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a risky business ?

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Contents

Refereed Papers

The Perils Of Plagiarism: Processes For Managing Academic Misconduct <i>Virginia Goldblatt</i>	5
External Review Of University Decisions Affecting Students: Ombudsman, Visitors And Tribunals <i>Bruce Lindsay</i>	15
Special Provisions ... The Risky Business Of Education Policy And Disability Discrimination <i>Shiralee Poed & Deb Keen</i>	27
Principals And Legal Risk: Complacency Or Concern? <i>Mui Kim Teh</i>	37
A Sleeping Giant: At Risk Of Being ' <i>At Risk</i> ' In School Sport And The Teaching Of Physical Education In Australia And New Zealand <i>David Wescombe-Down</i>	49

Non-Refereed Papers

Complimentary Or Conflicting Duties? Meeting Legal Obligations Under Education, Disability Discrimination, Privacy And OHS Legislation In NSW Government Schools <i>Margaret Baker</i>	63
Time To Consider - Is Teaching A Risky Business? <i>Rick Carter</i>	73
Universities' Negligent Misstatement And Students' Admission: Opening Doors To A Worthy Claim In Educational Negligence <i>Kathy Eivazi</i>	83
Managing The Risks In Off-Campus Activities <i>David Ford</i>	95
The Risk Of Pastoral Care Being Mistaken For Grooming Behaviour <i>Carol Howard & Joanne Worrall</i>	103
Plagiarism And Copyright In Education: Risks Posed By Plagiarism Detection Tools For Both Students And Educational Institutions <i>Juliet Hyatt & Pheh Hoon Lim</i>	113
The Implied Term Of Mutual Trust And Confidence In Employment Contracts <i>Eric Leahy & Stephen Corbishley</i>	125
Student Allegations Of Teacher Sexual Misconduct, Disclosure Of Documents, And A Teacher's Right To Privacy: Considerations From The U.S. And Queensland, Australia <i>Ralph Mawdsley, Joy Cumming & Andrew Knott</i>	135
Teachers And Social Networking Sites: Think Before You Post <i>Charles J. Russo, Joan Squelch & Sally Varnham</i>	149
The Australian Education Business Risk Of Constitutional Exposure To The <i>Fair Work Act</i> 2009 (Cth.): An Expanded Platform For The Advocacy Of Educational Workplace Rights? <i>Helen Sungaila</i>	160
New Classroom Practice And A Return To In-School Professional Learning - New Ways To Support Teachers In The Work Place <i>Peter van Cuylenburg</i>	166

Principals And Legal Risk: Complacency Or Concern?

Mui Kim Teh

About the Author

Dr Mui Kim Teh is both a lawyer and an educator. She trained as a Barrister-at-Law in London, and is an Advocate and Solicitor of the Supreme Court of Singapore. Before moving to Australia in 2005 from Singapore, she was a practising lawyer, and earlier in her career, she was both a teacher and a head of department in Singapore schools. Dr Teh is currently based at the University of Southern Queensland, Fraser Coast Campus, where she lectures in law.

Abstract

There has been an increasing awareness across many jurisdictions of potential legal issues that might arise in schools. These issues range from bullying to sexual misconduct, from injury to negligence. In a recent study in Singapore, despite the increased attention to such issues, school principals displayed a range of attitudes toward legal risk and a diverse range of strategies to minimise it. The findings were compared to those from a small scale study of senior educators in Queensland in order to ascertain commonalities and differences of view. This paper summarises those views and suggests some basic principles to help those in positions of leadership to avert unwanted legal attention.

Introduction

Singapore is a small island in a strategic location, but it has no natural resources. Thus, it is not surprising that its government often refers to the population as its only natural resource, with education being seen as a significant economy driver. Policies are initiated to nurture students in order that the nation has future leaders to meet the challenges of an increasingly service- and knowledge-based economy.¹ In such a culture of academic excellence, it became interesting to find out from school leaders whether legal issues do affect schools in Singapore and whether education has, indeed, become a 'Risky Business'.

There has been an increasing awareness across many jurisdictions of potential legal issues that might arise in schools. These issues range from bullying to sexual misconduct, from injury to negligence. This paper compares the range of attitudes of a small sample of 15 school principals in Singapore and Queensland towards legal risk and the strategies to minimise it. In-depth interviews were employed to seek these 15 principals' views on the trends in legal issues impacting schools and whether similar issues had arisen for them and the implications they have on their job.

This study was exploratory and hence the method of selecting participants was not guided by the need for validity, reliability and generalisability of the data received. The findings here are only indicative of the current views of a relatively small number of principals on schools and the law and what can be done to avoid legal risk. The principals interviewed are referred to throughout this paper as 'Participants'. A Singaporean principal is termed 'SP', while a Queensland principal is referred to as a 'QP'.

Legal Responsibility – How it Has Changed

'Legal responsibility' is that of providing the right environment and support for educating the child. This is presumably the starting point for any school. But the notion of legal responsibility has changed over the years, according to the views of all Participants. The following statements by one SP and one QP succinctly sum it up:

SP: Day 1, teachers - no such thing as legal issue. Never know about it. In the 80's, what legal issues? Just 'do', and nobody sues.

QP: As a beginning teacher, I didn't have much knowledge of education law and I also believe that the need to know was not there.

Legal responsibility for school leaders, indeed, has changed significantly. There are now many areas of responsibility in which principals need to have an overall understanding and for which they carry a duty. Often, they have to deal with the specificity of the law for issues such as workplace health and safety, students with disability (in terms of equity and access), custody in family law, and even the banning of religious clothing or symbols in schools (whether it is discriminatory)² rather than the general duty of care for health and safety. In fact, it was argued by two academics³ that the gradual increase in judicial opinions and legislative enactments involving schooling issues supports the argument for a new field of law known as 'Education Law'. In this study, some of the perennial legal issues that affect schools and school leadership are explored through the interactions with the Participants, and arguments are put forward as to why Education Law should be an important component in leadership and teacher training.

Legal Issues Encountered by Principals

Personal Injuries

The most common area of law encountered by the Participants was that of supervision and student injuries, or the allegation by parents of negligence by the school, thereby causing injury. In a study conducted in Queensland by Stewart,⁴ these negligence cases covered mainly the area of supervision, involving a wide range of school activities, such as before and after school supervision, school excursions, sports and classroom management. The Participants felt that the attitude of parents towards incidents in school has indeed changed. There is a greater demand for accountability and a greater awareness of legal rights. This is what one QP had to say:

Previously, when a child falls and the school calls the parents, parents will simply say, "Oh dear, oh dear, we'll take him to the doctor's." But now, they have a very different view of incidents, like questioning whether it is the school's fault.

According to the Participants, the effect of this change in attitude is that they (school principals) spend a large part of their time filing accident reports and supervision records, and conducting interviews with teachers and parents about the child's injury. In the area of personal injury, schools have become very wary of possible litigation for any negligent conduct by the school. But, interestingly, some SPs believe that if educators adopt the principle of 'acting in the best interest of the child' in all that they do, parents will be understanding and will not take any legal action against the school for student injuries. By 'acting in the best interest', these SPs are referring to ensuring that the welfare of the children is given priority at all times. This view is arguably naïve, as often the seriousness of any given injury will determine the type of action taken by parents. For example, a QP cited a case where the parents of a student pursued litigation against the school, several years after the student had left the school, for an incident involving a mini-trampoline while their child was a student of the school. The case came up because the boy (now a man) had a limp in his broken ankle as a result of the incident. Thus, as rightly felt by most SPs and QPs, a sound risk prevention management system must be in place to avoid litigation. One QP said, 'We are all very aware of the possibility of complaints or legal action if we get this one wrong'. But, not surprisingly, educators are often uncertain of the standard of care expected of them by the courts.

A welcomed decision in this respect was heard in the case of *Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v. Hadba* (2005).⁵ In this case, the majority of the High Court judges held that it is not reasonable to have a system in which children are observed during particular activities for every single moment of time, as

it is damaging to teacher-pupil relationships by removing even the slightest element of trust; it is likely to retard the development of responsibility in children, and it is likely to call for a great increase in the number of supervising teachers and in the costs of providing them.⁶

They also agreed with Spender, J., who, in his dissenting judgment at the Court of Appeal stage, said that to require a supervision system that is free of any risk

is a requirement of unrealistic and impractical perfection. It is born of hindsight. It offends the standard of reasonableness. It amounts to the imposition of the responsibility of an insurer.

This is a timely case, which provides Australian and Singaporean schools some guidance on the standard of care required by the courts where the supervision of students is concerned; and the standard is one of reasonableness, and not one that requires schools to 'insure' the safety of students.

Bullying

Many cases, both in Australia and overseas, have shown that litigation for bullying mainly arises if a school, having knowledge about the bullying, fails to take reasonable care to prevent foreseeable risk of injury. In the case of *Cox v. State of New South Wales*,⁷ it was alleged that the Education Department advised the plaintiff that 'bullying builds character' as opposed to taking the necessary steps to stop the bullying. The Participants in this study indicated a similar perception, in that litigation should not arise for bullying in schools if the schools are managing the bullying well. However, all agree that there is now a more subtle and insidious kind of emotional bullying, and that is cyberbullying – the 'newest breed of bully'.⁸ A cyberbully is one who can reach his or her victims simply with the click of a mouse, and who can often escape from any legal or disciplinary consequences. Schools are placed in a difficult position, as they do not see themselves legally able to discipline students for internet offences occurring outside school.⁹ This sentiment is reflected in the statement of a SP:

I can't do very much about that, but we do when it gets very bad. Sometimes we call them in, the children and the parents, we just inform them. It's not a discipline case because we are also worried because it took place in their home computers, so what action should we take?

The Participants from Queensland, however, took a different view on this. Although a lot of incidents happen outside school and on weekends, they believe they are still disciplinary issues. One QP said:

I had a case where a child was suspended for cyberbullying. Parents argued that it occurred outside school, so the student should not have been suspended (not school's business) but my counter argument was the matter was initiated at school, so it was the school's business even if the bullying occurred at night.

In a survey of 218 Queensland teens, Associate Professor Judy Drennan of Queensland University of Technology found that 93.6% claimed to be victims of mobile-bullying.¹⁰ Although we do not know the extent of cyberbullying in Singapore, the fact is that the advancement of technology provides an avenue for bullying to take place insidiously outside school and outside school hours. School leaders everywhere will need to be prudent in looking for ways and strategies (or even create new policies) to deal with cyberbullying, especially for out-of-school incidents where there is a potential impact on the school environment.

Behaviour Management

At the beginning of 1995, corporal punishment in Queensland State schools was abolished.¹¹ In its place, schools are required to develop a Responsible Behaviour Plan for Students. Corporal punishment is not banned in Singapore, but schools are given strict guidelines by the Ministry of Education¹² on how and when to administer it. It is interesting to note that though education policy is used to curb corporal punishment, the common law defence of 'reasonable chastisement' is arguably available to teachers in both Singapore and Queensland. This proved to be the case when a magistrate in the Gold Coast, Queensland, dismissed an assault charge against a teacher, who admitted to slapping a Year 8 student. The magistrate cited the recognition of 'domestic discipline' that allows a teacher to use reasonable force 'by way of correction, discipline, management or control'.¹³

Although there is international pressure for the abolition of corporal punishment, there are, nevertheless, protagonists. In the case of *R. v. Secretary of State for Education and Employment and others; ex parte Williamson*,¹⁴ the principals, teachers and parents of four Christian schools argued that they should not be denied their rights to educate their children in accordance with 'their religious and philosophical convictions' provided in Article 2 of the First Protocol of the European Convention on Human Rights.

According to them, the teachings of the Bible explicitly allow corporal punishment as a disciplinary measure. In a unanimous decision, the House of Lords upheld the ban on corporal punishment in all public and private schools. One of the reasons that came through strongly in the judgment was that religious belief must be consistent with basic standards of human dignity or integrity. Another reason given was that it would be unjustifiable 'in terms of the rights and protection of the child to allow some schools to inflict corporal punishment while prohibiting the rest from doing so'.¹⁵

Although corporal punishment is not a viable option when disciplining students, the Participants do use suspension and expulsion, albeit an extreme strategy, as another means of school discipline. The Participants expressed the view that, though they might face challenges when using this method of discipline, generally, parents back down when it is evident that the school has adhered to the discipline policy and there is evidence to support the school's actions.

A stark difference between the two jurisdictions in the area of suspension and expulsion is that none of the Participants in Singapore mentioned the term 'due process' in their responses. There is an assumption that, once the school rules are broken, the school has the prerogative to impose the punishment. Presumably, the offending child is punished because his or her action has a negative effect on the school as a whole. But one would have thought there is a need for school leaders to strike the balance between providing a safe environment for the whole school community and a child's individual rights in relation to natural justice and due process.

Educational Malpractice

It is an accepted fact that schools owe students a duty of care. Generally, this duty of care refers to taking responsibility for the students' physical well-being while they are in school, and negligence in doing so may result in liability. Arguably, the same duty of care should include looking after the educational needs of students as well. The question put to the Participants was whether they perceived a possibility of parents making legal claims on the basis that their children did not achieve expected educational outcomes due to poor teaching. Two interesting points of view emerged from this question.

First, the Participants believe that there is a heightened awareness about academic achievement. In Singapore, schools are being ranked according to academic results; and in Australia, the first national literacy and numeracy testing was conducted for Years 3, 5, 7 and 9 in 2008, and Queensland schools can now gauge how well students are performing against national benchmarks. One SP summed up the view of some Participants by saying that schools 'need to be ready for that very thing about poor teaching'.

Although it was felt that claims based on incompetent teaching may not be in the forefront of the State school system as compared with the private and independent system, where parents pay a fee and hence expect certain results, it was still felt that the State system is not immune from this either. As one QP pointed out:

I think the same thing will happen in the State system. There is an expectation that we have to provide high results. I suppose that could be happening in the primary school where they can see a child is failing but still get promoted to the next level. I hate to see my daughter or son go through that in that they are not achieving, but are being thrown through as if they are in a sausage machine.

As far back as the early 1980s, the now retired High Court judge, Justice Kirby, noted that it was anomalous that teachers and educationalists do not owe a legal duty for the intellectual development or advancement of a student, even though that is the main reason for a child attending school.¹⁶ Williams¹⁷ has listed a range of examples where a school authority could potentially be liable for negligence in teaching:

It has been variously suggested that the failure to teach a novel prescribed in the English curriculum (an event that has apparently occurred in one state on at least two occasions), the careless or incorrect assessment of a student's performance in tests and examinations, the incorrect classification or placement of a student, the improper diagnosis or improper treatment of a learning disability, or the failure to develop and implement a remedial program for a student known not to be achieving the appropriate level of competence, would seem to be the type of

teacher behaviour that an Australian court might reasonably accept as the basis for an action framed in terms of educational negligence.

Admittedly, the difficulty of establishing the breach of duty of care in the context of educational outcomes, and the causal link between such breach and the consequential loss to the child, would limit cases of educational negligence to exceptional situations. Nevertheless, 'though such actions are likely to be exceptional, the very possibility of an educational negligence action may, however, in itself operate to promote the highest possible professional standards among professional educationists'.¹⁸

In surveying the international trends and the developments in Australia, Justice R. Atkinson of the Supreme Court of Queensland, in 2002, was of the view that educational authorities will not

be able to rely on the policy reasons used in the United States to avoid liability for negligence in the provision of education. If such negligence can be isolated as a cause of measurably inferior outcomes for students, then it seems to me that educators and educational authorities are likely to be held liable in much the same way that they have been held liable for physical injuries to children under their care and control.¹⁹

Almost six years after Justice Atkinson's statement, a case was indeed filed in a Victorian court by a father, who claimed that his Year 12 twin boys did not achieve the academic results that were expected to be attained by an elite private school. The father claimed that, in light of the appalling Year 12 results, the fees paid were excessive and unnecessary. He sued the school for the repayment of up to \$400,000 in fees paid from kindergarten to Year 12.²⁰ This case reinforced the point made by the judges and academics referred to above that parents are increasingly expecting a high level of professionalism in the delivery of education.

The second interesting point of view arising from this topic came from the Participants in Singapore. It was highlighted that since the Ministry of Education's method of evaluating teachers²¹ aims at removing under-performing teachers from the system, complaints of poor teaching should decrease. A SP said:

... now we have a process of getting rid of "poor" teachers, you know. Now we have this, shall we say, our new appraisal system and this appraisal system will weed out all the teachers who are not performing, the D grade, the E grade, and so on. They will slowly go, you see. I think complaints about poor teaching will decrease.

One might take a contrary stance. Paradoxically, while the intent may be to define teacher performance as objectively as possible in order to weed out poor teachers (and reward the good ones), such measures of performance may provide a clear indication that unacceptable standards (for example, a D grade) are tolerated. Defining standards can actually backfire, especially if the data becomes available to those outside the domain of evaluator and evaluated. Further, this belief does not address the issue of what constitutes 'weak' or 'incompetent'. It is an over-simplified view that overlooks the context of increasing demands from all quarters on the profession and a job that is no longer confined to providing instructions in the classroom. In the context, therefore, of a multidimensional remit, how does one evaluate performance and give relative weightings to the various dimensions? That difficulty aside, although it may not be an immediate concern to the Participants and other educational leaders, the notion of 'educational malpractice' should probably be treated more seriously than it currently is.

Sexual Misconduct

One of the consequences of globalisation is that with the permeability of communication and information, attitudes concerning sexual values have shifted. Society has become more 'open' and sexual misconduct in schools is beginning to be a worry for school leaders. One QP had this to say

The data shows it is increasing and the nature of it is changing in terms of female adult and male students – that dimension has changed. The values have changed. It's so sad. Recently, two brilliant teachers I've worked with have been arrested this year.

Whether or not the Participants had experiences of dealing with sexual misconduct incidents, they were all very cautious about issuing instructions to teachers when it came to interaction with students. It was observed that some young teachers are only a few years older than their secondary or high school students and it can become very tempting for them to be over-familiar with students. The difficulty lies not so much in the blatant sexual misconduct of teachers, but, rather, in the innocent friendly touching of students by teachers, or where teachers knowingly have relationships with students outside school hours. Those situations put school leaders in a quandary.

An interesting point that emerged from the research is the question of whether the school authority would be liable should students be sexually abused by a school employee. In the Australian case of *Lepore*,²² the High Court was reluctant to impose a non-delegable duty of care on school authorities for an intentional act of an employee. A non-delegable duty of care involves the imposition of strict liability upon the person or organisation that owes that duty for 'foreseeable harm'. In other words, it is a liability that the person or organisation must assume in the event of injury, even if it had engaged a qualified and ostensibly competent person to carry out some or all of its function and duties. In the case of vicarious liability, an employer (for example, a school authority) will only be liable if the offending act of the teacher was authorised by the school authority or if the act was within the scope of the teacher's employment. The real issue here, therefore, is whether the unauthorised acts of the teachers can be said to be so connected with the authorised acts that the school authority that employed them should be held vicariously liable. This is a complex issue and is outside the scope of this paper. Nevertheless, it is encouraging to see school leaders recognising the issue and taking the necessary precautions to prevent sexual abuse of students by staff or non-staff. As rightly stated by Russo,²³ if educational leaders are conscientious in devising clearly written policies to address issues of sexual misconduct, and to inform all educational personnel, including students, staff, and volunteers of the standard of behaviour that they are expected to display, the less likely they will have to deal with litigation in this area.

Students with Special Needs

An area of law concerning education that has been developing in Australia is one that concerns student rights. The Human Rights and Equal Opportunity Commission ('the Commission'), which is a national independent statutory government body, even has a section in its website to educate students about their rights. In the area of education, the Commission has responsibilities for inquiring into alleged infringements under three federal anti-discrimination laws – the *Sex Discrimination Act (1984)*, *Disability Discrimination Act (1992)* and the *Age Discrimination Act (2004)*. In addition to these federal laws, anti-discrimination laws exist in each state and territory of Australia and these laws are overseen by the State and Territory Equal Opportunity Commissions. Schools are increasingly confronted with disputes over the identification, placement, and resources associated with special needs students, and more cases are being heard in the States' and Territories Equal Opportunity Commissions.²⁴

In 2005, the Commonwealth Disability Standards for Education were formulated under the Commonwealth *Disability Discrimination Act (1992)* with the aim of eliminating, as far as possible, discrimination against people with disabilities. The Standards specify how education and training are to be made accessible to students with disabilities. They cover enrolment, participation, curriculum development, accreditation and delivery, student support services and elimination of harassment and victimisation.²⁵

In Queensland, legislation is enacted to ensure that children with disabilities are not discriminatorily excluded from public schools, and that equal opportunity and access are provided for them. Singapore does not have similar legislation, but only a policy of 'inclusive education' whenever appropriate and feasible, with special education schools (run by voluntary welfare organisations) being the main providers of education for children with disabilities. The results of the interviews on this issue with the SPs show a general acceptance and satisfaction with the current position. Only one SP explicitly expressed her dissatisfaction. However, interestingly, her dissatisfaction translated into plain resignation:

I don't need parents to assert their rights for special needs children. As a principal, I also want to assert but my voice is not heard.

Another SP felt that the provision of facilities and personnel for special needs children was not a current concern. He went on to say that the issue will be an emerging concern:

Increasingly there are more students with special needs that are in the mainstream – autistic, dyslexic cases and all that. There are more so now and we have to handle that. And as a result of their handicap, they do get picked on and get bullied. Some of the kids can be pretty mean. I've got one case now of this autistic child, the class tease him badly. For example, I had student, Samuel, in sec one, all of a sudden, he will just burst out and scream and it gets very disruptive and everybody gets very cheesed off – all because somebody whispered in his ear, “we want to hack into your computer” – AAHH! AAHH! “We want to hack into your computer” – AAHH! AAHH! So, after a while, it gets to be fun with the rest, but it gets very annoying and disruptive for the others.

The overall sense of the responses was that students with disabilities were not a major concern for school leaders in terms of legal liability, but they (principals) would see an increase in parents voicing their concerns about the special needs their children have or requesting their children to be placed in a mainstream school.

Conversely, in Queensland, the principals are of the view that disability and discrimination greatly impact schools. The issues revolve around whether the special needs child can be integrated into the main classroom without completely destroying the normality of the class. Parents are knowledgeable about their rights in this area, as well as what is required by legislation for schools to do. Hence, according to some QPs, ‘the threat of litigation in this area will always be there’. One QP also went as far as to say that some schools are not prepared to suspend or discipline a child with disability in case it is construed as discrimination. Other QPs go out of their way to provide for special needs.

The contrast in the perception of the SPs and the QPs shows that the educational rights of special needs children require special provisions to be made by education providers. In Australia, the education of children with special needs is built on the philosophy of inclusion (mainstreaming) as reflected in the legislation and policies of the various States.²⁶ Perhaps there are lessons to be learnt in Singapore from Australia on setting up policies to ensure equal opportunity for all children (with special needs or otherwise) with regard to education and training.

Implications

All the participants were asked if they thought school principals should have a knowledge of the legal aspects of education. The answer was a unanimous ‘yes’, but the reasons differed. It was observed by all the Participants that there is an increase in the influence of law on school policies, and that legal matters caused more stress than they had in previous times. One of the reasons given by the Participants for principals to gain a knowledge of legal matters is that such knowledge may help them to make judicious decisions, and, in the view of one SP, that may in turn prevent unnecessary stress amongst teachers.

I think teachers shouldn't be put in a difficult position and be scolded by parents and all that. They don't deserve that...Not fair, to the teacher, to put them through, undue stress.

When asked to explain her statement, the SP said that principals should be equipped with the necessary knowledge to deal effectively with legal issues and to filter that knowledge to the staff so that teachers need not be distracted from the important job of teaching. Knowledge of legal issues, in the view of another SP, puts educators in a stronger position when confronted by problems that could have legal consequences.

They should not be threatened with ignorance. I mean ignorance is something, “Yah, yah, he can really sue me,” but it's rubbish, he cannot sue you, he has no case!

Two other reasons for gaining a knowledge of ‘education law’ emerged from the interviews. First, parents are more knowledgeable and vocal about educational issues, so principals should be equipped with at least an equivalent level of knowledge. There is no excuse for being ignorant about the law.

The parents will say, “If you don't deal with this matter, I will report to the MOE,²⁷ I will go the media.”...I guess I realise that I have to know the law a bit more and know if I'm on the right side of the law and what my rights are.

Second, there is an accountability issue. As suggested by one SP, it is not only limiting to make decisions concerning legal matters without any background knowledge; it is also potentially dangerous where children's lives are concerned

See, it is very limiting you know, to not know things, and it's very dangerous to not know things and yet go with, do first and then you know, apologise later. Where children's lives are concerned, you can't. Sometimes, there is no turning back to what you can do to the children in school. No apologies will be enough.

Thus, as aptly summarised by a QP:

A Principal who doesn't have knowledge is foolish. There is a need to have knowledge simply for self-preservation. You also have a moral obligation as a human being to preside over and ensure the best outcomes for every student in your care. The ramifications are too big... There is an extremely strong link between education and law.

The conclusion one can draw from the above is that the position with regard to education has changed. Schools need to be prepared to meet challenges, complaints, or feedback from their stakeholders, and work within boundaries of what is acceptable to these stakeholders. In addition, school leaders must possess social skills like Emotional Intelligence (EQ) and Human Resource (HR) skills to manage increasing demands. For educators, teaching is not just teaching any more. Educators' responsibilities may well encompass 'legal responsibility' too. For example, a generation ago, there was spanking and smacking. Now, although under common law, it is still acceptable, it is something that teachers are not permitted to do. Thus, in light of societal changes and in a new environment where parents, teachers and members of the public generally are more vocal and infinitely more demanding, one would argue that there is a need for educators to be knowledgeable about their legal responsibilities.

Major Areas of Concern

Going by the experience they have had, the Participants were asked what they thought were the major areas of concern relating to schools and the law that would likely emerge in their respective countries.

The major area of concern identified by all the Participants was that of 'safety and negligence'. As educators acting *in loco parentis*, it was felt that accountability for student safety is fundamental; perhaps, one could say, non-negotiable. The importance of this issue arises from the change in the way students are educated. Unlike many years ago, where students were usually desk-bound and involved in simple and relatively harmless activities, it was pointed out that students nowadays participate in many 'high risk' activities and excursions. As a result, school leaders need to carry out risk assessments, and plan activities well in order to avoid any possibility of negligence. This was the attitude of a SP and he summed it up with resignation:

If you are frightened into not doing anything because of the fear of litigation, you can "close shop"
– no education.

But injury to students may not always result from organized activities. One SP's comment - 'something happened to the child, nothing to do with the school...' - arose from a suicide case in her school, in which the parents alleged that the school was negligent in not informing them immediately that their child had admitted to stealing a hand phone.²⁸ This case highlights the fact that the area of negligence is not limited to physical injury, but extends to psychological safety, such as dealing with bullies or informing parents of potential suicidal tendencies, where such tendencies are exhibited.

After safety and negligence, there was a mixed response as to the other legal issues that might take prominence in the near future. Some felt that incidences of sexual misconduct of teachers will continue to rise, while others were more concerned with behaviour management and bullying. There was also a strong view by some Participants that student attainment rather than academic results will be an emerging concern. By student attainment, these principals are referring to the fact that schools are not taking a child to the level which he or she is capable of; thus, arguably, there is educational malpractice.

This exploratory study has shown that there are indeed many legal issues that school principals are concerned about and have to deal with in addition to their other defined roles. Many suggestions were therefore put forward by the Participants as to how they might deal effectively with legal issues and develop legal risk strategies to strengthen their professional roles. These suggestions are grouped into three categories – the training solution, the guidelines solution and the relationship solution.

Managing Legal Risk

It was clear from my conversations with the Participants that proactive strategies should be taken to reduce legal risk, and ideas were put forward about the types of strategies that would be effective. There was no uniform answer but the prevalent viewpoints are summarised below.

The Training Solution

The most common suggestion is that of ‘Training’, and since it is of critical importance that leaders are well trained, it was felt that principals should be the first to receive instruction on legal issues. It is also felt that trainee teachers should undergo some basic modules on ‘education and the law’, where a broad overview of the essential legal issues and legislation are covered. Very often, beginning teachers are briefed about their code of conduct but have very little knowledge about legal issues, and, in a given situation, may act in a way that leads to legal consequences. The training process for both school leaders and teachers should also be supported by continuing professional development, such as conferences, forums, workshops and seminars.

Interestingly, some Participants are of the view that training should impart not just knowledge but skills as well, such as mediation skills. One QP said:

They need to be aware of the environment in which they work. They also need to have the skills to diffuse a situation or give the actual bases before it escalates. Therefore, the knowledge and skills are both critical as they will save us a lot of grief further down the track.

Finally, it was felt that training should be complemented by school leaders being aware of trends in their own country as well as overseas in terms of where litigation is going, and being familiar with legislation and policy relating to education. By having the ability to make good and sound decisions, school leaders can limit the possibility of legal challenges or potential claims.

The Guidelines Solution

According to this solution, the real key to running a relatively ‘risk-free’ school is to have a strong principal, one who will give clear instructions and ensure compliance. Principals should spell out behaviour policies and disciplinary procedures to teachers and pupils, and make them aware of the correct courses of action. Principals should also constantly reinforce them, and should publish safe working guidelines and inform all those involved about them, because more and more outsiders are becoming involved in school life. Staff meetings and student assemblies to review safety rules will also help, and the school should identify the particularly dangerous problem areas, like P.E. facilities and workshops, and then monitor them closely. Standard Operating Procedures will help in averting risk, and schools should identify hazards and assess the risk of accidents occurring. These assessments should then be carefully documented.

This solution has a strong emphasis on procedures. It is about ensuring that there is a system of guidelines in place that can influence people’s actions. It is also about strong leadership and having principals at the helm who will ensure there is no ambiguity when teachers have to make decisions that could involve hazard.

The Relationship Solution

This is an interesting solution in that the key to managing legal risk lies in the quality of human relationships. Schools should, for example, keep in regular contact with parents and keep them informed, and should look after the welfare of teachers. Also, if educators keep the best interests of children at heart, they will lessen the chances of legal risk, because, as a SP said, ‘No judge is going to condemn you

if you are doing things for the children's sake'. Some training too in mediation skills will serve to enhance relationships.

Another aspect of this solution is that of principals establishing a close relationship with district officers and superintendents. The reason given is that these people are placed in a position to provide support and they are able to access information more quickly. It is therefore critical that principals have open channels of communication with their support officers.

Finally...

This paper has explored the commonalities and differences of view among some principals in Singapore and Queensland concerning legal risk in schools and the management of it. Although there are differences in opinion in relation to the provision of special needs and behaviour management, a common theme came through very strongly about the need for principals to acquire a professional knowledge of the law impacting school administration. 'We need to know enough to make good decisions, to understand, to undergird the kind of decisions that we make', said one Participant.

The basic knowledge needed here would include that about relevant legislation, common law, criminal law, family law (in particular, custody issues) and grievance procedures. Perhaps a good way to start is to set up a platform for principals to share stories of incidents and the coping strategies adopted. As noted by a SP, 'my knowledge I think is quite high as a principal because of my own brushes with the law. I learnt the hard way'; and by a QP, 'My knowledge and expertise is much higher than the teachers' because I have to deal with most of it'.

These statements confirm the observation of Stewart²⁹ where he highlighted the comments of Kowalski and Reitzug³⁰ (1993) that professionals are guided by 'an embedded, tacit knowledge' which is based on 'an implicit repertoire of techniques and strategies for handling situations' that evolves over time. A good starting point would be for school leaders – heads of department, vice-principals and principals - to work closely together in the same school to develop such a range of techniques and strategies. These experiences would be invaluable when principals come together to share their knowledge.

Endnotes

- 1 Teh, M.K. and Stott, K., 'Singapore' in Russo, C.J. and DeGroof, J. (ed), *The Employment Rights of Teachers: Exploring Education Law Worldwide* (2009) 173.
- 2 Squelch, J. (2008). *Banning Religious Clothing and Symbols in Public Schools*. Paper presented at the Australia and New Zealand Education Law Association 2007 Conference: Contention and Controversy in Education Law, Hervey Bay (26-28 September).
- 3 Mawdsley, R.D. and Cumming, J.J. (2008). The Origins and Development of Education Law as a Separate Field of Law in the United States and Australia. *Australia & New Zealand Journal of Law & Education*, 13(2).
- 4 Stewart, D.J. (1998). Schools and the law in Australia: An overview. *Liverpool Law Review*, 20(1).
- 5 HCA 31. In this case, a child struck her face on a platform when she was pulled off a 'flying fox' piece of equipment in the school playground. The accident occurred when the teacher on supervision was surveying another part of the school compound. The plaintiff contended that the school was liable for negligence as a different system of supervision would have prevented the accident.
- 6 Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v. Hadba (2005) HCA 31, para. 25.
- 7 (2007) NSWSC 471.
- 8 Giannetti, C.C. and Sagarese, M. (undated) 'The Newest Breed of Bully, the Cyberbully', at http://www.pta.org/pr_magazine_article_details_1117639656218.html, cited by Conn, K. and Brady, K.P. (2008). MySpace and Its Relatives: The Cyberbullying Dilemma. 226 *Education Law Report* 1, 5.
- 9 Conn, K. and Brady, K.P. (2007) 'MySpace and Its Relatives: The Cyberbullying Dilemma' at the 5th Commonwealth Education Law Conference, 19-21 April, Williamsburg Va, USA.
- 10 Brown, A. (2008, January 29). Phone technology not just for friendly chat. *Fraser Coast Chronicle*.
- 11 Abolition of corporal punishment, at <http://education.qld.gov.au/library/edhistory/topics/corporal/abolition.html>.
12. The Ministry of Education in Singapore directs the formulation and implementation of education policies. It has control of the development and administration of the Government and Government-aided primary schools, secondary schools, junior colleges, and a centralised institute. It also registers private schools.

- 13 Stolz, G. (2008, February 15). Gold Coast teacher cleared after slapping student. *Courier Mail, Australia*. Retrieved 15 February, 2008, from <http://www.news.com.au/story/0,23599,23217616-1248,00.html>
- 14 (2005) UKHL 15
- 15 Ibid, paragraph 86.
- 16 The Hon Mr Justice Kirby, 'Legal Responsibility and Private Schools' (1984) 14 *Independent Education* 16 at 19 cited in I.M.Ramsay & A.R. Shorten, *Education and the Law* (Sydney: Butterworths, 1996), 296.
- 17 Williams, P. 'Suing for Negligent Teaching: An Australian Perspective' (1996) 25 *Journal of Law and Education*: 281 at 295 cited by Atkinson, J. (2002). *Education and the law: Protecting the educational well-being of students*. Paper presented at the Australia and New Zealand Education Law Association 11th Annual Conference: Legal Risk Management Safety Security & Success In Education, Brisbane (2-4 October), 3-17.
- 18 Meredith, P. (2000). Editorial comment: Legal liability for educational failure. *Education and the Law* 12(3), 139-142.
- 19 Atkinson, J. (2002). *Education and the law: Protecting the educational well-being of students*. Paper presented at the Australia and New Zealand Education Law Association 11th Annual Conference: Legal Risk Management Safety Security & Success In Education, Brisbane (2-4 October), 3-17.
- 20 Hudson, F. (2008, March 16). Father wants refund on Brighton Grammar School fees. *Sunday Herald Sun, Australia*. Retrieved 18 March, 2008, from <http://www.news.com.au/story/0,23599,23382416-2,00.html>.
- 21 Under the 'Enhanced Performance Management System', teachers are 'ranked' from grades A to E. An 'E' grade means the teacher is performing below satisfactory level and will be monitored closely. If no improvement is shown over a prescribed period of time, the 'E grade' teacher will be dismissed.
- 22 New South Wales v. Lepore; Samin v. Queensland; Rich v. Queensland (2003) HCA 4 (6 February 2003)
- 23 Russo, C.J. (2008). A Legal Primer on Sexual Harassment: Lessons for Practice from the United States of America. *Australia & New Zealand Journal of Law & Education*, 13(1).
- 24 Russo, C.J. & Stewart, D.J. (2001). The place of educational law in the international community. *Educational Law Journal*, 2 (1), 18-25.
- 25 The Disability Standards for Education 2005. Retrieved 28 August, 2009, from <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/framelodgmentattachments/9006BFF67F0BE554CA256FD50023EB0A>.
- 26 Jackson, J. & Varnham, S. (2007). *Law for educator: School and university law in Australia*. Lexis Nexis Butterworths: Australia, 107-108.
- 27 Ministry of Education, Ibid note 12.
- 28 The coroner recorded a verdict of misadventure in this case. In the verdict, the coroner said it was very difficult for a teacher to decide what to do as different children react differently. In another case which he also heard, it was alleged that the student committed suicide because the teacher called the parents over a discipline issue. In the present case, the parents claimed that if the school had called them, they would have prevented the suicide, so 'which is the correct way?'
- 29 Stewart, D.J. (1996). School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland. Unpublished doctoral dissertation, Queensland University of Technology, Brisbane, Australia.
- 30 Kowalski, T.J. & Reitzug, U.C. (1993). *Contemporary school administration: An introduction*. New York: Longman, pp. 235-236 cited by Stewart, D.J. (1996). School principals and the law: A study of the legal knowledge needed and held by principals in government schools in Queensland. Unpublished doctoral dissertation, Queensland University of Technology, Brisbane, Australia.