issue was not raised on the pleadings, there was no evidence that Mr Cullen had ever attended Board meetings or

wanted to, and the parties made only passing reference to it in their submissions. It is not a matter that I need to decide.

The evidence

[35] Mr Cullen made an affidavit in support of his interlocutory application. He outlined the tutoring and other services he provided to students, his dealings with the School, and the receipt of the email from Mr Pa'u on 16 March 2023.

[36] In support of their notices of opposition, the respondents filed five affidavits, from Mr Pa'u, Mr Todd, Mr Drumm, Joanne Williams (the Associate Principal at the School), and Tanya Rose (a Deputy Principal). These covered their experience of Mr Cullen's interactions with students and with teachers and other staff at the School.

[37] Mr Cullen did not make an affidavit in reply. When filing his written submissions he filed two further affidavits from two of the students he tutored. The respondents did not raise any issue with the late filing of those affidavits. The Board included them in the common bundle it filed for the hearing.

[38] Although most of these affidavits were filed in respect of Mr Cullen's interlocutory application, they were treated as the evidence for the substantive claim.

In deciding to issue a trespass notice, was the Board exercising a judicially reviewable power?

[39] Mr Cullen's submission on this issue began with the Judicial Review Procedure Act 2016 (**JRPA**). He said that the effect of s 3(1) of the JPRA is that the exercise, or proposed exercise, of a statutory power can be judicially reviewed. He submitted that the issue, or proposed issue, of a warning under the Trespass Act was the exercise, or proposed exercise, of a statutory power. He said it was therefore reviewable.

[40] That submission, with respect, misunderstands the purpose and effect of the JPRA. The JPRA does not found, or determine the scope of, this Court's supervisory jurisdiction to review the

exercise of power (statutory or otherwise). Rather, as its title indicates, it is a procedural enactment.[2] This is stated in s 3(1), which says that the purpose of the JPRA is "to re-enact Part 1 of the Judicature Amendment Act 1972,

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2 *Hughes v Auckland Council* [2021] NZHC 3296 at [32].

which sets out procedural provisions for the judicial review of" the exercise (or proposed or purported exercise) of statutory power.

[41] Contrary to Mr Cullen's submission, not every exercise of statutory power is judicially reviewable. This Court's supervisory judicial review jurisdiction is concerned with the exercise of "public" powers. The Court has jurisdiction to review "exercises of power which in substance are public or have important public consequences".[3] The Supreme Court has said that the question is whether there is a "substantial public interest component" to the exercise of power.[4] Exercises of such public power are reviewable, whether the power derives from statute or otherwise,[5] and whether the person or body exercising the power might be characterised as public or private in nature.[6] The jurisdiction has limits, including that "the exercise of power must be one that is appropriate for review".[7]

[42] The question, therefore, is whether a school board's decision to issue a trespass notice against someone such as Mr Cullen has a substantial public interest component. Mr Cullen submitted that this question was answered in the affirmative by the Court of Appeal in *The Board of Trustees of Nelson College v Fitchett*.[8]

[43] *Fitchett* concerned the relationship between pt 7 of the LGOIM Act, which confers a qualified licence to enter land for the purpose of attending meetings of a school board (or other local authority), and s 4 of the Trespass Act. Section 47 of the LGOIM Act confers the qualified licence. The licence is qualified by the exclusion and removal provisions in ss 48 and 50. Mr Fitchett disrupted a Board meeting. The chair of the Board invoked s 50 and asked Mr Fitchett to leave. Mr Fitchett refused to do so and thereby became a trespasser. Three weeks later, the Board served a trespass notice precluding Mr Fitchett from entering College buildings for two years.

[3] *Royal Australasian College of Surgeons v Phipps* [1999] 3 NZLR 1 (CA) at 11.
[4] *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 at [71]; and *Moncrief-Spittle v Regional Facilities Auckland Ltd* [2022] NZSC 138, [2022] 1 NZLR 459 at [108].
[5] *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 at [1].
[6] *Royal Australasian College of Surgeons v Phipps* [1999] 3 NZLR 1 (CA) at 11.
[7] *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 at [1].
[8] *The Board of Trustees of Nelson College v Fitchett* [2017] NZCA 572, [2018] NZAR 327.

The purpose of the notice was to prevent Mr Fitchett from attending future Board meetings.[9]

[44] The Court of Appeal said that the narrow issue was whether s 4 of the Trespass Act empowered the Board to issue a trespass notice in those terms, given ss 47, 48 and 50 of the LGOIM Act.[10] The Court held that the Board was not so empowered. This was because the circumstances in which the s 47 licence could be withdrawn were exclusively prescribed in ss 48 and 50. Further, s 13(c) of the Trespass Act said that nothing in that Act restricted the provisions of any enactment conferring a right of entry on any land. The entitlement under s 47 to attend a Board meeting was therefore not restricted by the Trespass Act.[11]

[45] I do not accept Mr Cullen's submission that *Fitchett* held that any decision by a school Board to issue a trespass notice is amenable to judicial review. The Court emphasised that the purpose of the trespass notice was to ensure that Mr Fitchett did not attend Board meetings for two years. Properly understood, *Fitchett* is concerned with a school Board's purported exercise of power to exclude a person from a Board meeting. That power is plainly one that has a substantial public interest component.[12] *Fitchett* did not address whether a decision to issue a trespass notice for a purpose other than to prevent attendance at Board meetings is the exercise of a public power and therefore judicially reviewable.

[46] An occupier of land who exercises a power to issue a trespass notice does so in the exercise of private property or possessory rights, but in some circumstances the issuing of the notice may have a substantial public interest component.[13] There is no "bright line" test for identifying when the exercise of an otherwise private power has substantial public elements.[14] In the present case, guidance as to where to draw the line can be found in cases that have considered judicial review in the educational

[9] At [25].
[10] At [25].
[11] At [27]–[28].
[12] So plain that, in *Fitchett*, this appears to have been assumed.
[13] *Police v Beggs* [1999] 3 NZLR 615 (HC) at 626 (dealing with the similar question of whether the issue of a trespass notice was subject to the Bill of Rights Act).
[14] Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at 934.

context. Judicial review of the decisions of principals and school Boards has generally been limited to cases relating to matters directly involving students or teachers such as suspensions, expulsions and transfers, or matters of public interest relating to educational policy.[15]

[47] Evidence from the Board was that Mr Cullen has entered the School site without complying with the School's sign-in policy, has wandered around the School having meetings with students (sometimes at the Aquatic Centre), and has sometimes collected students while the School is open for instruction without the knowledge or approval of teachers. Mr Cullen did not file a reply affidavit disputing this evidence.

[48] School buildings and grounds are not public spaces. A school Board is responsible for governing the school, including by setting the policies by which the school is to be controlled and managed.[16] In this case, the Board has set a policy for trespassers. This says that the School and its grounds "are not freely accessible to the public" (which correctly reflects the legal position) and that the headmaster or Board is responsible for issuing written trespass notices.

[49] I consider there is no public interest component in a decision by a school Board to issue a trespass notice against a person who is on school grounds or in school buildings without permission. It would place an intolerable burden on schools if, every time a Board wished to issue a trespass notice against such a person, the Board had to consider the possibility of judicial review, and the attendant procedural and substantive constraints on its decision-making.

[50] The Board accepts that the Aquatic Centre is a public space. However, there is no public interest component in excluding Mr Cullen from the Aquatic Centre.

[51] Any trespass notice issued against Mr Cullen would not,

however, merely prevent him from making unannounced visits to the School buildings and grounds and the Aquatic Centre. It would also prevent him from accompanying students as

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15 *Maddever v Umawera School Board of Trustees* [1993] 2 NZLR 478 (HC) at 504–505; *M v Board of Trustees of Palmerston North Boys' High School* [1997] 2 NZLR 60; and *J v Bovaird and Board of Trustees of Lynfield Coll*ege [2007] NZAR 660 (HC).

16 Education and Training Act 2002, s 125.

a support person at their meetings with teachers and senior staff. Mr Cullen is not a parent or guardian of any of the students. He is, nonetheless, a person who is providing educational assistance to the students (however flawed the School may think that assistance to be) and who the students wish to accompany them as their support person. A decision to exclude Mr Cullen from such meetings therefore has real consequences for the students. Although not as dramatic as suspension or expulsion, I consider the consequences are sufficiently significant to supply the requisite public interest element to make the Board's decision amenable to judicial review.

[52] I therefore conclude that, in deciding to issue a trespass notice, the Board was exercising a judicially reviewable power.

Was the decision subject to the Bill of Rights Act?

[53] Having answered the first question in the affirmative, it is necessary to consider whether any of Mr Cullen's grounds of judicial review are established. For the most part, those grounds relied on alleged inconsistency with Mr Cullen's and his students' rights under the Bill of Rights Act.

[54] This raises an issue as to whether the Board's decision was subject to the Bill of Rights Act. Section 3 of that Act states:

> This Bill of Rights applies only to acts done—
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> (a) by the legislative, executive, or judicial branches of the Government of New Zealand; or
>
> (b) by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

[55] Here, only s 3(b) could be engaged. When applying s 3(b), the dispute will generally be as to whether the decision-maker was performing a "public" function or power. The Supreme Court reviewed the approach to s 3(b) in *Moncrief-Spittle v Regional Facilities Auckland Ltd*.[17] The Court said that the approach taken by Randerson J in *Ransfield v Radio Network Ltd*,[18] including

the indicia used by

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[17] *Moncrief-Spittle v Regional Facilities Auckland Ltd* [2022] NZSC 138, [2022] 1 NZLR 459.
[18] *Ransfield v Radio Network Ltd* [2005] 1 NZLR 233 (HC).

Randerson J to draw the line between private and public functions and powers, should continue to provide guidance to the application of s 3(b).[19] The Court also said there may be little to distinguish the s 3(b) test from the test for amenability to judicial review.[20]

[56] I consider that, to the extent that any trespass notice would simply prevent Mr Cullen from making unannounced visits to the School, the Board would not be exercising a public function. The Board would, in my view, be exercising a power no different from that of any other occupier of property who wanted to vindicate private rights of ownership or occupation through the mechanisms available in the Trespass Act. That the School is publicly owned and publicly funded, and that the power in question is statutory, do not affect that characterisation.

[57] Here, the trespass notice would also prevent Mr Cullen from accompanying students to meetings. That means the Board's exercise of power has a public character. For that reason, I consider that the Bill of Rights Act does apply to the Board's decision.

Did the Board make its decision inconsistently with Mr Cullen's rights?

[58] Section 5 of the Bill of Rights Act provides that, subject to s 4 (which no party said was relevant in this case), the rights and freedoms in the Act "may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". The first step is to identify those rights in the Act that were engaged by the Board's decision. Those rights will constrain the outcome the Board was able to reach. The Court must be satisfied that the decision was a reasonable limit on any rights engaged.[21]

[59] Mr Cullen submitted that five rights were engaged by the Board's decision. His submissions on each were brief.

[19] *Moncrief-Spittle v Regional Facilities Auckland Ltd* [2022] NZSC 138, [2022] 1 NZLR 459 at [48].

[20] At [49].

[21] *Moncrief-Spittle v Regional Facilities Auckland Ltd* [2022] NZSC 138, [2022] 1 NZLR 459 at [82]–[84].

[60] First, he said his right to freedom of expression in s 14 was engaged. Mr Cullen submitted this was the case because it could be inferred from the Board's decision that members of the community who hold views critical of the school can be trespassed from the School. I reject this submission. No such inference is available on the evidence. It is plain that the trespass notice was issued because of a combination of Mr Cullen's flouting of policies in entering the School's buildings and grounds without permission and his argumentative and combative approach to meetings with teachers and staff. As to the latter reason, Mr Cullen's approach is evident from the manner in which he responded after Mr Pa'u sent the email on 16 March 2023.

[61] Secondly, Mr Cullen said the decision engaged his right to freedom of peaceful assembly in s 16. Mr Cullen submitted that he wished to exercise his right of peaceful assembly by being on the School's sports fields or being at the Aquatic Centre. I do not accept that this right is engaged. An assembly is a gathering of several persons for a particular purpose. Mr Cullen did not identify any such gathering that he would, were it not for a trespass notice, wish to attend. Attendance at a meeting with a student and staff would not be an assembly. Even if it were, I consider that it would be reasonable for the School to limit Mr Cullen's right, given his flouting of School policies and disruptive approach in meetings.

[62] Next, Mr Cullen said his s 17 right to freedom of association would be infringed because the trespass notice would limit his freedom to associate with the students to whom he provides services. Like the right to freedom of peaceful assembly, this is a democratic and civil right. I do not consider that Mr Cullen's right to associate with those students would be limited by the issue of a trespass notice. Even if it were, such a limit would be justified. To the extent that Mr Cullen wishes to exercise that right by coming on to the School's grounds or buildings, it is reasonable for the School to have policies around visitors, to enforce those policies

and to exclude those who refuse to comply with them. To the extent that Mr Cullen wishes to accompany students to meetings, it is reasonable for the Board to issue a trespass notice given the unhelpful approach that Mr Cullen has taken to those meetings.

[63] Mr Cullen alleged that his s 19 right to freedom from discrimination would be infringed by the issue of a trespass notice. He said a trespass notice would discriminate against him on the basis of his political views. I do not accept this. Mr Cullen did not identify his political views. Those views played no part in the Board's decision.

[64] Finally, Mr Cullen submitted that his s 27(1) right to the observance of the principles of natural justice would be infringed. He said this was because the notice would infringe his students' rights to be represented by him at meetings with senior staff (where those meetings could result in a determination in respect of the students' rights or obligations). I will assume, without deciding, that Mr Cullen has standing to apply for judicial review of a decision allegedly infringing of a right of his students, and that in some meetings a student's rights or obligations may be in issue to an extent that engages s 27(1). On those assumptions, I consider that the issue of a trespass notice would be a reasonable limitation on this right. Once again, that is because I am satisfied that Mr Cullen's contributions to the meetings were disruptive and unhelpful to the students.

[65] In summary, I am not satisfied that the Board made its decision inconsistently with Mr Cullen's rights under the Bill of Rights Act.

Is the Board entitled to issue a trespass notice in respect of all areas of the School?

[66] Mr Cullen submitted that, even if his challenges to the decision to issue a trespass notice failed, the Board could not include the Aquatic Centre within any trespass notice. He said this was because the occupier of the Aquatic Centre, Belgravia, did not authorise the issue of the trespass notice until some weeks after the letter from Mr Pa'u on 16 March 2023.

[67] There is nothing in this point. There is no dispute that

Belgravia has now authorised the issue of a trespass notice against Mr Cullen in respect of the Aquatic Centre. Any relief on a judicial review is discretionary. A court is not going to grant relief in circumstances where any lack of authority on 16 March 2023 has since been cured.

[68] Mr Cullen also submitted that the Board could not issue a trespass notice until he had committed a trespass, and that he had not yet done so. I reject that submission. I am satisfied that Mr Cullen has repeatedly been on the School's property without the School's authority. That is a trespass.

Is Mr Cullen's claim against Mr Pa'u an abuse of process?

[69] Given the intermediary role that Mr Pa'u had adopted from 2020, it was plain to Mr Cullen that Mr Pa'u was simply passing on the Board's instructions. This means that Mr Cullen should never have included Mr Pa'u as a respondent to this application.

[70] I have dismissed Mr Cullen's substantive grounds for judicial review of the Board's decision. It is therefore not necessary for me to determine whether the claim against Mr Pa'u was an abuse of process. It suffices to say that Mr Cullen's claim against Mr Pa'u never had any merit.

Costs

[71] Mr Pa'u and the Board have succeeded in defending Mr Cullen's claim. They are each entitled to costs, on a 2B basis.

Result

[72] I decline Mr Cullen's interlocutory application. I dismiss his claim for judicial review.

Campbell J