



# Unreasonable decision of Board of Trustees to trespass student without opportunity to comment

<b>Legislation</b>	Ombudsmen Act 1975 (22)(1)(b)
<b>Agency</b>	Board of Trustees
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	536762
<b>Date</b>	October 2021

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*Student trespassed after planning and holding a fight on school grounds – Chief Ombudsman found the student’s family was not given an opportunity to comment before the trespass decision was finalised – Ombudsman recommended that the Board of Trustees reconsider its decision and apologise to the family.*

## Background

In September 2020, the Board of Trustees trespassed a student from another school for two years.<sup>1</sup> The student had organised a fight with a student from another local school, on school grounds.

The trespass notice meant the student was unable to travel on the school bus, as the bus passed through the school’s bus bay on the way to the student’s own school. The student was forced to find alternative transport (until changes were made to the school bus route).

The family complained to the Board about the trespass decision. The Board agreed to review the trespass order 12 months from the date it was served. However, the family considered that

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<sup>1</sup> Under section 4 of the Trespass Act 1980, an occupier of land may issue a trespass notice to any person. If that person enters the property, then they will be deemed to be trespassing. The offence carries a potential sentence of three months’ imprisonment or a fine of \$1000. Both private and public occupiers have the same rights in respect of issuing trespass notices.

the Board did not adequately consider the implications of the student being unable to transit through the school, and complained to the Chief Ombudsman.

## Investigation

The Ombudsman investigated the decision of the Board to trespass the student from the school, focusing on whether the board undertook a fair and reasonable process. The Ombudsman observed that he did not intend to substitute his view about whether a trespass notice should have been issued nor did he condone the behaviour of the students involved in the fight.

In *Police v Beggs*<sup>2</sup>, the High Court considered the interaction between the Trespass Act and the Bill of Rights Act 1990 (BORA). It concluded that an occupier's rights under the Trespass Act are not absolute and must be considered in conjunction with the rights affirmed by the BORA. This includes section 27(1) BORA which states:

*Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law*

The Ombudsman was not satisfied the family was provided with the opportunity to comment before the Board finalised its decision. The Board did not follow an appropriate decision-making process when reaching its decision to trespass the student. The Ombudsman acknowledged that there may be circumstances in which providing an opportunity to comment would be impossible or otherwise impractical. However, this did not seem to be the situation in this case. The decision to trespass was finalised a few weeks following the incident, therefore the Board had the chance to communicate its preliminary view to the family for their comment.

## Outcome

The Ombudsman formed the opinion that the Board acted unreasonably by not providing the student's family with the opportunity to comment. The Ombudsman recommended the Board reconsider its decision to issue the trespass notice, and apologise to the family. The Board accepted the Ombudsman's opinion and recommendations.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*

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<sup>2</sup> *Police v Beggs* [1999] 3 NZLR 615