

**IN THE CORONERS COURT  
HELD AT AUCKLAND**

**IN THE MATTER** of the Coroners Act 2006

**AND**

**IN THE MATTER** of an Inquest into the  
death of Edward Franklin Magalogo

Date of Hearing: 16 May 2011

Appearances: Mr Reed QC for the Tangaroa College  
teachers  
Dr White for Tangaroa College  
S/Constable Herman for New Zealand Police

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**FINDINGS OF CORONER**

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**Introduction**

[1] This is an inquest into the death of Edward Franklin Magalogo, late of 52 Boundary Road, Clover Park, Auckland, school student, aged 18 years, who died in Auckland City Hospital on 28 March 2010.

**Purpose of Inquiry**

[2] The purpose of an inquiry is set out under Part 3 of the Coroners Act 2006. Section 57 of the Act defines the purpose of inquiries as follows;

- (1) A coroner opens and conducts an inquiry (including any related inquest) for the 3 purposes, and not to determine civil, criminal, or disciplinary liability.
- (2) The first purpose is to establish, so far as is possible-
  - (i) That a person **has died**; and
  - (ii) The person's **identity**;
  - (iii) **When** and **where** the person died; and
  - (iv) The **causes** of the death; and
  - (v) The **circumstances** of the death.
- (3) The second purpose is to make **specified recommendations** or **comments** that, in the coroner's opinion, may, if drawn to public attention, reduce the chances of the occurrence of other deaths in circumstances similar to those in which the death occurred.
- (4) The third purpose is to determine whether the **public interest** would be served by the death being investigated by other investigating authorities in the performance or exercise of their functions, powers, or duties, and to refer the death to them if satisfied that the public interest would be served by their investigating it in the performance or exercise of their functions, powers, or duties.

### **The School Trip to Muriwai Beach**

[3] On 26 March 2010, Edward Magalogo, a year 13 student at Tangaroa College, East Tamaki, Auckland, went with a group of 33 fellow students and 3 staff members to Muriwai Beach, West Auckland. The purpose of this educational field trip was to study elements of the coastal environment as part of the geography curriculum. Such a trip had been made by students from the College in previous years.

[4] The trip fell within the Education Outside The Classroom (EOTC) Policy of Tangaroa College. This document, prepared for approval by the College Board of Trustees (BOT), contained appropriate Rationale, Purpose, Guidelines and Procedures sections.

The Purpose section stated, in part:

*1. To ensure safe practices are followed for all EOTC experiences.*

Preparations for the trip included agreement by parents/caregivers by way of a permission slip requiring signature. In Edward's case his mother was not happy for him to go on the trip and Edward apparently wrote his own permission slip and handed it in with the \$15.00 fee. His mother was not aware that he had done this and the school accepted the hand-written slip without further enquiry.

[5] The trip documentation completed by school staff was an EOTC Event Proposal Form, a Risk Analysis Management Plan, and a Tangaroa College EOTC Event Approval form.

[5.1] The EOTC Event Proposal Form

This document states that:

This form is 4 pages-3 for teacher, 1 for BOT.

It was filled out by Mr M Smith as Teacher in Charge and Head of Learning (HOL).

Hence the statement 'HOL' approval Yes/No was not completed.

Section 6 Details of outside provider/s to be used in the EOTC activities (if any) lists an outside provider to be used in the EOTC and names an Auckland Regional Council Park Ranger and Section 11 outlines his responsibilities. This was wrong-no such arrangement had been completed. In Section 11 the bus driver was listed and his responsibilities were described as *assists with supervision at the lunch break*.

I will return to this matter below.

Section 9 Details of any hazardous activity and the associated planning, organisation and staffing lists among other details:

***Measurement of wave height and frequency-remain in knee deep water.***

This detail has been annotated with the words ***2-3 students at once.***

I will return to this matter below.

The form was signed by Mr Smith and dated 9 March.

The 'To be filled out by BOT form' (page 5) has not been completed other than with the Principal's name and the Board of trustees chairperson's name but no signatures or dates appear.

[5.2] The Risk Analysis and Management Plan (RAM)

This document lists under:

Causal Factor-*Students' lack of experience of beach conditions. Students' lack of swimming ability.*

and under:

Risk reduction strategies-*Ensure students remain in less than knee depth of water.*

The Plan section Final Approval-Accept-Reject is blank.

[5.3] The Tangaroa College EOTC Event Approval Form

The Comments/Feedback section states *only task knee deep water-2-3 at one time.*

I will return to this matter below.

[6] Mr Smith stated that a safety briefing was given at the College before the trip and on the bus in which students were advised that when it came to entering the water they were not to go out any further than knee height and were not to swim.

[7] Events at the shoreline of Muriwai Beach

After other activities the students went to the water's edge in groups to carry out the final activity, a measurement of a process known as long shore drift-this process refers to the movement of sand and larger natural objects by wave action. The task required assessment of the movement of index objects (lemons) thrown into the sea and observed as the waves moved them.

Tu'a Alo was a fellow student of Edward. In her statement to the Department of Labour she stated:

*We were all down at the beach doing the lemon experiment i.e.30 students with the teachers....The waves were rough, like big and continuous....Half the class were in the water when me and Esther got there, but nobody that I saw was actually swimming i.e. diving...The exercise finished. I was with Janona, we were just holding hands in the water up to above our knees and a strong wave was coming, and it came it took us into shore and another wave did the same thing, probably about 7 times. We were just standing there and the waves kept coming at us, we were in the water for like 20-30 minutes, but then I still remember that one of the girls came and told us that we had to get out of the water now, but all of us just kept going .... At this time I was standing next to Edward, everyone was around us at this time. There were some kids that close to us.*

*When the wave took me into shore again, I got up wiping my eyes and Edward was there. I picked him up because he was wiping his eyes, got him up asked him if he was alright, he said "yup". And after that, me and Edward were just talking together. I was standing next to him and a wave came. The water was just above our knees and me and Edward were facing our backs to the waves. We thought it was just another normal one that would take us to shore. When it came it took us back out to sea, quite far, we tried to stand and we couldn't stand. The only person I knew was this Indian boy, he knew how to swim and he swam back to shore. Edward was with me. The boys that were back on shore they were calling out to a surfer to come and help us we were in the water for about 20 mins. The time me and Edward were holding hands we knew we were in danger, I tried not to panic whenever a wave came I kept my head up. This other wave came and we separated, it took him about 3 metres away from me. Edward was under the water the whole time. Edward could not swim. A surfer came to help us. I told him to get Edward first 'cause he was already face down. After he got Edward he came and got me because he couldn't lift Edward, I helped him put him on the board....All this time I was out amongst the waves trying to get Edward on the surfboard....Me and the surfers brought Edward to shore on the surfboard, once we were on shore that's when the boys and Mr Smith came running...One of the boys did cardiopulmonary resuscitation on him and Mr Smith helped....The rescue helicopter came....<sup>1</sup>*

[8] Edward was transferred to Auckland Hospital by air. There he developed overwhelming infection in both lungs consequent upon the damage done by the 'near drowning' he had suffered and he died on 28 March 2010 despite the best efforts of the hospital staff.

[9] Evidence of Mr A Kent, Life Saving Development Officer of Surf Life Saving Northern Region New Zealand

Mr Kent, a long serving life guard with particular experience of Muriwai Beach wrote a Critical Incident Report on the near drowning of Edward and gave evidence at the inquest. In summary he reported that:

### **Environmental Conditions**

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<sup>1</sup> I note that in response to an alert to the Muriwai Callout Team lifeguards Hudson, Russek and Wallis responded and lifeguard Hudson went to assist at the scene.

Low tide occurred at 13.29hrs, approximately 1 hour before the incident.

With waves 1.5 to 2.0 metres the rip close to ‘Flat Rock’ would have been active.

### **Contributing and Causal Factors**

Lack of appreciation or disregard of risk posed by conditions and location.

Possible perception of lower risk being in reportedly knee depth water.

Turning away from incoming waves catching the victim/s off guard.

Possible inability to swim/poor swimming skills.

The no lifeguard patrolled area at the time of the incident.

In evidence, in response to a question as to the suitability of the timing of the activity, Mr Kent stated that: ‘The tide, on conditions like they were, low tide or around low tide, two hours either side would probably be the worst conditions...because of the amount of water moving when the tide is retreating or incoming...with the waves the height they were, means that the power around the currents is a lot stronger.’

He gave a hazard rating of 9/10 to Muriwai Beach.

He accepted that a number of schools conducted similar activities at Muriwai Beach.

[10] Department of Labour Investigation

Ms Tawhiti carried out an investigation for the department. She reported, in summary, as follows:

### **Conclusions**

*It is difficult to come to a conclusion when all relevant information including statements pertaining to this investigation, has not been provided to the Department.<sup>2</sup>*

*Therefore, the inspector can only conclude from the information gathered that there is evidence to suggest;*

- *the Board of Trustees for Tangaroa College had a system in place to manage the EOTC Year 13 Geography field trip to Muriwai*
- *the victim has paid the fee to attend the trip*
- *this is the 12<sup>th</sup> year this field trip has been undertaken to Muriwai by the same teacher in charge*

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<sup>2</sup> This refers to the fact that the three teachers who went on the trip to Muriwai Beach declined, on legal advice, to give statements to the department.

- *the ratio of the teachers that attended and supervised the students was 1:10 as per the requirements of the Event Proposal Form and the size and composition of the group*
- *the students are in year 13 aged 17 to 18 years old*
- *the teachers were in the proximity of the students when the “lemon” activity was taking place in the water*
- *the students were in the water up to knee level*
- *the victim had his back turned against the waves when a “rogue” or “freak” wave has taken him and his friend out to sea, further than expected*

### ***Recommendations***

*In view of the above it is difficult to see what more the school could have done from a realistic point of view. In determining whether or not all practicable steps had been taken, the matter must not be judged with the benefit of hindsight. It must be judged on the basis of what had been known at the relevant time.*

*However, the Department is recommending that:*

1. *A letter is sent to the Board of Trustees of Tangaroa College advising that the Department will be taking no further action.*
2. *The letter will also be reminding the school of their duties under The Act without inferring any criticism of their actions.*
3. *A letter is sent to the victim's family advising the outcome of the investigation.*
- ...
6. *The file is closed.*

### **[11] Evidence of the Principal of Tangaroa College**

Ms Ngaire Ashmore gave statements to the DOL investigator and to the Court. In the former statement, given on 7 April 2010, she referred warmly to Edward as a student at her school and also to the process involved in planning outside school activities and stated that:

- *The number of staff that attended with the students were 3, plus the ranger from ARC-supervising activities (but see para 5.1)*
- *The teachers have written their statements but were advised to get some advice from their representatives*

I note that this referral to teacher statements having been written was made 12 days after the incident at Muriwai Beach.

In the latter statement, given on 6 May 2011, she stated that:

- *These processes (referring to EOTC policies) involved the submission of an EOTC Event Approval form indicating the activities that would occur. Notably, that form recorded that no swimming activities were planned and that **the tasks in water were in knee deep water, with 2-3 students at a time.***

I will return to this matter below.

- *The Tangaroa College Board of Trustees has commenced that review (of the EOTC policy)...In order to ensure that the review was comprehensive, Tangaroa College also sought the assistance of the working group that devised the EOTC guidelines.*

She concluded as follows:

- *The death of any student at a school is a principal's worst nightmare. That nightmare is compounded when the death occurs on a school activity. Tangaroa College and me personally, do not want to see a similar tragedy repeated, hence our thorough reviews of the EOTC policies and procedures.*
- *I have maintained contact with Edward's family following his death with the intention of offering support from myself and the school where ever possible. I wish to express my deepest condolences to them over the tragic death of Edward.*
- *I would like to thank the Magalogo family for attending the remembrance service we held at the school for Edward recently and for the wonderful words and stories that you shared. The seat that has been dedicated to Edward's memory will be forever in our school for us all to enjoy.*

At the inquest I asked her:

*Having confronted this terrible tragedy for the school, and you've said that, in the end, the responsibility is yours and that's absolutely right, how do you think that such a death might be prevented from happening again?*



The Principal replied:

*I certainly think a process of continued review and using the Ministry of Education guidelines, continuing to upskill staff and to make contact with the experts in the field to be able to come in and continue to work with our staff on trips. I think that...we could avoid any sort of accident or tragedy in the future, I don't know whether that's a realistic possibility but certainly at Tangaroa College we'll be working really hard to ensure that we continue to review and have a look at our processes and make sure that we are carrying out best practice as advised by the experts.*

I applaud that reply.

### **Issues**

[12] Tangaroa College Documentation for the Education Outside The Classroom trip on 26 March 2010

The evidence of the documents and that of the Principal was that only 2-3 students would be in the water at any one time while the evidence of those at the beach was that at least 6 and possibly 15 were. The implications for safety of this confusion between Mr Smith and the Principal and the documents are clear.

I see no reason why the documentation should not be a single document without repetition.

[13] Supervision of the shore edge activity at Muriwai Beach

One of the three supervising teachers was asked by Mr Smith to leave the beach during the activity to make a telephone call to the school regarding the expected delay in returning from Muriwai Beach. The near drowning of Edward was happening as she returned to the beach. Mr Smith stated that the bus driver was present on the beach 'wondering when we were going to be returning' and that therefore three adults were present at all times. In the trip documentation the bus driver's only stated responsibility was 'assists with supervision at the lunch break'.

The evidence about what 'in water' activity was going on was not clear. Mr Smith, the other teachers and Ms Talo gave evidence that no one was swimming while several students in their written descriptions of what had happened (provided three days after the trip) stated that some students were swimming. I am unable to form a view on this

matter and in any case it is peripheral to the near drowning of Edward who was not swimming at the time he was swept out from the shore.

[14] Dangers of Muriwai Beach for shoreline activity

It is clear from the evidence of Mr Kent that the holding of 'in water' activities at this site poses dangers that may be avoidable elsewhere. The provision of advice to schools by Surf Life Saving experts is available as is public education on the dangers of shoreline activities particularly on West Coast beaches.

I conclude that the Tangaroa College Principal and Board of Trustees should consider anew whether Muriwai Beach is unsafe for this school activity and therefore should not be used in the future.

### **Recommendations**

**[15] I recommend that the Board of Trustees and the Principal of Tangaroa College review the documentation used, and reconsider the safety instructions, the site and the supervision standards of shoreline activities on any future Education Outside The Classroom trips taking into account advice from, in particular, Surf Lifesaving New Zealand.**

**I recommend that The Board of Trustees of Tangaroa College report to the Magalogo family when the above process has been completed.**

I will send this finding to the Minister of Education for distribution as the Minister sees fit.

### **Finding**

[16] **I find that:** Edward Franklin Magalogo, late of 52 Boundary Road, Clover Park, Auckland, school student, aged 18 years, died Auckland City Hospital on 28 March 2010. The cause of death was pneumonia subsequent to the near drowning he suffered on a Tangaroa College educational trip to Muriwai Beach, West Auckland, on 26 March 2010.

My reasons for this finding are drawn from the evidence produced at the inquest.

### **Conclusion**

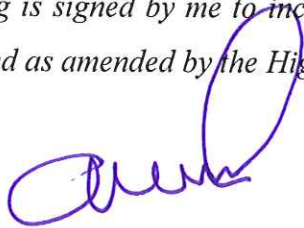
[17] I acknowledge the assistance given by witnesses and counsel involved with this

matter.

On behalf of the Coroners Court I extend my sympathy to the family of Edward Magalogo for their loss.

I recognise the efforts of T'ua Alo, the surfers present at the beach and the emergency services for their efforts to help Edward, and I thank them for their willingness to do so with no thought for their own safety.

*This finding is signed by me to incorporate the original findings of Coroner Jamieson (retired) and as amended by the High Court.*

A handwritten signature in purple ink, appearing to be 'A N MacLean', written in a cursive style.

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Judge A N MacLean  
Chief Coroner

9 July 2012