

UNIVERSITY OF SOUTHERN QUEENSLAND

**Schools and the Law: Emerging Legal Issues Internationally
with Implications for School Leaders in Singapore**

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ABSTRACT

Singapore schools had encountered little involvement with legal issues in the past, and there had been a general feeling of complacency amongst educators that the situation was unlikely to change. Yet many English-speaking countries across the world had been experiencing increasing exposure to legal issues in their schools, and the question was whether Singapore was likely to share the same experience over time. Strong indications were beginning to appear that the situation was indeed changing, including a number of reported incidents in schools and evidence of changing attitudes amongst parents and educators.

The study set out, therefore, to examine the types of legal issues that were emerging on the international scene, and particularly in the major jurisdictions with relevance to Singapore, and to understand what the implications might be for Singapore. Thus, it was intended to identify the legal issues that seemed likely to become more prominent in the Singapore education system, to draw comparisons with events in other countries, and to examine the strategies that school leaders might adopt in order to manage legal risk effectively.

This exploratory study used a mixed-method design, including document analysis and legal research, exploratory pilot interviews, in-depth interviews with verbatim transcription, and Q Methodology, which combined quantitative and qualitative techniques in order to interrogate and understand opinion. The study was conducted in four phases, moving from a broad survey of developments internationally, through a detailed analysis of issues in Singapore schools, to a deep understanding of the strategy preferences for coping with legal risk amongst senior educators. This then gave rise to a set of recommendations that could be used by policy makers and implementers, and by senior personnel in schools, to avert and manage legal risk and incidence in schools.

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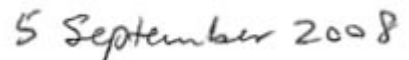
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CERTIFICATION OF DISSERTATION

I certify that the ideas, experimental work, results, analyses, software and conclusions reported in this dissertation are entirely my own effort, except where otherwise acknowledged. I also certify that the work is original and has not been previously submitted for any other award, except where otherwise acknowledged.



Signature of Candidate



Date



Signature of Supervisor

5 September 2008

Date



Signature of Supervisor

5 September 2008

Date

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Australia and New Zealand Education Law Association Conference paper: “Children Speaking up in Singapore: Progress or Peril” (September 2005, co-written)

Australia and New Zealand Education Law Association Conference paper: “When Is A Reinstated Pupil Not Reinstated?” (October 2006, co-written)

Teh, M.K. (2005). Globalisation, rights and issues in education law in Singapore. *International Journal for Education Law and Policy*, Vol 1(1-2), 119-131.

Chapter entitled “Teacher Rights: International Perspectives - Singapore” in the edited book “The Legal Rights of Teachers: International Perspectives” published by Rowman and Littlefield Publishing Group - in press.

CHAPTER ONE

THE RESEARCH PROBLEM

1.1 The Purpose of the Study

This chapter begins with an explanation of the purpose and rationale of the study to provide an overview for the reader. The study sets out: (1) to understand the developments of legal issues in education in other jurisdictions and to explain how those developments might have a bearing on the legal responsibilities of educators in Singapore; (2) to find out the areas of law in which principals in Singapore are involved, and their perception of their need for legal knowledge in school administration; and (3) to provide carefully considered suggestions or strategies that school leaders can utilise to manage legal risks in schools.

1.2 Introduction

This study was prompted by the changes that are taking place in Singapore society and globally, and by how these changes may make the job of administering and managing schools increasingly challenging. Society, systems and thinking about issues affecting lives - in particular, rights issues - are undergoing remarkable levels of change. Singapore is no exception. “Our world has changed irrevocably...Singaporeans are now better educated and more informed. Their desire to be involved is much stronger” commented the then Deputy Prime Minister Lee Hsien Loong at the Harvard Club’s 35th anniversary dinner on 6 January 2004 (Lee, 2004, p.1).

The landscape of education in Singapore has been dominated in recent years by calls for significant reform. In 1997, the Prime Minister’s launch of a new vision for the education service, expressed as “Thinking Schools, Learning Nation”,

brought to the fore a recognition that the old ways of preparing the young will not serve the future well. The pressure for reform has not abated and Singapore has experienced a plethora of initiatives and drives, all designed to steer education along a course that meets the needs of a changing society. Most recently in 2003, the report of the Junior College/Upper Secondary review committee suggested even more changes to the education system, aimed at further developing thinking skills and engaging students in greater breadth and depth of learning. In 2004, the new Prime Minister, Lee Hsien Loong, urged education professionals to “Teach Less Learn More”, and at the 2004 Work Plan Seminar (an annual seminar held by the Ministry of Education for principals and teachers setting out the educational visions and goals), the Minister for Education spelt out “Major Works in Progress” by focusing on two key areas - “Enabling our Teachers” and “Nurturing Students”, so that the nation could prepare its children for the future, break new ground and chart new directions for Singapore.

There is also the consequence of globalisation¹. With the continuing spread of globalisation, we are seeing not only cross-border economic and social exchange under conditions of capitalism bringing about ever increasing global economic integration, but are also experiencing “the emergence of different modes of telecommunication and computer technology that has made the movement of data and information much more transnational and flexible” (Gopinathan, 1995, p.1). The consequential flow of capital, jobs, information, ideas, ideals and attitudes all have an effect on societies, curriculum and education. This increase in flows around the world creates what Hallak (2000, p. 24) calls “the fluidity of boundaries”. Nation states find a weakening of their capacity for action when the

¹ See Chapter Three for more discussion on this issue.

borders that define their territories lose their strength (Hallak, 2000). This pulling away of influence from the nations into the global arena can, however, create new pressures for local autonomy (Giddens, 1999). As Leonard Waks (2003), drawing on the work of Robert Reich (1992), indicates, for economic liberalisation to be truly efficient, it must be accompanied by international agreements protecting basic social, political and environmental rights. One example of this “pull” into the global arena is Singapore’s accession² to the *United Nations Convention on the Rights of the Child (1989)* (“CRC”)³.

Another effect of globalisation is that education can be seen to be more of a form of service, a commodity that can be “priced and purchased, because it is seen as primarily of benefit to the individual and his family”, and this *commercialisation* of education will invariably lead to “greater devolution and less central control so that schools can be more responsive, firm-like, to their customers’ changing preferences and needs” (Gopinathan & Sharpe, 2003, p.10). The Singapore government recognised this as early as the mid 1980’s, and in the report entitled “Towards Excellence in Schools” (1986), recommendations were made to give a limited number of high performing schools greater autonomy, the goal being to encourage creativity and innovation (Gopinathan, 1995). Further, the Junior College/Upper Secondary review report mentioned above, which was accepted by the government, proposed measures such as the integrated programme⁴, specialist

² “Accession” has been described as a process where states become parties to a convention which they did not participate in during negotiations but which the original parties agree to such states acceding to it. Accession has the same legal effect as ratification and only required the deposit of an instrument of accession. (Commonwealth Secretariat, Human Rights Unit, United Kingdom 2006:34)

³ Singapore acceded to the CRC on 2 October 1995, which is the date the instrument of accession was received by the United Nations General Assembly, and the date of entry force by the General Assembly was 4 November 1995.

⁴ The Integrated Programmes provide a seamless secondary and junior college education without requiring the pupils to sit for the GCE 'O' Level Examination. The time “saved” by

schools and private schools that were intended to fuel “the process of individualisation” (Gopinathan & Sharpe, 2003, p. 4). What is this process? In a society where knowledge transfer between individuals and communication networks occurs at a rapid speed, society needs citizens who are “capable of acting and thinking autonomously about rapid social evolution” (Hallak, 2000, p. 30). Thus, the intended process was one of building up individuals who are able to think critically and meet the global challenges that come their way.

The government’s actions discussed so far reveal an acknowledgement of the need to establish some form of consistency between educational policies and the trends of globalisation. The government’s commitment to enhancing “human capital” by better equipping individuals and society to confront and adjust to these trends may strengthen as demands arising from closer economic and cultural integration continue to increase.

How does this process of globalisation affect the social domain, especially with regard to norms and procedures? A quotation from Francis Fukuyama (1992, p. xviii) may well offer an answer:

The social changes that accompany advanced industrialization, in particular universal education, appear to liberate a certain demand for recognition that did not exist among poorer and less educated people. As standards of living increase, as populations become more cosmopolitan and better educated, and as society as a whole achieves a greater equality of

not having to prepare for the GCE ‘O’ Level Examination is used to develop pupils’ intellectual curiosity, enrich their experience and provide a broad-based education that is more in tune with desired real-world competencies. Students sit for the GCE ‘A’ Level Examination at the end of junior college.

condition, people begin to demand not simply more wealth but recognition of their status...

Fukuyama's sentiments suggest that globalisation generates some form of cross-fertilisation of cultural forms and identities, and even "homogenization of values" (Reich, 1998, p.12). It is likely, then, that this "homogenization" of culture and values will usher in new responses to and greater respect for human rights in societies. As this happens, the legal culture among the people of Singapore will experience change. As the Singapore government implements more policies to bring about a more entrepreneurial society, the propensity towards "homogenization of culture and values" will intensify, although the government will probably respond to this challenge in its own unique way. Nevertheless, the end result may be an increasingly litigious society, where civil or personal rights are more vigorously and consciously advocated. The "Remaking of Singapore" report in June 2003 acknowledges that, out of economic necessity, there is an urgency for a change in the mindsets of Singaporeans, and Dr Balakrishnan, the then Minister of State for National Development and chairman of the Remaking Singapore Committee, explained that "the centre of gravity, of power, will alter, the rules of engagement will change and OB (*out of bounds*) markers, the avenues for expressions, regulations, all these will change" (Lee, 2003, p. 3) (italics mine).

For educators in Singapore, it has become increasingly noticeable that parents too have changed. They are more knowledgeable, educated and informed than ever before and, on an almost weekly basis, parents write to the local newspapers raising concerns about schooling issues. While they cannot be compared with their American, British and Australian counterparts at this stage, they seem more conversant with their rights than in the past, and these rights include their legal

rights. For example, a disgruntled parent of a special needs child wrote to the newspaper expressing her disagreement with the government's policy of letting voluntary welfare organisations ("VWOs") run special needs schools. As VWOs do not have as much funding as the government schools, very often, special needs schools survive in old and rundown buildings. Overall, she felt that special needs children are not given a fair chance or fair treatment. She urged parents with special needs children to speak up to, "let the authorities know that their children, though intellectually slower, are capable of learning, and deserve every opportunity, like their intellectually able counterparts" (Chua, 2003, p.25). There are many more letters like these that reach the newspapers regularly and, uncannily, on 23 October 2006 (same day as the previous letter), the father of an autistic child wrote to *The Straits Times* bemoaning the fact that his son had to wait many years for a place in the special needs school, and having got a place, had to travel 40km every day just to study for two hours, and, to make matters worse, pay \$200 a month in school fees. It was further pointed out that a mainstream student, who was the same age as his son, only paid a nominal school fee of \$5.50 a month. The parent ended the letter by questioning the government's lack of responsibility for this group of students (Yeo, 2006).

In another example, one parent blatantly accused the government of discriminating against children who are home schooled, under the *Compulsory Education Act (Cap. 51, 2003)*. The parent highlighted two discrimination issues his child faced. First, his child was not eligible for student concessionary travel cards, simply because he is not registered with a school; and second, his child was not eligible for "Edusave", which is a government grant that covers enrichment programmes or additional resources for students who perform well or make good

progress academically. Under the *Compulsory Education Act (Cap. 51, 2003)*, children who are being home schooled are legally required to be prepared for the Primary School Leaving Examination (“PSLE”) as well as meet the National Education objectives. By discriminating against home schooled students in the way mentioned above, the government is saying, “Yes, you have to prepare for the PSLE and National Education, but you will also be treated differently to those Singaporeans attending school” (Rushton, 2005, p.20). These are just some examples, among many, of parents asserting their rights (or their children’s rights) in the public arena, and as the nation progresses, it is likely that such voices will be increasingly heard.

It was pointed out earlier that education could be seen as a provision of service. The education of foreign students is the most common form of trade in education services and there are an increasing number of foreign students being educated in Singapore schools. Already, complaints have been reported in the press about private educational providers failing to provide contracted services. The parents of these foreign students may not only be more educated, but are probably more litigious. For all the reasons mentioned above, the Ministry of Education (“MOE”) is moving “from a bureaucracy-dominated education system to one characterized by greater autonomy at school level” (Gopinathan & Sharpe, 2001, p. 24). This, together with the changing attitudes of parents, may well mean a growing community demand for greater accountability in the teaching profession. Such accountability could be over issues such as the school’s duty of care regarding the physical safety of the child, the school’s duty to prevent bullying from occurring on school grounds, and, for students with special education needs, that those needs are identified and met. As Stewart and Knott (2002, p. 3) note, “school

principals and teachers are highly visible in the community and are personally as well as structurally accountable”.

What are the implications for educators in Singapore? It is not beyond the bounds of possibility that teachers and principals could face the risk of being named as defendants in the judicial process. Although they have experienced and may still be experiencing a high level of protection from legal actions, this situation is unlikely to continue indefinitely. It may be only a matter of time before the ways educators discharge their legal responsibilities are challenged in court.

In Australia, where legal issues in education have been developing since the 1970s, there is mounting jurisprudence which tests the extent of a school's duty in relation to the physical safety of students. The Australian courts expect schools to recognise the mischievous tendencies of children and have held that the duty to keep students safe from physical injury extends to before and after school hours. The principles of the law of negligence - that those who have a special relationship of control over others should exercise greater care and skill - clearly applies to the education context in that country. The other areas of law that have impact on education and are heard in courts in Australia include issues relating to bullying in schools, sexual abuse (by teachers) and the rights of students with special educational needs. An area of law, though, that is yet to be heard in the Australian courts is “the duty of a school in relation to the educational well-being of its students” (Atkinson, 2002, p.4). However, the stage is set for such cases to be heard following the House of Lords decision in the joint hearing of *Phelps v. London Borough of Hillingdon, Anderton v. Clwyd County Council, Jarvis v. Hampshire County Council*, and *Re G (a minor)* (2000) (*Phelps*), when a claim for

negligence against a school authority for failing to identify and address the educational needs of students was recognised as a valid claim. In analysing *Phelps*, Justice R. Atkinson of the Supreme Court in Queensland said in 2002: “In thirty years’ time, an experienced lawyer will be able to chart the development of the law in Australia with regard to educational negligence, discrimination in the provision of educational services and liability for educational outcomes. At present, we can but survey the international trends and local developments to try to determine where these developments might lead” (Atkinson, 2002, p. 14).

It is doubtful that, in Singapore, we shall have to wait twenty or thirty years to experience change, but Atkinson J’s message is clear: we must look at what is happening both locally and internationally if we are to gauge what the future might hold. That is precisely what this study sets out to do: (1) to find out the areas of law principals in Singapore are involved with and the legal knowledge held and needed by them; (2) to understand the developments of legal issues in education in other jurisdictions and to explain how those developments might have a bearing on the legal responsibilities of educators in the local context.

1.3 Need for this Research

A survey of what is happening in other countries in the field of education and the law reveals issues working their way onto the agenda that are very much the same problems that surface in Singapore education. For example, an issue of current concern in Singapore relates to bullying. In 2003, *The Straits Times* printed several reports about bullying that took place in a secondary school (Nadarajan, 2003, & “Bullied”, 2003). The story was about a student who was beaten up by a schoolmate outside school, but, interestingly, as a result of that story, several

parents of other bully victims in that school came forward to relate similar incidents. In one case, the bully was even expelled from the school.

Studies and research carried out in New Zealand and Britain have revealed that bullying is a problem that affects all schools at some point (Hay-Mackenzie, 2002)⁵. The consequences for victims of bullying are far-reaching and statistics in Britain show that at least 16 children commit suicide in Britain every year because of this phenomenon (Marr & Field, 2001). ChildLine, a phone counselling service for children in distress, concluded that “promoting a culture of decency within a school seems to be the bedrock on which real success depends. The role of the head teacher in this process appears to be pivotal” (Marr & Field, 2001, p. 149). Thus, by reviewing the international scene, one is able to see how the development of an issue that is just surfacing in Singapore has unfolded elsewhere, and such experience might offer clues as to what may happen in Singapore and, more importantly, how one can effectively manage the risks before they become too problematic.

Another issue that is of paramount concern in other countries in the field of education and the law and which is equally important in Singapore is the duty of care for students’ physical welfare. In Australia, as noted above, there are many negligence cases covering supervision in a range of school activities and settings, including: classrooms, school fields, before and after school, travelling to and

⁵ In Japan, a type of school bullying referred to as “shikato” takes place in schools. “Shikato” is a kind of “mobbing”, where a group of peers pick on one person instead of simply peer to peer bullying. “Shikato” accounts for 25% of school bullying in Japan (Rayner, 1997). Bullying cases in schools have also led to student suicides. Although the Kawasaki municipal government has enacted an ordinance to protect children’s human rights (“Kawasaki Aims”, 2001), the United Nation’s report on children’s rights said that the central government has yet to step up measures to eliminate bullying (“U.N. Report”, 2004). It is interesting to note here that despite different legal and cultural traditions, there are similar bullying issues arising in schools across jurisdictions.

from school, sport and excursions. Stewart's research on accidents in Victorian schools indicated that in 1982 the accident rate in public schools was 53 per every 1000 students enrolled, with 23 out of every 1000 receiving serious injuries (Stewart, 1998a). In New Zealand, the Ministry of Education's effort to establish minimum safety requirements led to the formalisation of the schools' risk management process in the form of "Guidelines for Good Practice relating to 'Education Outside the Classroom'" (Hay-Mackenzie & Wilshire, 2002, p. 59). In Canada, where "teachers and/or their employing boards, by acts of commission or omission, fail to provide a student with the appropriate safe and secure learning environment, they may be sanctioned criminally, civilly or professionally" (Anderson & Fraser, 2002, p. 183). In England, there is health and safety legislation that ensures local education authorities and schools carry out their duty in providing a safe learning environment for their students (Lowe, 2002). Chan Soo Sen, Minister of State at the Ministry of Education and the Ministry of Community Development and Sports, in the Initial Report of Singapore to the Committee on the Rights of the Child said that, by acceding to the United Nations ("UN") Convention, Singapore is signalling its commitment to uphold the rights and best interests of children in the country (United Nations Press Release, 2003). This reinforces the importance of the duty of care on the part of education professionals for the physical well-being of the child in Singapore schools.

The legislation in Singapore that pertains to education includes statutes such as the *Education Act (1957)* and the *School Boards Incorporation Act (Cap. 284A, 1990)*, which govern issues such as the establishment and management of schools, whether government, private or government-aided. Although the *Public Service (Disciplinary Proceedings) Regulations, Constitution of the Republic of Singapore*

(1965) provide directions for disciplinary actions for teacher misconduct⁶, the standards required of teachers' conduct are merely set out in guidelines in handbooks or manuals rather than in legislation. While this may be the current position in Singapore, one that may provide some protection for educators in avoiding unwelcome attention and litigation, legislation and the mindsets of parents can change. Article 3 of the Convention on the Rights of the Child ("CRC") declares that in "all actions concerning children...the best interests of the child shall be a primary consideration". As a party to this Convention, Singapore may well see increasing pressure on it to raise the legal, professional, and moral duties of educators.

1.4 Rationale for this Research

The move towards the "legalisation" of education is unstoppable if one follows international trends, and this is "evident in the increase in legal processes being used to frame and challenge policies, practices, and decision-making in...schools" (Russo & Stewart, 2001, p.18). The move becomes even more inexorable if one treats teachers as "professionals", placing them in the same category as doctors, lawyers, accountants and architects. Doing this could mean their being held liable as professionals for the quality of their professional services. Whether or not one considers teachers in this way, it is indisputable that the "legalisation of education" (by imposing legal liability on educators) will create a greater sense of professionalism among educators and increase the overall standards of educational services. Russo and Stewart (2001, p.18) further argue that "it is necessary for administrators, teachers and other staff to have expertise in a wide array of

⁶ Teachers who are public servants appointed by the Public Service Commission cannot be dismissed or disciplined without adherence to the *Public Service (Disciplinary Proceedings) Regulations*. For non-public servants, the terms of their contract with the school will apply.

educational matters, including sufficient legal literacy to meet increasingly sophisticated management and teaching responsibilities, from the moment they first appear in schools.” The term “legal literacy” refers to a basic knowledge of those areas of law that have a direct bearing on educators’ responsibilities, enabling them to function effectively in situations where relevant law applies.

In speaking with educators, the researcher’s perception is that in Singapore, principals, teachers and students arguably have little or no legal literacy or understanding of areas of law that impact their job, since the notion of “education and the law” does not exist to the same extent as in other countries. But legal issues in education do evolve and are likely to continue to do so as significant issues enter the arena, especially those issues that relate to teachers’ and schools’ legal responsibilities. For instance, legal cases in the United States (“US”), England and Australia show that there is expanding interest in the nature of “professionalism”: what rights do parents have to be guaranteed in order to realise the expected education “experience” for their children? This question goes to the heart of what a professional is, in much the same way that one thinks about the expectations of professional groups, such as doctors, lawyers and accountants. Similarly, since the mid-1980s, the Ministry of Education (“MOE”) has been making concerted efforts to decentralise the education system and build teacher professionalism through initiatives such as the cluster school concept, Teachers’ Network and annual teachers’ conferences. These efforts have been in response to globalisation challenges and the need to give teachers more space to act autonomously, which, by implication, means more professionally (Gopinathan & Sharpe, 2001). This process of decentralisation has invariably led to the devolving of more decision-making powers to school management personnel and such

devolution moves necessitate a relocation of accountability to the school level. If educators were to become more accountable than they are in the previous centrally-directed system, it follows logically that the “professionalism” expectations will also increase. If this is so, and if school-based professionals, with high accountability expectations, are thought of in the same way as other professional groups, it will be no surprise that the term “educational negligence” may emerge to have a similar connotation to terms such as “medical negligence”, “legal negligence”⁷ and “accounting negligence”. This argument is not far-fetched. Analyses from other countries suggest that teachers may well be held liable for the quality of their professional services⁸. Since education plays such a fundamental role in society, it seems improbable that teachers can plead non-professional status as a defence against challenge.

The question of professionalism, while central, is surrounded by many issues. Although Singapore does not have statutes that may have an impact on how schools conduct themselves legally, such as the anti-discrimination legislation in several countries, the *School Standards and Framework Act (1998)* in England and the *Education Standards Act (2001)* in New Zealand⁹, the common law of tort, especially the law of negligence, the law of contract and copyright law will

⁷ Barristers in England and New Zealand traditionally enjoy “barristerial” immunity from negligence claims from Court and pre-trial work. However, in *Arthur JS Hall v. Simmons* (2002), the House of Lords unanimously held that barristerial immunity should be abolished in light of the changes in the law of negligence, the role of the legal profession and the administration of justice. This approach was followed by the New Zealand Court of Appeal in the case of *Chamberlains v. Lai* (2003) where by a 4 to 1 majority, the court agreed that barristerial immunity should be abolished, at least in relation to the conduct of civil cases. In the United States, legal professional responsibility is well-established in that attorneys can be liable in malpractice whenever it is established that they have “failed to exercise the degree of skill and care of the average qualified lawyer”: *Meyer v Wagner*, 429 Mass. 410, 419, 424, 709 N.E.2d 784 (1999). On the other hand, the High Court of Australia in *D’Orta-Ekenaike v Victoria Legal Aid* (2005) expressed a different view and held that immunity still existed.

⁸ See page 157, section on “Educational Malpractice” in Chapter Five.

⁹ See page 147 and Chapter Five for examples of these Acts.

inevitably find their way into the educational arena. In fact, the MOE in July 2003 signed an agreement with The Copyright Licensing Administration Society of Singapore to establish a Statutory Licensing Scheme to regulate the photocopying of copyrighted materials in all government-run secondary schools and 11 junior colleges (Koh, 2003). Indeed, as Russo and Stewart (2001 pp. 18-19) advise, “educators need a sound understanding of the law associated with the many legal questions that they confront on a daily basis” and a good starting point is for principals to acquire sufficient legal literacy to meet the increasingly complex challenges in the administration of schools.

As one surveys the international scene, there are many issues that already are relevant to the Singapore context. For example, recent legislation (*Compulsory Education Act [Cap. 51, 2003]*) has made primary education compulsory, and this in itself raises interesting questions for educators. But the issue is not simply one of the “right to an education”, for experience in other systems has shown a shifting focus to the rights of children to physical and emotional well-being. In addition, the case of *Phelps*¹⁰ noted earlier showed that schools can be sued for educational malpractice arising from the school’s want of due care and skill in failing to correctly diagnose learning disabilities or to provide a sound education in an appropriate setting. Other jurisdictions thus give clues as to why and how judicial decisions are arrived at and provide a sound evidence basis for seeking to avert risk in Singapore.

¹⁰ See pages 9 and 160 for more details of this case.

1.5 Significance of the Study

This study is an exploratory study that sets out to consider a wide range of legal issues relating to Singapore schools, and which are likely to influence the professional lives of teachers and principals in the foreseeable future. It also aims to establish the knowledge and skills required by these professionals to manage in this new environment. The study investigates those areas of the law, internationally and locally, that might have the most impact on educators as they carry out their professional duties, and it assesses the level of knowledge and understanding of legal responsibility amongst principals in the Singapore education service. Information gathered in the study may also be readily utilised by principals and the Ministry of Education for change in educational management and school administration.

The study also aims to offer advice on the programmes that the Ministry of Education, other relevant agencies and schools might provide that would give principals and teachers a working knowledge of the fundamentals of education and the law. Educators will then be able to use their knowledge of the law or their enhanced legal literacy as a source of guidance and protection in the performance of their professional roles and avoid the pitfalls that may lead to litigation or potentially litigious situations. From this standpoint, one of the major outcomes of the study will be a legal risk management strategy for educators.

1.6 Research Questions

The following major research questions guide the study:

1. What roles do globalisation and the *United Nations Convention on the Rights of the Child (1989)* play in the area of rights and education in Singapore?
2. What are the legal issues in other countries (particularly commonwealth countries) such as England, Canada, Australia , New Zealand and the USA, arising mainly from tort liability litigation, which have the potential to impact upon the responsibilities of Singaporean educators?
3. What are the potential major areas of concern (e.g. behaviour management and discipline, supervision and injury to students) relating to schools and the law that are likely to emerge in Singapore?
4. What is the current status of legal responsibility in Singapore schools and to what extent is the position changing - in the perception of experts, senior educators and administrators?
5. What areas of law are principals involved with in schools in Singapore, and to what extent are principals knowledgeable about their legal responsibilities in relation to those areas of law?
6. How might schools develop risk management systems to cope with significant “care” issues?
7. What forms of support need to be given to principals and those in managerial positions to prepare them for the legal requirements of their professional roles, to ensure that they are conversant with important legal issues, can apply principles in the workplace that are robust and resistant to challenge, and what shape should those support strategies take?

In this chapter, the reasons for and purpose of this research have been delineated by examining the changes taking place in Singaporean society, the challenges posed by globalisation, and trends with regard to education or schools and the Law internationally. As the Ministry of Education in Singapore continues its efforts to decentralise the education system and build teacher professionalism, the need for school principals to have a sound professional knowledge of the fundamentals of areas of law affecting education is argued.

1.7 A Personal Approach

In traditional approaches to research, the researcher uses quantitative or qualitative methods to communicate their ideas and findings to the reader. This study cannot be classified as either. Rather, having been an educator for ten years and later a practising lawyer for seven years, the researcher embarked on a research journey that wove together different research techniques and approaches in an attempt to plug a noticeable gap in the research area of “Schools and the law in Singapore”.

Again, in contrast to more traditional approaches, the chapter dealing with an explanation of the methodological design and techniques adopted is located before the review of available literature. The reason is that the literature review is deemed to be part of the methodology, as the research problem was formulated only after an extensive review of the literature. Apart from logic dictating such a configuration, it was felt that this approach lends more coherence, flow and understanding of the study.

1.8 Outline of this Study

In this Chapter, the researcher has examined the changes taking place in the education arena in Singapore, briefly discussed some legal issues experienced by schools in other jurisdictions and similarly experienced by Singapore schools, and argued for the rationale, need and significance of embarking on this research.

Methodology is discussed in Chapter Two. An understanding of the methodological approach underpinning the study is essential to appreciating the sequencing and logic of the study, and hence its location.

Chapter Three is a literature review of Singapore's response to globalisation. It also examines the notion of "rights" in the Singaporean society and explores legal issues which have a bearing on the education sector in Singapore.

As this study aims to provide some benefit to educators, Chapter Four gives attention to some of the more important legal concepts pertaining to legal issues in education. Educators who are interested in reading this study will then hopefully have a better understanding of the issues discussed in Chapter Five.

Chapter Five is a literature review of the legal issues in education from the international scene, in particular, commonwealth countries, and analyses how these other jurisdictions can give us clues about averting legal risk in the education profession in Singapore.

In Chapter Six, the findings of a pilot study on the legal knowledge held and needed by principals in Singapore schools are presented and discussed.

Chapter Seven provides the first part of the main results of the study. It evaluates what the implications of the survey findings in Chapter Five are on school leaders in Singapore. A detailed analysis of interview data is presented and discussed.

Chapter Eight provides the second part of the main results of the study. It discusses the findings of the Q methodology study and presents a detailed analysis of the different perspectives educators hold when considering how to address the development of educators' ability to manage legal issues. The implications of the Q-study are then considered.

Chapter Nine discusses the conclusions and implications of the research for school leaders in Singapore and presents recommendations for implementation by key personnel. The implications for further research are also discussed.

In the following chapter, a discussion of the methodology used in this study is provided. The different phases of the research and the research strategies employed are described. Data gathering techniques are also identified and discussed.

CHAPTER TWO

METHODOLOGY

2.1 Introduction

This study is arguably the first in Singapore to explore the implications of both common law and legislative law impacting schools, and how these two areas of law necessitate changes to school practices. In researching this field, there are inevitable challenges to thinking about “knowing”, theory and validity. Perhaps some of these challenges are best explained by Lomax (1994, pp. 12-14), who writes about educational research, and who rejects much of the traditional thinking about theory and validity. Some of her views are outlined briefly as follows:

- Educational research is always tentative. We can “know” only at one point in time, but education is constantly changing and our findings must always be vulnerable.
- By inquiring into our own practice, we are able to create a living form of theory. Educational research is thus self-developing.
- Working with subjective data is more difficult than with objective data. It demands high-level skills. We get too obsessed with validity and justification before academic audiences. Instead, we should accept the tentativeness of our work and justify it because it is “authentic”.

Lomax’s final point concerns the influence that a researcher might have. Thus, if academics set themselves up as gatekeepers of what constitutes academic research, then the potential for significant change and improvement to school practices resulting from such “authentic” work will be impeded.

So what is the “authenticity” of this study? How tentative is it and how does it generate the potential for significant change? To respond to these questions, the study was divided into four different phases using several interrelated methodological techniques or processes.

2.2 The Four Phases

This research started with information gathering and speculation. The research problem was conceptualised after an extensive review of literature on education and the law from the international scene, and legal research into cases vis-à-vis schools. Informal conversations were also held with key personnel in the Ministry of Education, the Attorney General’s chambers, the Singapore Teachers’ Union and with several school principals to ascertain the focus of the research.

The next phase was a pilot study involving a short questionnaire and semi-structured face-to-face interviewing of six principals to ascertain the knowledge of legal issues in education held and needed by them. This provided a basis for the third phase, which was in-depth interviewing of ten principals to discuss the emerging legal issues internationally and the implications for them as school leaders in Singapore. As in the pilot study, a short questionnaire was administered before the interview to ascertain some background information on the principals.

Having determined the current situation with regard to the impact of the law on school administration, the fourth phase - using a relatively unusual methodological technique, Q methodology - was designed to draw out the best solutions to help principals, as school administrators, develop legal risks management strategies in schools. This methodology will be explained in detail later in this chapter.

2.3 Research Strategies

As suggested in the preceding sections, this study adopts an exploratory mixed-method design that integrates contributions from both the qualitative and the quantitative. Although interest in combining forms of quantitative and qualitative data first came about in the 1950s, it was not until the 1990s that a distinct mixed-method design was advocated (Creswell, 2002). Tashakkori and Teddlie, 1998, disagree that the two paradigms are mutually exclusive, or that methods must complement the philosophical assumptions¹¹ that researchers possess when conducting studies. For pragmatic researchers, “ ‘what works’ for a particular research problem under study” is what matters, and “all methods should be used in understanding a research problem” (Creswell, 2002, p. 562). The expression “all methods” is vague. Denzin and Lincoln (1994) are more precise in talking about “appropriateness”, placing the researcher as a *bricoleur*, one who is prepared to piece together tools, methods and techniques in an effort to arrive at a multimethod solution (*bricolage*) (p. 2).

Each research method used in social sciences has inherent weaknesses, for objective reality can never really be captured and the process leading to subjective reality has its problems and limitations. One way to overcome this is to make use of multiple or different methods and theories to provide corroborating evidence in order to shed light on a theme or perspective (Lincoln & Guba, 1985). Thus, with a *bricolage*, i.e., by using a multimethod or mixed-method solution, there can be “an in-depth understanding of the phenomenon in question” and as a

¹¹ Philosophical assumptions are that first, quantitative methods (e.g., pupil scores on an instrument) are the best ways to test a quantitative worldview (e.g., measuring student achievement objectively). Second, qualitative methods (e.g., observing pupils) should only be conducted within a qualitative worldview (e.g., researcher finds out the answers to a problem subjectively only through his or her lens) (Creswell, 2002).

strategy, it “adds rigor, breadth, and depth to any investigation” (Denzin & Lincoln, 1994, p. 2).

2.4 Research Design

The nature of this research is exploratory, as it had to address issues and problems in an area where little was known in Singapore. Such exploratory studies, according to Singleton, Straits and Straits (1993), require a research plan that “is more open than in any other kind of research” (p. 91). This requires the researcher to carry out what Denzin and Lincoln (1994, p.2) refer to as “diverse tasks” and it was with the spirit of a *bricoleur* that the researcher adopted what might be known as the triangulation mixed method design (“triangulation study”). This method avoids *methodolatry* - a term described by some commentators as faithful adherence to methods and “obsession with validity, reliability, and generalizability”, at the expense of truly understanding the perspectives of the participants by capturing their lived experiences (Curt, 1994; Janesick, 1994, p. 215). With the triangulation study, the researcher attempts to understand the research problem by producing a *bricolage*, i.e., studying the principles of the phenomenon from different methodological perspectives; collecting both quantitative and qualitative data and using the results to analyse the problem, all this in order to “provide solutions to a problem in a concrete situation” (Denzin & Lincoln, 1994, p. 2; Creswell, 2002). For this purpose, a number of qualitative and quantitative research methods, including document analysis, legal research, questionnaire, interviews and Q methodology, were used. By designing the study this way, it can strengthen the study’s usefulness for other settings or subsequent research in the area (Marshall & Rossman, 1995).

2.5 Document Analysis and Legal Research

As mentioned above, the research problem was conceptualised after an extensive review of literature and some informal conversations with key personnel in relevant institutions. This was followed subsequently (by permission from the Singapore Teachers' Union) by inspection of documents relating to incidents occurring in schools that had legal implications. Similarly, a summary of legal issues handled by the legal department in the Ministry of Education was obtained for analysis, with the assistance of the Head of Legal Services at the Ministry.

In analysing the local cases, it was necessary to understand what the legal position would be should any of these local cases reach the Singapore courts. It was thus imperative to carry out extensive legal research on legislation and cases relating to schools, education and the law, both from Commonwealth countries and Singapore. The legal research involved looking up primary authorities, which consist of written law itself (statutes, regulations and reported decisions of court cases), and secondary authorities, comprising items such as legal dictionaries, digests, periodicals, textbook and internet databases. By summarising cases and carefully studying the *ratio decidendi*, i.e., reason(s) underpinning the judges' decisions in these cases, and by noting the workings of statutory provisions, extracting theories and commentaries from books and articles, there is a sea of information from which the researcher can draw a more detailed understanding of the issues relating to the research problem.

The document analysis and legal research produced mainly research and writing on the research problem in other countries. The question then was whether these data and the informal conversations were in any way applicable to or

characteristic of the Singapore setting. In order to find out the answer to this question, a pilot study was conducted with a small sample of principals.

2.6 The Pilot Study - Interviews

As indicated by Janesick (1994), the benefits of a pilot study include enabling the researcher to focus on particular areas that are previously unclear, test certain questions for the main study and “uncover some insight into the shape of the study that previously was not apparent” (p. 213). The pilot study was conducted by way of a semi-structured face-to-face interview, and it was preceded by a questionnaire seeking background information about the principals and their knowledge of education law.

As indicated above, this research adopts a triangulation mixed-method design. The qualitative data obtained in the pilot study were used to explore a phenomenon, and the findings of the pilot study supported the literature review, as well as the views held by the participants in the informal conversations. With the information obtained from the pilot study, the literature review and the informal conversations, a clearer picture of the issues associated with the research problem was gained. All this served as a basis for developing a quantitative-qualitative strategy in the next two phases of the research - a short principals' questionnaire and in-depth interview questions and, subsequently, a Q methodology study. A full discussion of the Pilot Study is presented in Chapter Six.

2.7 Questionnaire

This method was used as a relatively quick and economical way of obtaining background information about the school principals interviewed. The aim was to

capture the diversity of experience and background which would give some reasonable indication of the relative importance of the law as it related to their role as school leaders. Further administering the questionnaire first provides “collaborative evidence or triangulation” and builds up a “layer of understanding” when the in-depth interviews (as discussed below) take place (Miller & Glassner, 1997, p. 106).

2.8 Interviewing

Following the pilot study, semi-structured in-depth interviews were conducted to form part of the *bricolage*. The purpose was to obtain an indication of school leaders’ perspectives on the role of school law in the education context. By using semi-structured interviews, the researcher can gain a detailed picture of the respondents’ beliefs, perceptions or even personal experiences concerning this issue. This method also enables the researcher to enter into a dialogue with the interviewee by following up interesting thoughts or responses that emerge in the interview, probing beyond answers and allowing the respondents to elaborate (Smith, 1995; May, 2001). Gubrium and Holstein (2002, p. 3) note that this form of interviewing is qualitative and is both “simple and self-evident” and the data produced is the outcome of the interaction between the interviewer and interviewee. As pointed out by Miller and Glassner (1997, p. 106), qualitative interviewing recognises and builds on interaction, which in turn achieves “intersubjective depth and deep-mutual understanding (and, with these, the achievement of knowledge of social worlds).”

There is a view that interviewers should be neutral and not too interactive so as not to contaminate the data (Weiss, 1994). However, some authors argue that this

view overlooks the fact that we live in an “interview society” in which interviews play an important role in making sense of our lives, and “informal interviews” probably take place frequently in everyday situations (Silverman, 2001; Douglas, p. 185). When the interviewer and interviewee interact with each other or have a social encounter, it does not mean that the interviewer will taint the information collected. As argued by Gubrium and Holstein (2002, p. 15), interviewers “cannot very well taint knowledge if that knowledge is not conceived as existing in some pure form apart from the circumstances of its production”. On the contrary, by utilising interactive in-depth interviews, the researcher can better understand the “complex behavior of members of society without imposing any *a priori* categorization that may limit the field of inquiry” (Fontana & Frey, 1994, p. 366). In fact, it allows a more flexible coverage of areas of discussion, perhaps even novel areas, and it probably produces richer data (Smith, 1995).

Another strength of in-depth interviews is the totality of responses that may be elicited, including the mood, tone of voice, facial expressions and hesitations. The face-to-face interview produces insight into the subjectivity and lived experiences of the interviewees, and as the interviewer establishes rapport with the interviewees, this “cooperative, engaged relationship - can encourage ‘deep disclosure’ ” (Oakley, 1981; Douglas, 1985; Smith, 1995), and provide “a framework within which respondents can express their own understandings in their own terms” (Patton, 2002, p. 348).

As mentioned above, this study began as an exploratory study and was not intended to produce findings that are representative of the issue under investigation. In the same way, the responses from the interviews are not meant

to be a reflection of all the legal issues faced by school leaders, or a full reflection of their insights into the emerging legal issues that will be faced by them. Rather, the responses represent an indication of the legal issues that may emerge and the experiences faced by them. As one of the desired outcomes of this study was to obtain an indication of the importance of legal issues in Singapore schools, only ten principals were interviewed. Unlike quantitative research, where “narrow” information is collected from a large number of respondents, qualitative interviews gather “broader” in-depth information from fewer respondents and enables “micro-analysis” (Leonard, 2003, p. 167).

As in all research interviews, finding subjects to agree to an interview and the process of setting up the interview is always a difficult task due to busy work schedules or commitments of the interviewees. Although there may be ideal outcomes when it comes to selecting interviewees, very often “recruitment routinely happens on an ad-hoc and chance basis” (Rapley, 2004, p. 17). Further, some scholars are of the view that for interviews to be successful, the interviewees should satisfy three conditions - “accessibility”, “cognition” and “motivation”. Accessibility refers to the interviewee having access to the information sought, cognition - an understanding of their role in the interview, and finally, motivation, in that they believe that their participation and answers are important and fundamental to the research (Kahn & Cannell, 1983; Moser & Kalton, 1983; May, 2001). Therefore, taking advantage of the opportunity arising in the workshops on “Principals and the law” conducted by the researcher, several principals who attended the workshop were approached to participate in the interviews. Eight principals agreed to be interviewed. Being in leadership positions and having attended a workshop in the research area, these principals not only

had access to the information sought by the researcher, but they understood their role in the process and were motivated to contribute to the research. The other two principals who were interviewed responded to an email request and were very keen to assist in the research.

Semi-structured interviews generally take a long time (about an hour or more), so the researcher had to ensure that the interviewees were interviewed in a location they were most comfortable with. Of the ten principals interviewed, eight preferred to have the interview conducted in their office while two others chose to have the meeting in a café. A tape recorder was used for the interviews after obtaining the interviewees' explicit permission. In deciding whether to tape record the interview, the advantages and disadvantages of doing so were considered.

The advantages of tape recording are numerous. At the forefront, tape recording allows a much fuller record of the event than notes taking, as considerable information can be lost if there is no audio record (Smith, 1995). It also allows the interviewer to concentrate on how the interview is proceeding and interact with the interviewee instead of spending most of the time with head down, writing what the interviewee is saying (Rapley, 2004; Smith, 1995). With tape-recording, the researcher can "produce transcripts and then selectively draw on these" (Rapley, 2004, p. 18) when putting forward the researcher's arguments.

The main disadvantage of tape recording centres around the question - "will the interviewee talk?" The authors in this field argue that tape-recording "might increase nervousness or dissuade frankness" (Arksey & Knight, 1999, p. 105),

inhibit interaction or may cause the interviewee feel that he or she needs to make the interview more interesting or dramatic, and in doing so, the account may be altered (Minichiello *et al.*, 1995). Undoubtedly, the responses from each school leader were different and unique, as in every interaction, but as argued by Czarniawska (2004), it would be “both presumptuous and unrealistic to assume that a practitioner will invent a whole new story just for the sake of a particular researcher who happened to interview him or her”. Indeed, the narratives, views or oral reports (Douglas, 1985) of the ten principals provided valuable information for this exploratory and indicative study, and in analysing the data, the researcher was able to capture the richness of the themes that emerge from the responses instead of reducing them to numbers or categories (Smith, 1995).

Other disadvantages include the time consuming affair of transcribing the tape-recording and the exclusion of non-verbal behaviour such as gestures and facial expressions (Smith, 1995; Mason, 1996). Nevertheless, a tape-recorder was used for the interviews, as the researcher felt that the advantages of tape-recording outweighed the disadvantages. Further, as most of the interviewees knew the researcher (having previously interacted in a lecture setting), the interviewees did not object to the tape-recorder being used and indicated that they were prepared to trust the researcher not to misuse the information recorded.

2.9 Q methodology

This study can also be described as “problem-solving”, as it set out to identify and examine the current situation with regard to the impact of the law on school administration, and then to provide information which principals and others could use for managing or preventing legal risks in schools (see research questions 6 and

7 in Chapter One). The approach used for this part of the study was Q methodology, which is a combination of quantitative and qualitative approaches in a single method. As this methodological approach may be unfamiliar to many researchers, the theoretical underpinnings and some of the key principles that guide its application will be explained.

2.9.1 Q methodology - a priori or a posteriori?

In a common research approach, a researcher observes, describes, counts and charts, and arrives at interpretations and conclusions in the light of prior understanding and knowledge. Such an approach is based on a set of ontological and epistemological assumptions about the way in which knowledge is accessed, and it forms a paradigm that has been universally accepted as almost the only way of proceeding with investigation into management problems (Crowther & Limerick, 2000), or in this study, management solutions. Researchers tend to devise the most complex constructs in an attempt to investigate a phenomenon, approaching it at a tangent, instead of investigating the phenomenon itself. Observation checklists and cleverly worded questionnaires are worked out in order to arrive at the researchers' conclusions about what the individual's value preferences are. Why don't the researchers simply ask the person directly whether he or she values A more highly than B?

Adopting such an approach may mean we have to endure uncertainty as we try to make sense of the subject's words and meanings, which are unique to that individual, and different from the understanding that others may draw from them. Thus, responses to questions and scales have meanings which may be different from those of the observer or the researcher. As Stainton Rogers (1991, p.9)

notes, "when an individual marks an item on an attitude scale, they are not expressing 'their' opinion (i.e. making explicit a single implicit and enduring 'essence'), rather they are selecting *one* from a range of contradictory 'attitudes'. They are choosing which one to express at a particular moment." Seen in this light, is there coherent purpose in asking people questions or administering rating scales if decisions have already been taken as to what the responses mean?

In the study of subjectivity, the subject alone, as a partner in the research (Ribbins & Sherratt, 1992), can provide suitable measures, and this means employing investigative approaches that enable the subject to provide the explanation of the issue or phenomenon, and to engage his or her own measurements and observations. Thus, Q methodology¹² is a research technique or strategy that relies on gathering information and then applying concepts to it, rather than trying to locate data in predetermined concepts and theories.

In this study with school principals, there were no *a priori* definitions; no attempts to infer. All the data that was received was used. From this perspective, one had to expect the unexpected and accept new explanations of the relevance of law to school leaders and their preferred strategies to avoid legal risk - ones that may never have been considered. The opinions that this research yielded represented a set of explanations about what the law means to principals and how it should be managed, and such opinions could not be derived from the literature. Further, an understanding of these explanations may have to give rise to new theory about

¹² A detailed explanation of this methodology can be found in Brown (1980).

issues such as what steps should be taken to manage legal risk and how one might elevate principals' understanding of the issues involved.

2.9.2 Q methodology - discovering what people mean

For this part of the *bricolage*, the researcher started off with the researcher's own perceptions of the situation, because she had been involved in several ways in working with educators, talking with them, and seeing for herself what the law meant to schools and the people in them. But words were not put into people's mouths: rather, as explained below, the situation was set up in such a way that people were able to say what they wanted to say, and then the researcher hoped subsequently to discover something about what they meant. As argued by Wittgenstein (1971), the meanings an individual may attach to his words may very well be entirely different from everyone else's. To accept this approach, we have to accept that, amongst the participants in the research, there are separate worlds of experience, belief and reality; but - and this is an important caveat - they are not limitless: there is a pattern if we know how to look for it.

In approaches characteristic of the positivist paradigm, the researcher puts together the bits and pieces, and it is often the researcher's subjectivity that is brought to bear on the data. It is the researcher's synthesis. By contrast, in Q methodology, it is the subject who assembles the puzzle in a synthetic picture of his or her own preferences. This modelling takes place in the Q sort (a collection of statements written in pieces of card). Every item in the sort is related one to another in a distinctive way. This synthesising process is central to the methodology. The sort represents the whole response that cannot be broken down.

2.9.3 Q methodology - and human subjectivity

Q methodology is thus designed to investigate the individual's subjectivity. Using this method, the individual was asked to construct a model of his or her subjective preferences about the issue of law and legal risk in schools. The way in which individuals placed statements in relation to one another revealed the relative subjective importance attached to their perceptions. Significance could be attached to the differences, since the differences in scores between items in the instrument reflected differences in the amount of importance given to them by the individual concerned. Meaning was then drawn from the way in which the sort was completed *a posteriori*, that is, after the event.

The sample, then, in Q methodology is the collection of statements that form the Q sort. This is an important distinction to make. In other methodologies, the sample refers to the persons who are the subjects in the research. In Q methodology, the statements are intended to form a thoroughly representative sample of the whole field of opinion, perception, view and preference about the issue in question. Whereas, in other methodologies, the concern is to infer a relationship between those researched and the whole population of which they are a sample part, the concern in Q methodology is to sample adequately the range of opinion, perception, view, preference and so forth about the issue. The statements, in this project, were a sample of opinions about what should be done to help schools avoid issues that might give rise to legal concern or action.

From this, it can be seen that there is no concern about the relationship between a sample of people and the "population" of which they are a representative part.

Rather, the concern is with the model of opinion (or perceptions) that statistically typifies people who relate to it. Such a model is expressed, through a process of factor analysis, as a factor, and the factor is best described by Brown (1980) as a generalised abstraction of a particular outlook or value orientation. Thus, people who load highly on Factor A may be generalised as having similar models of opinion.

While those who feel great discomfort with the absence of a focus on the population of subjects (people) may criticise the methodology, their approaches frequently err by failing to sample the issue domain. Thus, in their methods, the researcher may have confidence in the conditions under which results were obtained, but he or she may have less confidence in what they are saying about the issue. In Q method, on the contrary, the researcher samples the issue by placing “the participants in the study in control of the classification process” (Stainton Rogers, 1991, p. 130), and the data from Q methodology are “literally what participants *make* of a pool of items germane to the topic of concern when asked to rank them” (Stainton Rogers, 1995 pp. 179-180).



Figure 2.1 Sifting through the statements

2.9.4 Q methodology - principles

So, a large number of statements relating to an issue, and drawn from diverse sources, represents the “population”. William Stephenson

(1986) terms this stage of the research as the “concourse”. The statements are then “sifted and condensed to yield a representative pool of propositions” (Stainton Rogers, 1995, p. 184). Figure 2.1 shows the process of sifting through the statements to eliminate identical ones.

The individual respondent operates with the statements, using them as stimuli, to arrange them in a configuration that represents his or her point of view.

Essentially, they are rank ordered. All the Q sorts are then inter-correlated and put through a factor analysis process. Factors, in this methodology, are best described as clusters of “persons” who rank the statements in approximately the same way. Thus, those who load highly on the same factor may be deemed to have a commonly shared perspective.

So that the following paragraphs can be set in context, the stages involved in this part of the study are outlined and a brief explanation of how each stage operated is given:

1. The issue was defined.
2. Statements about the issue were collected.
3. Participants sorted the statements by setting them in a grid (administering the Q-sort).
4. The scores from the grids were factor analysed and provisional “accounts” written.
5. Follow-up interviews took place with identified individuals.
6. The factors from the analysis were written as final “accounts”.

2.9.5 Q methodology - technical procedures

2.9.5.1 The issue

One of the concerns that arose from this study was how educators in leadership positions - mainly in schools and the Ministry of Education (“MOE”) - understood the law having an impact on their work and the best strategies for averting legal risk. Even where situations did not have any serious repercussions, there was also a concern that issues might demand a great deal of time, attention and anxiety, and so the intention was to understand how educators felt they might create conditions in which they could concentrate on the core business of schooling without unpleasant and unnecessary distractions.

2.9.5.2 The procedures

In developing the concourse, the researcher simply wrote down everything she heard, read or thought about the issue. These items emerged as statements about what should be done to avert legal risk in schools, and they expressed views and opinions obtained from casual conversations, interviews, books, journals and newspapers. Once the researcher reached the point of diminishing returns, i.e. when the same information was repeated with little new, the concourse was drawn to a close.

In finalising a list of statements that the researcher could use for the Q sorts, she had to apply two criteria: comprehensiveness and “heterogeneity” (Stephenson, 1953). In other words, she had to ensure that her statements covered a broad range of opinion about the issue under investigation; and that the statements were clearly different one from the other. As observed by Wendy Stainton Rogers (1991, p. 130), the researcher has to avoid a situation where the participants

complain that the research has not provided the right statements to enable them to fully express their opinions.

This process was facilitated by some categorisation of the first list of statements. For example, the concourse stage of the research yielded statements about the MOE, principals, parents, training methods, standard operating procedures and a host of other potential categories. Even when sifting through for the first time, it was realised that one could categorise in several ways, for many if not most of the statements contained several categorisable elements. For instance, the simple statement “The MOE should organise a training event exclusively for principals” could be categorised in three ways: under “MOE”, because it indicates the MOE should take responsibility; under “training”, because that is one method of giving people the requisite knowledge; or under “principals”, because the statement indicates that only principals should be involved. But this is all a distraction, because the intention was only to ensure that the statements to be used eventually covered the issue thoroughly, and that all the statements were sufficiently different to enable the respondents to sort them easily.

The above may appear to suggest that the researcher is making her theory explicit by categorising data, but this did not form a basis for the analysis of responses. It was purely a means of making sure there was good material with which the participants could work. The field was covered adequately and each statement had something different to convey. This was probably borne out by the fact that only 11 out of 47 respondents suggested some new statements that the researcher might have included (all participants were invited to do this.) However, closer inspection revealed that these suggestions did not really cover new items, but

reinforced their views about particular items that were already in the instrument. Indeed, for some, it seemed to be a way of venting their feelings about what, precisely, should be done. For others, they simply made observations about the increasing importance of the law; while one participant quoted the references of two verses from the Bible!

The list of statements started off with 162 items, all coherent answers to the question: What should be done - if anything - in our schools to ensure we don't encounter legal difficulties or, at least, to minimize the risk of legal challenge? Much depends on the complexity of the issue under investigation, but, for this issue, the concourse took several weeks. However, prior to the concourse, several months had been invested in reading the available literature.

The methodology accepts it is too problematic for participants to sort such large lists of statements, partly because of the strain on the memory, so some reduction had to take place, and this was done by looking for statements that carried identical ideas. (A detailed and partly statistical explanation is given in Brown's (1980) authoritative work on Q methodology of why statement reduction can take place and how the effects of such reduction make negligible difference to the final factors that emerge.) In some cases, the language was almost the same, so it was relatively straightforward to condense such statements into one. Further reduction was achieved by the process of categorisation mentioned above (Brown, 1980).

The reduction process was not without challenges. The first attempt at reduction left the researcher with over 90 statements; the second attempt with 80; and the

third try with 68. Even at that point, the researcher was constantly questioning whether she had discarded important statements and retained duplicate statements. She referred time and time again to the question and tested each statement against it. After going through the list about ten times, each time taking some out and reinserting others - and even partially rewriting some statements in order to combine them - the researcher ended up with a list of 47, all of which she was confident answered the central question. This was ideal, because 40-50 statements are seen as the best sample size for this technique (Brown, 1980).

As far as possible, the original language was retained, especially of those statements that were given orally by principals. They had an authenticity about them that gave life and realism to the set of statements. Reluctantly, the wording of some statements had to be changed, not for clarity in this case, but in order to assimilate several ideas into a single statement. Again reluctantly, a few vernacular phrases had to be edited, which, while appealing, made the statements too long to fit into the boxes for the Q sort.

2.9.5.3 Administration of Q sort

Once a stage was reached where a list of statements had been generated and reduced to manageable and representative proportions, the Q sort was prepared. Each statement was numbered randomly and put on a separate piece of card. The final lists of statements are shown in Appendix 1A. Written instructions were given to each participant and these are shown in Appendix 1B. This is how the Q sorts proceeded:

2.9.5.4 Factor analysis

The scores from each participant's grid were then entered into a dedicated Q methodology software programme (PQMethod). (Q factor analysis can be performed by using the SPSSx Factor procedure or by the use of a dedicated Q software package [Stainton Rogers, R., 1995]). The programme carried out an inverted factor analysis of the data. Factor analysis is a way of reducing correlated measurements to a smaller number of values for ease of study and consequent understanding. To explain, the factors that emerged from the analysis were the *models of opinion* about what should be done in or for schools to avoid legal challenge. These models showed how opinions, beliefs and perceptions were put together. In any given model, there was a distinctive "story", with some things more important than others, and some things included and others excluded. Factor analysis, as it is used in Q methodology, is a method of determining how individuals have classified themselves: the sorts fall into natural groupings by virtue of being similar or dissimilar to one another. If two persons were of similar mind about the strategies for dealing with legal risk, their Q sorts would be similar and they would both end up being associated with the same factor.

2.9.5.5 Interview

What factor analysis could not tell us was why people ranked statements in distinctive ways, why they saw some things as important and others as unimportant, and why they strongly supported some statements and strongly rejected others. In answering the question "Why?" individuals whose sorts were significantly correlated to a given factor helped to explain the essence of the factor through follow up interviews.

To facilitate this process, some initial “accounts” or “storylines” were prepared in order to give the data some flow. The researcher then took these provisional stories to the “exemplars”: those who correlated highly against a given factor. Through interview, they confirmed or modified the understandings the researcher gained from looking at the way in which the factors were put together, and they explained to her why certain items were placed in certain ways. The interviewees helped the researcher to clear up anomalies: for example, there were times when it was unclear why one statement generated agreement, yet another compatible statement generated disagreement. To the researcher, it did not make sense. But that betrayed the researcher’s minimal understanding of the perspective, and it was the interviewee who would explain the reasoning. The outcome of this very important part of the process was a heightened awareness of why certain choices were made. It was a chance to explore the subject’s unique logic and thus to deepen understanding. And, being pragmatic, it was also a useful way of checking on the veracity of the response, since the subject would usually wax lyrical about those items placed at the extremities.

2.9.5.6 Writing the final accounts

The final phase of the process was the writing of the final accounts. This is best described as a “craft” rather than a science (Stainton Rogers, 1995, p. 186). The factor analysis produces numbers. It shows which statements provide the basis of a given factor and which statements contribute to a factor’s variability. Such numbers, however, have to be converted into material that reflects the language of the original opinions expressed in the concourse and the interviews, put together in such a way as to provide a coherent and readable account. This is the challenge of the “craft”.

2.9.6 Selection of Participants

The group of participants for this study was chosen from primary and secondary government and government-aided schools, junior colleges and the Ministry of Education. It did not include special education schools, the institutes of technical education and independent schools, as they operated in a separate legal framework, and might therefore be more appropriately researched separately.

To recapitulate, there were four separate groups of people used in this study and these corresponded to four separate stages of the research process:

- Information gathering - informal conversations with key personnel in the Ministry of Education, the Attorney General's chambers, the Singapore Teachers' Union and with several school principals to ascertain the focus of the research;
- Pilot study - an initial sample of six principals participated in a face-to-face interview. This was preceded by a questionnaire on the background of the principals and their knowledge of education law. (For a full discussion of the Pilot Study, see Chapter Six);
- In-depth interviews - an opportunity sample was used where eight principals who participated in a law workshop agreed to be interviewed and another two principals agreed via an email request;
- Finally, a Q methodology approach was used to deal with the issue of how school leaders might deal effectively with legal issues and develop legal risk strategies (see Research Questions 6 and 7 in Chapter One). As discussed in the section on Q methodology, the sample, in this method, was the collection of statements that formed the Q sort. As such, the principals who agreed to participate in this stage of the research could have been the same ones that

were previously used in the earlier stages. For this methodology to be effective, it is quite satisfactory to have about 30 people to complete the Q sort, but there are circumstances where even fewer will suffice (Brown, 1980). For this methodology, again an opportunity sample was used. Principals who were involved in the training of future principals were invited to participate as part of their duties while others were approached by the researcher. In the end, a total of 47 principals completed the Q sort.

Subsequent chapters will document Phase 1 of the research strategies - Document Analysis and Legal Research. In the next chapter, Chapter Three, Singapore's response to globalisation, the notion of "rights" and some legal issues in education in Singapore will be discussed.

CHAPTER THREE

LITERATURE REVIEW

GLOBALISATION, RIGHTS AND ISSUES IN EDUCATION IN SINGAPORE¹³

3.1 Globalisation And Singapore

Over the last two decades, there has been a proliferation of academic articles written on globalisation. One author, who has written extensively on this issue, is Hallak (2000, p. 22) who refers to globalisation as the “combination of the free exchange of goods, services and capital”. Watson (2000), though, prefers to term globalisation as the world primary operational unit of business - for example, transnational corporations operating in many countries under different brand names or producing components in different countries, and then assembling the finished product in another country. Ghai (1999), however, views globalisation differently. He sees it as an economic platform for transnational and large national corporations to create conditions in which rights become hard to exercise or protect. He gives the example of large publishing and television companies having the prerogative to decide, for profit reasons, what books to publish or programmes to screen. Arguably, this violates the rights of private individuals or groups, in that they are discriminated against or not given equal opportunities. Thus, globalization moves from being a simple exchange mechanism to one with ideological, ethical or moral dimensions.

There are other aspects of globalisation. They include the “emergence of environmental and conservation consciousness, and the new cross-border roles of

¹³ Some of the material in this chapter was previously published in the International Journal for Education Law and Policy as Teh, M.K. (2005). *Globalisation, Rights and Issues in Education Law in Singapore*. (Volume 1, Issue 1-2).

non-governmental organisations like Amnesty International, Greenpeace and the World Wildlife Fund” (Gopinathan, 2001, p. 3). Globalisation has opened up world markets with the growth of numerous worldwide networks, and technology plays an important role in people’s lives. People can talk to friends, family, colleagues or customers at any time and anywhere. With a click of a button, one can access information about virtually any subject. Globalisation has indeed exerted considerable influence in society, and together with Western symbols of dominance, such as McDonalds, television programmes and Coca Cola, the notion of “rights” is also exported to many parts of the world, including Singapore. But in Singapore, the government has always made it clear that the push for a global free-market and for human rights must be balanced against the nation’s need to preserve political and cultural autonomy; that the Western model of democracy is not appropriate for all; and “that nations must be allowed to develop their own forms of human rights, i.e., which take the cultural context for its expression into account” (Gopinathan, 2001, p. 6). Singapore has taken the view that neo-Confucian ideology is the most appropriate alternative framework for socio-economic and political organisation (Lee, 1994). The style of government for a long time has therefore been paternalistic, authoritarian, inflexible and even - some would say - rigid. However, the speed at which globalisation is occurring has caused the government to rethink this position. The government realises that in order to be economically competitive, the country needs entrepreneurs and innovators rather than citizens who simply follow instructions and who expect to be told what and how to do things. This has led to several educational changes couched in various terms, among them, “Thinking Schools, Learning Nation”¹⁴ and

¹⁴ The “Thinking Schools, Learning Nation” initiative includes the goal of broad-based educational outcomes, the recognition of the need to cater better to pupils with different talents, aptitudes and dispositions, the infusion of thinking skills, group and project work in the curriculum, the provision

“Curriculum Reduction”¹⁵, aimed at cultivating a citizenry with the ability and skills to compete globally. One commentator noted:

It is ironic that rote learning and hierarchy in Confucianism and traditional Asian systems which have been good for a stable government is now less suitable as creativity and innovativeness imply some ‘chaos’ and ‘untidiness’. The new world needs political space and democratisation for individuals and the civil society to participate effectively. (Low, 2002, p. 411).

But although “the new world” needs new ways, the government is not prepared to allow the nation to forget its roots or culture. “Thinking Schools, Learning Nation” therefore comes together with National Education, which is basically citizenship education. The emphasis is on equipping our young (from primary to junior college level) with the knowledge of Singapore’s unique challenge, and how Singapore succeeded, despite all the constraints and vulnerability (Gopinathan & Sharpe, 2003). The attempt to create a common, unified culture, which can “be passed from one generation to the next” (Lee, 1997¹⁶) suggests an admission of cultural anxiety of the state: a fear that “globalisation may bring about the erosion of cultural and national identity” (Koh, 2004, p. 340). But as Gopinathan and Sharpe (2003, p. 2) have so aptly put it, “the terms of Singapore’s survival have changed, calling into question the relevance of long-standing strategies”. Policy makers in Singapore realise that there is a need to respond adequately and speedily to

of one computer for every two students and broad-based internet access (Sharpe & Gopinathan, 2002:151).

¹⁵ The Ministry of Education, following the recommendations of an external review team, has embarked on a major curriculum reform in the form of curriculum reduction for all subjects and across all levels. The aim of the reduction is to free up space and time for teachers to promote thinking and self-directed learning, and a passion for continuous learning since these are vital skills needed for the new globalised economy (Koh, 2004; Ministry of Education, 1998)

¹⁶ From <http://www.moe.gov.sg/speeches/1997/170597.htm>.

global imperatives, and the examples of education policies discussed above show an attempt by the state to keep up with the trends of globalisation and yet maintain national pride and citizen loyalty.

3.2 Globalisation And Rights

It has already been mentioned that the “rights” movement is one of the products of globalisation that is exported to many parts of the world, including Singapore. A classic example of this movement is seen in the influence of the American television drama “The Practice”. It was recalled by one legal practitioner¹⁷ that some Singaporeans assert their rights under the First Amendment (which is part of the American constitution) rather than their rights under the Singapore Constitution. Singapore’s local newspapers frequently carry stories about people, who claim that their “rights” have been violated - the right to privacy, the right to keep their dogs in their Housing and Development Board flats¹⁸, animal rights and so on. The idea of “rights” is conveniently used to support anything they think necessary for dignity and freedom.

In 1993, Mr Lee Kuan Yew, the former Prime Minister and the then Senior Minister of Singapore, expressed his view that in 10 to 20 years time a set of universal norms on human rights would be reached:

Mainly because of communications. We are seeing each other in our own sitting rooms, and we are passing judgement on each other. And that is something new. You are not just passing a message to your representative at the UN urging a vote of condemnation, which is known only to a few

¹⁷ Senior State Counsel during a lecture given to incoming principals at the National Institute of Education, Nanyang Technological University on 20 August 2004.

¹⁸ These flats are built by the Housing and Development Board (HDB) under the public housing scheme, and flat owners are governed by the rules and regulations imposed by the HDB.

leaders or people in the Foreign Ministry. Everybody is watching and saying, 'My God, how can they do this?' So this will lead to drastic change.
(Burton, 1993)

Those who blatantly abuse human rights will face criticism and justice eventually. For example, there is constant and widespread criticism from the international community of the continued repression against Aung San Suu Kyi by the military in Burma by holding her under house arrest and detaining her supporters; and Slobodan Milosevic, former Yugoslavian president, faced justice in the United Nations ("UN") court for crimes against humanity (Parmly, 2001). Even business and corporations are urged to give globalisation a "human face". For example, the Global Sullivan Principles¹⁹ and the UN Global Compact²⁰ "encourage corporations, on a voluntary basis, to recognise international human rights, labour, and environmental standards" (Parmly, 2001, p. 59).

Thus, the 20th century saw the emergence of "political" globalisation - a situation where different forms of international law and agreements govern issues ranging from war to crimes against humanity, to environmental issues, to human rights (Held & McGrew, n.d.). It is admirable that nations collaborate and form partnerships to deal with these issues, but these must be done in tandem with educating people about the very same issues. Education can teach universal values, such as tolerance and human rights, diversity of culture, and respect for

¹⁹ A code of conduct which companies can adopt. The main objective is to support human rights, social justice and economic opportunity. The Global Sullivan Principles was an expansion of the Sullivan Principles developed by Reverend Leon H. Sullivan in 1977 to end discrimination against blacks in the workplace in South Africa. Reverend Sullivan created the Global Sullivan Principles of Social Responsibility in 1997 to expand human rights and economic development to all communities (see: <http://www.globalsullivanprinciple.org>).

²⁰ A set of 10 principles which concern human rights, labour and the environment formulated by a group of business leaders in 1999 (see <http://www.unglobalcompact.org>).

others and the environment. Education can help students to strike a balance between society's concerns and the rights of the individual. Education can enable students to acquire relevant knowledge and understand new values, and it can strengthen the autonomy of the individual so that individuals can catch up with "the evolution of their environment" (Hallak, 2000, p. 28). Non-governmental organisations have an important role to play in strengthening and developing education, especially for a young nation like Singapore. Two international treaties that influence the development of education internationally are the *Universal Declaration of Human Rights (1948)* and the *United Nations Convention on the Rights of the Child (1989)*, and the roles that these two treaties play vis-à-vis rights, education and legal issues in education in Singapore will be discussed.

3.3 Universal Declaration of Human Rights

Prior to World War II, each country had the prerogative to decide what rights to grant its citizens. But after the horrific abuse of human rights carried out during that calamitous period, it was realised that human rights cannot be treated as the private business of individual countries, but was "a common concern for the international community" (Ding, 1998, p.17). To address this issue, the UN, in 1948, adopted the *Universal Declaration of Human Rights* ("UDHR"). The UDHR sets out the basic rights and freedoms to which all people (regardless of race, language, religion, sex and disabilities) are entitled. Although the UDHR was adopted by the UN in 1948, all member states that are admitted to the UN after 1948 are required to uphold the principles in the Charter of the UN and the UDHR. Singapore, as a member of the UN²¹, has reaffirmed and pledged her commitment to achieving and promoting universal respect for and observance of human rights

²¹ Singapore became a member of the United Nations on 21 September 1965.

and fundamental freedoms²². However, for many decades, Singapore has argued that her application of political and civil rights must be adapted in order for the nation to enjoy stability and economic development.

The two international covenants on human rights that act as the enforcement mechanism to protect basic rights and freedom are the *United Nations International Covenant on Civil and Political Rights (1966)* (“ICCPR”) and the *United Nations International Covenant on Economic, Social and Cultural Rights (1966)* (“ICESCR”). Singapore is not a party to these two covenants and the main reasons given in the early years of Singapore’s development were that certain freedoms may need to be restricted as a short-term measure to eliminate poverty and to provide the conditions for economic growth. The government also argued that it aimed to secure peace in the country and would thus curtail civil liberties only when it had to (Bell, 2000). Indeed, the government’s efforts have transformed Singapore from a fragile, multi-ethnic society into a country with a developed nation status.

Since the government is managing its population and the economy so efficiently, why should it change the way it does things? This is a reasonable question, but with the progress Singapore has made, the “economic growth” and “peace and security” arguments are becoming less tenable. The arguments for not ratifying the ICCPR and ICESCR have thus recently shifted towards a more cultural standpoint. Asian leaders have argued that the interests of the community are more important than those of the individual, and that society should be placed above the self and issues resolved through consensus rather than contention. This

²² See the UN Conference on Human Rights in Vienna 1993 and the United Nations Millennium Declaration adopted by the General Assembly on 8 September 2000.

is the so-called “Asian Culture” (Little, n.d; Oh, n.d.). But with the global flow of migrant workers in Singapore, wouldn’t this “Asian Culture” be “complicated by the formation of new diasporic communities and new ethnicities”? (Koh, 2004, p. 340); and wouldn’t individuals in these communities want to know how the law can protect their individual rights?

Although Singapore is not a signatory to the ICCPR and ICESCR, its actions regarding human rights are still judged against the UDHR, which is the only international standard against which the observance of human rights is measured²³. In fact, the UDHR has laid the foundation for more than 80 conventions and declarations on human rights, of which Singapore has acceded to two - the *United Nations Convention on the Rights of the Child (1989)* and the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979)* (Samydorai, 2001).

The Singapore Constitution provides for freedom of speech, but in practice this freedom is restricted by an authoritarian style of government. The perceived government intimidation and pressure to conform often result in self-censorship among the people and even journalists (U.S. Department of State, 2004). The government often makes reference to “out-of-bounds” markers or issues. However, it is hoped that there has been a shift toward greater tolerance for openness and free speech. For example, in 2001, the government permitted

²³ The UDHR is known and accepted as authorities both in countries that became parties to the ICCPR and ICESCR and in those that did not ratify or accede to either. Because of its worldwide recognition under the domestic law of many countries, the UDHR has become part of the customary international law (OHCHR, n.d.). It is also treated as an authoritative interpretation of the human rights provision in the UN Charter (Ding, 1998). As customary international law binds all states without exceptions and regardless of consent, the principles in the UDHR, arguably, must be obeyed by all member states (Tay, 1996).

international human rights organisations²⁴ to observe the opposition politician JB Jeyaretnam's bankruptcy appeal. In 2003, two representatives from the Lawyers Committee for Human Rights were allowed to attend another opposition politician Chee Soon Juan's appeal of a summary judgment awarded against him in defamation suits brought by the former Prime Minister and then Senior Minister of Singapore (U.S. Department of State, 2004).

The human rights movement has gained momentum internationally. In participating in the Vienna Declaration of 1993 and the UN Millennium Declaration, Singapore is basically agreeing that human rights are interrelated and indivisible, and that they comprise civil, political, economic, social and cultural rights. Thus, the defence of "the right to development" and "cultural differences" in supporting the divergence in the application of human rights in Singapore may have to be re-examined in the light of the changes taking place in Singapore and globally. Take the example of the right to chew gum. The sale and import of chewing gum has been banned in Singapore since 1992. But Singapore in 2004 permitted "medicinal" and "dental" gum products to be sold in pharmacies as health products or as therapeutic preparations that aid smokers ("Singapore Loosens", 2004). What is the real reason? One commentator perceives that it is globalisation, in the form of a Free Trade Agreement, which has compelled even a country like Singapore to back away from national values (Nickel, 2003).

In the age of rights and with the advance of internet technology, the people of Singapore are becoming more aware of human rights issues. Communications media and technology are now so decentralised that it is near impossible to keep

²⁴ Representatives from Amnesty International and the Lawyers' Rights Watch in Canada.

foreign ideas away from local eyes and ears. The interactions across state borders by both governments and private citizens have markedly increased (Spickard, 1999). As pointed out as early as 1996 by a Singapore lawyer²⁵, Singapore is clearly interconnected with the rest of the world through trade, industry, media, travel and even education. He went on to say, “A nation’s conduct as regards its citizens is no longer purely a matter of its internal laws; it is the legitimate subject of international concern” (Tay, 1996, p. 750). In the next section, Singapore’s response to the *United Nations Convention on the Rights of the Child (1989)* and the legal implications the Convention presents for schools in Singapore will be examined.

3.4 United Nations Convention on the Rights of the Child (“CRC”)

Singapore acceded to the CRC on 2 October 1995²⁶ and it came into force in Singapore on 4 November 1995. As a party to the CRC, Singapore is required to submit an initial report on measures adopted, which gave effect to the rights provided for in the CRC. A progress report must be made on the enjoyment of those rights within two years of the CRC coming into force and thereafter every five years (Article 44, CRC).

Although the CRC itself cannot be invoked before the courts of Singapore, it is implemented in Singapore through a number of statutes and their subsidiary legislation. They include the *Children and Young Persons Act (Cap. 38, 1993)*, the *Women’s Charter (Cap. 353, 1961)*, the *Criminal Procedure Code (Cap. 68, 1955)*,

²⁵ Simon SC Tay LL.B Hons (National University of Singapore) LL.M (Harvard), who teaches international law at the National University of Singapore.

²⁶ Singapore entered some declarations and reservations on various articles of the CRC on its accession to the CRC. In the area of education, one of the declarations permits the judicious application of corporal punishment in the best interest of the child.

the *Penal Code (Cap. 224, 1872)*, the *Adoption of Children Act (Cap. 4, 1939)*, the *Guardianship of Infants Act (Cap. 122, 1935)* and the *Compulsory Education Act (Cap. 51, 2003)*.

Singapore's initial report on the CRC was submitted in April 2002 and the UN Committee on the Rights of the Child ("the Committee") released its comments on this report in October 2003. The Committee was of the view that Singapore had not fully reflected all the principles and provisions of the CRC in her domestic legislation:

The Committee recommends that the State party undertake a comprehensive review of its legislation and take all necessary measures to ensure its conformity with the principles and provisions of the Convention (Committee on the Rights of the Child, 2003a:2).

The Committee also criticised the Singapore government for not setting up an "independent mechanism" with authority and mandate to monitor and evaluate the country's implementation and progress of the CRC. The Committee

encourages the State party to establish an independent and effective mechanism, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights..., which is provided with adequate human and financial resources and easily accessible to children and which monitors the implementation of the Convention, deals with complaints from children in a child-sensitive and expeditious manner, and provides remedies for violations of their rights under the Convention (Committee on the Rights of the Child, 2003a:3).

The Committee observed the presence of discrimination against persons with disabilities, the inadequate provision of avenues for children to express their

views in all matters affecting them, the use of corporal punishment as a form of discipline, the absence of legislation to require social workers, teachers and medical personnel to report suspected cases of child abuse, and the lack of human rights education in schools and for the public (Committee on the Rights of the Child, 2003a).

In setting these principal subjects of concern, the Committee also spelt out its recommendations²⁷. To show Singapore's commitment to the CRC, the government would have to consider carefully the recommendations and examine its progress and implementation of the CRC before the second and third periodic reports were due in 2007²⁸.

Singapore does not have a strong rights culture, and the government does not like formal legal structures to regulate such issues, as can be seen in the lack of legislation in this area.

However, by acceding to the CRC, Singapore has opened itself up to international scrutiny and is obliged to make all reports on its progress on the CRC public.

Singapore, in practice, does not show any gross or widespread abuses of the rights of the people of Singapore. But as the "rights culture" continues to grow and people become more educated about "human rights", they will inevitably demand to be heard. Schools will similarly expect such demands from well-educated and

²⁷ For the full report, refer to *United Nations Convention on the Rights of the Child 1989*. Document No. CRC/C/15/Add.220 dated 27 October 2003.

²⁸ The Committee has allowed, as an exceptional measure, Singapore to submit its second and third periodic reports in one consolidated report by 3 November 2007, the date on which the third report is due. This is to enable Singapore to catch up with its reporting obligations.

well-informed parents, and school leaders will have to be well-prepared to meet the challenges that these sets of stakeholders will pose to them.

3.5 CRC and the Schools

It was noted by Russo and Stewart (2001) that in many common law countries, there has been an increase in the legal processes to guide policies, practices and decision-making in all educational institutions, in particular, schools. Apart from the UDHR, the CRC also plays an important role in promoting this increase. Many articles in the CRC that apply to schools require educators to formulate and implement policies that reflect the principles in the CRC. There are many articles in the CRC that impact on education. Some of the significant articles in the CRC are considered below.

Article 3 states that in

all actions concerning children...the best interests of the child shall be a primary consideration,...institutions...responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the area of safety...as well as competent supervision.

To promote the best interests of the child, Article 12 states that “a child who is capable of forming his or her own views (*is entitled*)...to express those views freely in all matters affecting them” (italics mine). Article 19 reinforces the importance of protecting the physical welfare of children by requiring parties to the CRC to “take all appropriate measures to protect children from violence, injury or abuse, maltreatment or exploitation and to undertake prevention and support programs”. Article 23 recognises the needs of children with physical and/or intellectual

disabilities and Article 28 provides that “primary education” must be made “compulsory and available free to all”. How, then, has Singapore responded to the principles of the CRC when compared with other countries?

3.5.1 Compulsory Education

In acceding to the CRC, Singapore has expressly reserved the right not to make primary education compulsory, the reason being “such a measure is unnecessary in our social context where in practice virtually all children attend primary school” (United Nations Treaty Collection, 2001). But with the government’s rhetoric indicating that every Singaporean counts, and with Singapore being a progressive country, it would have been an anomaly had education not been made compulsory in Singapore.

Primary education was eventually made compulsory in 2003 but, as a speaker in Parliament correctly said, six years of primary level education will not adequately prepare a person to meet even the most basic challenges of a knowledge-based and globalised economy (Parliamentary Debates, 2000, p. 851). Most countries referred to later on in Chapter Five have made education compulsory at least for primary and secondary schools, with England and some states in Canada requiring parents to register their children in schools at pre-school level. The definition of a “child” in CRC is one that is “below the age of eighteen years” (Article 1).

Although the CRC requires State Parties to “make primary education compulsory and available free to all” (Article 28), some might argue that the government should nevertheless consider the spirit of the CRC when setting the criteria for compulsory education in Singapore, and follow the example of other developed

countries in ensuring a minimum of at least 9 to 10 years of compulsory education so as to more adequately prepare young people for the future.

3.5.2 Corporal Punishment

Singapore has declared that a child's rights, as defined in Article 19 of the CRC, do not prohibit "the judicious application of corporal punishment in the best interest of the child" (United Nations Treaty Collection, 2001). This is contrary to a fundamental principle in Article 19 that a child should be protected from all forms of violence and, therefore, non-violent forms of discipline should be adopted for school discipline. However, as will be seen from the overview of education law in the developed countries in Chapter Five later, corporal punishment is not completely banned. For example, in some states in the USA, the decision as to whether children or youths should be physically punished is a policy question left for educators to decide (Fischer, Schimmel, Stellman & Cynthia, 2003). In Australia, corporal punishment is prohibited in all state schools either by regulations or policy although in some states, it is still allowed in private schools (Global Initiative to End All Corporal Punishment of Children, n.d.). In Canada, most school districts disallow the use of physical discipline (Anderson & Fraser, 2002), but, the Criminal Code of Canada provides a defence for teachers who do mete out corporal punishment. However, in January 2004, the Supreme Court of Canada removed this defence. Subsequently, teachers are no longer allowed to administer corporal punishment but are only permitted to use physical force to remove a student or prevent immediate threats of harm to person or property (The Centre for Effective Discipline, n.d.). In England, corporal punishment is banned in schools on the ground that this policy preserves the human dignity of a child, and respects parents' basic human right to ensure that their children are

educated in a way that is not offensive to them (Harris, 2002; The Head's Legal Guide, Croner, 1999). Similarly, in New Zealand, corporal punishment is prohibited in schools pursuant to the *Education Act (1989)* (amended 2007).

The Committee on the Rights of the Child (2003a) recommends that Singapore amends its legislation to prohibit corporal punishment in the home and in schools. The government has not followed up on the recommendation, but the Ministry of Education (MOE) has given broad guidelines to school principals on managing student discipline. On the use of corporal punishment, very specific guidelines are given (Ministry of Education, 2000b; *Education (Schools) Regulations, Education Act [Cap. 87, (1957)]*). The law of tort also provides students with legal redress should any corporal punishment be excessive and unreasonable.

Asians believe that the age of a person equates with maturity and knowledge, and they are respected for these attributes; such respect is often given according to the hierarchical order (Sandhu, 1997). Besides age, official position is also regarded as a form of social status. Students are expected to treat teachers with respect as teachers are deemed to be experienced and educated persons, who are knowledgeable enough to deal with schooling issues and even personal problems (House & Pinyuchon, 1998). In Singapore, there is still a strong culture of respect for the authority of parents and teachers. This was seen in the public outcry following the stepping-down of a secondary school principal after he hit a female student with a book²⁹. It could be argued that, with MOE's guidelines on corporal punishment, the remedy in common law for abuse, and a culture of respect for

²⁹ The principal of Nan Chiau High, while reprimanding the student with disciplinary problems, lost his temper when she lied to him, and hit her with a soft-cover book. The Principal's Handbook and the *Education (Schools) Regulations* expressly prohibit any form of corporal punishment to be administered on a girl. The majority of the public felt that even if the principal's action was wrong, he had acted with good intentions and the MOE should not have allowed him to step-down.

authority, there may not be a need for Singapore to withdraw its declaration on corporal punishment. Nevertheless, the international pressure to promote “rights in education” is evident and the Minister of State for Education, Mr Chan Soo Sen, acknowledged that Singapore may have “to move with the times” and eventually review her “approach to caning and spanking” (Committee on the Rights of the Child, 2003b, p. 11).

3.5.3 Safety in Schools

Each child is expected to be educated in a safe school environment, and this expectation is evident in the articles declared in the CRC. The notion of the best interests of the child is interpreted very strictly when determining the rights of the child in the education context. The scope of the duty of care of educators in respect of the child’s safety in school includes not only the physical safety but also the psychological safety of the child (De Waal, 2002). Safety in schools encompasses a whole range of related issues. They involve negligence resulting in injury, violence in schools by students, peer harassment in the form of bullying, sexual misconduct by teachers, and child abuse of students by care-givers at home or even in boarding schools. Many countries have some form of legislation to safeguard the physical welfare of students. Such legislation generally imposes on education authorities, private school proprietors, senior post holders in schools and all teachers a duty to take care of the health, safety and welfare of the teachers and students in schools. A more complex duty of care issue that has entered the education scene is that of bullying that occurs on school premises. Schools have had to deal with claims for physical or psychological harm for their failure to prevent bullying.

In Singapore, there is no specific legislation that deals with the health, safety and welfare of students in schools. However, the common law of negligence and occupier's liability, combined with the numerous guidelines in the Principal's Handbook on safety, provide at least some guidance on the standard of care required by educators. Examples of guidelines in the Principal's Handbook are guidelines on: "Safety and Health Precautions in School Tuckshops", "Safety Precautions in Science Laboratories, Technical Workshops, Computer and Home Economics Rooms", "Safety Precautions in Physical Education (PE) lessons/Trim and Fit (TAF) Programme/National Physical Fitness Award (NAPFA) Test", "Safety Precautions for Pupils Outside School", and "Safety Precautions on the Air Rifle Range" (B361, Ministry of Education, 2000b). While these guidelines may offer some assistance in the planning and conducting of school activities in a safe manner, they do not replace the corresponding legal responsibilities of those in authority and the need for educating principals and teachers about the rights of students in law.

Most countries have legislation protecting children from abuse. Singapore has similar legislation reflected in the *Children and Young Persons Act (Cap. 38, 1993)*, but as pointed out by the Committee on the Rights of the Child, there is no legal requirement for teachers to report suspected cases of child abuse. One may argue that teachers have a "moral duty" to act on evidence or suspicion of such cases, but even if only one teacher fails to exercise this moral duty, it is one too many. The Principal's Handbook encourages schools to report cases of child abuse, neglect and ill treatment to the Family and Women's Welfare Branch and the Ministry of Community Development and Sports (B332, Ministry of Education, 2000b). However, no guidance is given on the various symptoms of abuse and

neglect and the correct approach to reporting one's suspicions. Article 19(2) of the CRC requires state parties to provide effective procedures for identifying and reporting abuse and neglect. A police spokesman said in a newspaper report (Tan, 2004) that nine out of 10 rape victims in 2004 knew their attackers, many of whom were family or friends. In the same report, the chairman of the Women and Safety Committee at the Association of Women for Action and Research (Singapore) said, "Worldwide statistics show nine out of every 10 rape cases go unreported". If Singapore is to take her commitment to promoting "the best interests of the child" seriously, the government should provide at least more effective procedures, if not appropriate legislation, to fulfil the requirements in Article 19(2).

In early 2004, there were newspaper reports detailing the sexual misconduct of two male teachers in Singapore³⁰. These teachers were convicted and punished under the law. Unlike the English and Canadian jurisdictions, where there is specific legislation explaining what constitutes sexual offences by teachers, Singapore's law simply states that it is an offence for a person "to have carnal connection with any girl below the age of 16 years except by way of marriage" (Section 140(i) *Women's Charter*, [Cap. 353, 1961]). In terms of guidelines, the MOE expresses teachers' misconduct as "conduct prejudicial to good order or discipline" or "immoral behaviour", among other examples (Ministry of Education, 2002, p. 39). In England, teachers and other school staff who have any sexual activity with someone below 18 years of age commit the offence of "abuse of

³⁰ In the first case, a male teacher was jailed for seven years for having sex 18 times with his 14 year old student. In the second case, a married teacher was jailed for 16 months after pleading guilty to having oral sex with his 14-year-old former student. Under the *Penal code* (Cap. 224, 1872), it is a criminal offence both to have carnal connections with a girl under the age of 16 and to perform oral sex (Section 140(i) *Women's Charter* (Cap. 353, 1961) and Section 377 *Penal Code* [Cap. 224, 1872]).

trust” (*Section 3, Sexual Offences (Amendment) Act (2000)*). Similarly, the law in Canada makes it a criminal offence for a person who is in the position of trust or authority to (for a sexual purpose) touch any part of the body of a young person who is below 18 years of age (*Section 153, Criminal Code of Canada, Chapter 46*). It may be argued that it is time for Singapore to review its law and policies in this area, or at least to implement a code of ethics to help principals and teachers know, in the eyes of the teaching profession, what constitutes sexual misconduct or sexual offence, and when and how to report suspicions of such sexual misconduct or offence by teachers. In the meantime, we have to rely on each individual’s moral conviction, and some convictions may fall way below generally accepted norms.

3.5.4 Special Education

Special education (“SPED”) schools are the main providers of education for children with disabilities in Singapore. As at January 2006, other than three other private centres³¹, there are 21 SPED schools run by Voluntary Welfare Organisations (which receive funding from the Ministry of Education (“MOE”) and the National Council of Social Services). Although SPED schools are the ones mainly responsible for the education of children with disabilities, the policy of MOE is to allow pupils who are successful in the Primary School Leaving Examination³² to leave SPED schools to continue education in mainstream secondary schools (Ministry of Education (Singapore), n.d.).

³¹ These three centres are the “Genesis School for Special Education” and “Kits4Kids Special School” which are commercially run centres, and the “Dover Court Preparatory School” which is a foreign system school with a special education department.

³² The Primary School Leaving Examination is a placement examination taken in Primary Six. The results will determine whether students go on to secondary schools to complete an additional four to five years of secondary education.

The current policy appears to be in line with the *Report of the Advisory Council on the Disabled: Opportunities for the Disabled* stating that “whenever appropriate and feasible, special education should be provided within the regular education system. A child should only be placed in a special school if he cannot be well educated in a regular school” (Lim & Tan, 2001; 37-38). A survey of the improvements and modifications made to the physical environment of various schools further suggests that considerable efforts have been made to support the notion of “inclusive education”. However, as pointed out by Lim and Tan (2001), the system of inclusive education in Singapore is not without tensions and limitations. The following paragraphs will now look at three such limitations.

First, although initial teacher training does include reference to disabilities, the emphasis is on ensuring that trainee teachers master basic skills in teaching and learning. They are not trained with sufficient skills, knowledge or confidence to integrate students with disabilities in their classes. This lack of training further translates into regular teachers being unable to identify special needs pupils other than those with physical or sensory disability.

Another limitation is one where education is increasingly becoming “market-based” and where competition and standards are vital to a school’s survival. In such an environment, schools are compelled to compete with one another, and one way is to recruit the best cohort of students so that the school’s performance can be boosted. Naturally, students with disabilities, especially those that have learning difficulties, are deemed to be less desirable (Lim & Tan, 2001). Although there is no evidence that principals reject students with learning difficulties at the outset, informal conversations with principals reveal that when special needs

students (for example, those that are autistic or who suffer from Attention Deficiency Hyperactive Disorder) become too disruptive, principals will strongly encourage parents to withdraw their child from their school and place him or her in a SPED school. Unlike the United States, England and other commonwealth countries, the concept of inclusion is not a “right” in Singapore. In fact, the *Compulsory Education Act (Cap. 51, 2003)* allows children with special needs or learning disabilities to be exempted from its provisions. The government is of the view that enforcement of compulsory education on parents of children with learning disabilities will be unduly harsh on them.

Although efforts have been made to enhance opportunities for inclusive education, the third limitation is seen in the research carried out by Rao, Lim and Nam (2001), which indicates that there is still a lack of resources in terms of school personnel, flexible curriculum and suitable physical setting in the classrooms.

Mr Stephen Woodhouse, the Independent Consultant with experience in the work of the UN and UNICEF, in a keynote address on “The Status of Children in Singapore - Regional and Global Benchmarks”, congratulated Singapore on its excellent efforts in “promoting children’s welfare in a rapidly changing world” (Woodhouse, 2004, p.2). One of the ways in which Singapore promotes the welfare of children with disabilities is through integration of these children into the mainstream schools. But while this may look good on the surface, the underlying problems faced by schools and parents, as discussed briefly above, remain largely unresolved. The government’s objective of excluding special needs children from the compulsory education legislation is to allow special needs children to attend

SPED schools and learn at their own pace (Ministry of Education, 2000a). However, there are insufficient SPED schools to meet the demand³³. Since special needs children are exempted from the *Compulsory Education Act (Cap. 51, 2003)*, some may end up not being in school at all.

Article 23 of the CRC specifically refers to the right of a mentally or physically disabled child to enjoy a full and decent life, and this necessarily includes effective access to and receipt of education. From the available literature and newspaper reports in Singapore, there appears to be little evidence to show that, in practice, “the best interest” principle is applied to children with disabilities. One parent commented,

parents with special-needs children are faced with the dilemma of not knowing where to place their children at school-entry age. The present education system does not cater to the slower learners. At the same time, the parents are not sure the existing physical environment of special primary schools is conducive to learning (Chua, 2003, p.25).

Despite the moves to integrate children with special needs into mainstream schools and the steps taken to enhance the support for these children, there has been no attempt to formalise this process into the education legislation or at least to give clearer guidelines on placement and special educational provision. As mentioned above, the government argued that, if compulsory education were to include education in SPED schools, the enforcement of compulsory education may be unduly harsh on the parents of children with special needs. But some parents do not send their children to SPED schools because of the costs. This can be

³³ *The Straits Times*, 22 March 2003 - there is a huge demand for places in special needs schools with programmes for autistic children. More teachers are being trained so that by 2006, 400 more autistic children may benefit.

overcome by making education at SPED schools free for such children. The principal objective of introducing compulsory education is to ensure that every child is given the opportunity to maximise his or her potential. If a child with special needs cannot attend a mainstream school, then he or she should be sent to a SPED school as part of the requirement of compulsory education. Perhaps there are lessons that can be learnt from the experience of special educational needs in other developed countries in this regard, and measures adopted and implemented to give disabled children in Singapore what they rightly deserve - the best opportunity to learn.

3.5.5 Privacy

Article 16 of the CRC states, “No child shall be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation”, and, “the child has the right to the protection of the law against such interference or attacks”. In short, every child has the right to privacy. But Singapore does not have any general laws on privacy, and there are no cases in Singapore that have recognised a legally enforceable right to privacy *per se*. The laws pertaining to privacy and personality are “mostly piecemeal and are to be derived mainly from various branches of the law” (Hwang & Chan, 2001, p. 355)³⁴. Schools collect and maintain a great deal of information about students and their families, much of which is personal, confidential or sensitive in nature. They are also constantly faced with requests for some of that information, perhaps by solicitors or other private agencies. Do schools have a duty to protect students’ personal information? Under the common

³⁴ Examples of some of the relevant laws are the *Copyright Act (Cap. 63, 1987)*, the *Computer Misuse Act (Cap. 50A, 1993)*, the *Miscellaneous Offences (Public Order and Nuisance) Act (Cap. 184, 1906)*, the *Telecommunications Act (Cap. 323, 1999)*, the *Vandalism Act (Cap. 341, 1966)* and various section of the *Penal Code (Cap. 224, 1872)*.

law, there is a branch of law known as the “law of confidentiality”, which may be used to protect confidential information concerning a person or his activities, and it is this branch of law that may protect a student’s right to privacy (*X Pte Ltd v. CDE* [1992]³⁵). Article 16 above also reminds us that teachers and school administrators may have an obligation to ensure that information on a student is not misused so that there is potential for breach of confidence or defamation.

3.6 Conclusion

Seymour Martin Lipset (1980), in his book entitled “Political Man”, said that the more the economy grows, the more likely it is that stable democratic forms of politics will emerge. In a post-industrial economy and in a shifting world, where the government promotes creativity, innovation and enterprise, Singapore needs an even more democratic environment, giving relative freedom to individuals to experiment, to freely express themselves, and to take risks as entrepreneurs in order to maintain or extend the nation’s competitive edge over other rich countries (Spickard, 1999; Bell, 2000). One would argue that this idea of “individualism” supports the ideals of human rights, and an authoritarian model of governance is incompatible with a human rights framework.

The tenor of the rhetoric from government ministers in past years has been that Singapore needs to be a more open society. The third Prime Minister of Singapore, Mr Lee Hsien Loong³⁶, in his inaugural speech spelt out his vision for Singapore to

³⁵ In this case, the defendant claimed that under Article 14 of the Constitution of Singapore, she was entitled to freedom of speech and expression, thus she was free to divulge the sex life of her ex employer. The plaintiff successfully argued that Article 14 was subject to the existence of the equitable duty of confidence in Singapore.

³⁶ Mr Lee Hsien Loong was sworn in as the third Prime Minister of Singapore on 12 August 2004.

be an “open and inclusive society”, which is a reiteration of the theme in his speech given at the Harvard Club’s 35th anniversary dinner on 6 January 2004,

‘I have no doubt that our society must open up further. The growing participation and diversity over the last two decades have been vital pluses for Singapore, enabling us to adapt to changing conditions, and to the needs and expectations of a new generation (Chua, 2004, p.1).’

By encouraging participation in decision making, the government is enabling people to own their choices and to contribute to the vision and growth of the nation. By encouraging openness and diversity, and by promoting, respecting and observing universal human rights and fundamental freedoms in the form of the UDHR and the CRC, each new generation will only develop greater respect for rights in the society. In fact, the education system in Singapore should teach children what their rights are (for example, freedom of association, freedom of speech, the right to primary education) and specify the object of each right. In teaching children their rights, children will also learn about their corresponding responsibilities.

This chapter has touched briefly on globalisation trends and international trends on human rights and their impact on education policies in Singapore. But more importantly, in examining the CRC vis-à-vis schools, it emphasises the importance of legal issues for schools in Singapore. As we look at other countries, we can see things happening that appear to parallel developments in Singapore. For example, there is a growing concern abroad about corporal punishment, negligence in schools, sexual assaults by teachers and bullying by students. As seen earlier, these are issues that have also surfaced in Singapore (Teh, Stott & Zuzarte, 2004).

In the preceding pages and chapters, it was observed that the “rights culture” is indeed growing, and people, including students and teachers, are demanding to be heard and be treated fairly. The then Singapore Teachers’ Union’s (“STU”) General Secretary, Mr Swithun Lowe, observed a “changing scenario”, where “more educated parents are ready to take teachers to task for problems between teachers and their children”, and he stated that STU was prepared to defend members who are sued or unreasonably abused by parents in the course of their duties (Sim, 2004, pp. 2-3).

Two commentators said that educators (education professors, superintendents, principals and teachers) need to realise that “the significance of school law presents a unique intellectual challenge” to prepare them (educators) to be more proactive (rather than reactive) in meeting the needs of staff, parents, students and the community (Russo & Stewart, 2001, p. 23). Indeed, “education and the law” is an emerging area of nascent importance in Singapore. If these commentators are right, then it will not be adequate for educators simply to facilitate an “open and inclusive society” that can meet the demands of global interactions. It will also be incumbent on educators to recognise and have a broad understanding of the issues and legal concepts in education law to meet this “unique intellectual challenge” in their day-to-day, real life situations.

Although there is no single piece of legislation that addresses all the rights of a child as set out in the CRC, a child’s rights in Singapore are nevertheless reflected in various statutes and their subsidiary legislation. In recognising the rights of the child in all these statutes, “the best interests of the child” is always of paramount importance. But for teachers, acting in the best interests of the child may not be

as simple as it sounds. Children today come to school with all kinds of different needs, many which are emotional, rather than physical needs. Sometimes, acting in the best interest of the child means requiring a teacher to gather information on what happens to a child outside the classroom, and taking appropriate action; for example, reporting an abusive parent to the relevant authorities or dealing firmly with a school bully. Undoubtedly, teachers' jobs are very stressful, for very often, their role as a teacher is not confined to teaching alone, but they are also involved as counsellors, social workers and sometimes mediators, in addition to the various administrative roles demanded of them. Nevertheless, as the "rights culture" continues to manifest itself, teachers will find themselves inexorably drawn into yet another area of involvement - education and the law. The illustrations given earlier are just two examples of legal issues³⁷ that teachers will have to grapple with, and as seen in earlier chapters, there will be many other legal issues that will eventually confront teachers in their daily duties.

In highlighting some of the important provisions of the CRC as they relate to schools and education in Singapore, this study has shown that a better and more comprehensive legislative framework is needed to respond to the objectives of the Convention. But it's more than having legislation in place. Educators too have a duty to know about legal rights and responsibilities and educate those in the school and community so that these objectives can be met. It is a collective effort on the part of the government and educators. Like it or not, societies are caught up in the zeitgeist of globalisation and rights, and if Singapore recognises the importance of meeting international standards in this respect, then both the government and the people on the ground will have to press on with reforms and

³⁷ The first example concerns possible child abuse and the reporting procedures under the *Children and Young Persons Act (Cap. 38, 1993)* and the second example deals with the common law duty of care to prevent a child from suffering physical or psychological harm while in school.

changes in education and law to gain Singapore the recognition and acceptance that she rightly deserves.

In the next chapter, some attention will be given to the more important legal concepts pertaining to legal issues in education in Singapore and how they might have an impact on schools.

CHAPTER FOUR

AN OVERVIEW OF AREAS OF LAW WHICH HAVE SIGNIFICANT IMPACT ON EDUCATION

4.1 Introduction

The study of law is an extensive field, and it is impossible in a short chapter like this to set out comprehensively details of the various disciplines of law that contribute to the field of “Education and the Law”. The legal concepts discussed here are therefore by no means exhaustive, but they represent some of the more significant concepts associated with this study, and are placed here for the reader who may not have a legal background.

4.2 Schools and the Law

“The law” refers to, first, a system of rules or legislation developed by a government: in other words, statutory law created by the enactment of legislatures; and, second, the common law, which comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity (Black, 1990). Where statutory law on a particular issue is not available or where the law is not available in a precisely organised way, common law enters the scene to “make” law or interpret the “unclear” statute law. According to Menacker (1987), common law is found in court opinions through the years, as judges have resolved controversies and recorded their reasoning. This part of the law frequently gives operational meaning to written regulations and comes into play when written rules do not exist on any given point. This so-called legal relationship of persons to one another in society becomes the accepted standard or standards of conduct (common law).

There are many aspects of law affecting public schools. Schools function in a complex legal environment and there is a variety of legal issues that confront the lives of teachers, administrators, parents and students on a daily basis. The combination of both legislative and common law that impacts school policies and practices are what academics and lawyers in the USA term “School Law” or “Education Law” and elsewhere refer to as “Schools or Education and the Law”.

In the following paragraphs, an overview of the areas of law pertaining to this study will be examined.

4.3 The Tort of Negligence

Negligence is classified under the law of torts and it is the most wide-ranging among the numerous torts. In order to establish the tort of negligence, a plaintiff must establish the following four elements.

4.3.1 *Duty of Care*

Principals and teachers are entrusted with the heavy responsibility of caring for large numbers of young children. Owing to the nature of their work, special duties of care are imposed on them. A duty of care may arise in three ways:

- (i) A duty not to act in a certain way; for example, a physical education teacher has a duty not to leave a gymnastics class unattended;
- (ii) a duty to perform a job with a certain degree of skill and care; for example, teachers have to ensure that the school syllabus is taught correctly; and
- (iii) a duty to take reasonable steps to ensure that some purposes or a goal is achieved; for example, if a school is to operate as a centre of teaching and

learning, it has to take steps to ensure that the school is reasonably safe for that purpose (McBride & Bagshaw, 2000-2001).

It is reasonably foreseeable that the breach of the duty in any of the three ways described above will result in some form of harm. This breach of duty amounts to negligence. Most people, at some point in their lives, have probably indulged in some form of negligent act, but fortunately for them, legal liability for negligence only arises when all of these elements are established:

- (i) a duty of care is owed to the plaintiff and it is reasonably foreseeable that harm will result if there is a breach;
- (ii) breach of the standard of care required;
- (iii) damage or injury results from the breach;
- (iv) the damage or injury was reasonably foreseeable; and
- (v) the negligent act was the cause of the damage or injury.

4.3.2 Duty of Care - when is it owed?

The element of duty of care is a threshold requirement that must be established before a plaintiff can proceed with a negligence claim. In determining who is owed a duty of care, the often cited words of Lord Atkin in *Donoghue v. Stephenson* (1932) provide the answer:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law is my neighbour? The answer seems to be persons who are so closely and directly affected by my acts that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question.

The notion that a duty of care exists between a teacher or school and a student whenever the former has care or custody of the student has been recognised since the 1893 English case of *William v. Eady* where Lord Esher stated that “the schoolmaster was bound to take such care of his boys as a careful father would take of his boys”.

In the English case of *Norman v. Inner London Education Authority* (1974), an unlabelled beaker of sulphuric acid was left on the bench in the chemistry laboratory in the teacher’s absence. A boy filled a syringe from the beaker and squirted it in another boy’s eye. It is reasonably foreseeable that by leaving a dangerous substance around, someone may get hurt if the substance is improperly used. The teacher’s failure to give a specific warning of the danger involved was thus a departure from the standard of care required of him. The elements of negligence were established: duty of care, breach of standard of care, and a resultant foreseeable injury. The injury was attributed to the teacher’s actions and the school was held vicariously liable.

4.3.3 The Standard of Care

The earliest common law description of the standard of care required of teachers is that by Lord Esher MR in the case of *William v. Eady* referred to above. The standard of care required of teachers is that of a careful parent³⁸. Knowing the

³⁸ This has become a fairly controversial issue since the House of Lords decision in *Gillick v. West Norfolk and Wishech Area Health Authority and the Department of Health and Social Security* (1985). The main question in the appeal was whether a doctor could lawfully prescribe contraception for a girl under 16 years old, without the consent of her parents. The Health Department’s guideline had implied that in “exceptional cases”, a doctor could do so. Mrs Gillick applied for a declaration that the guidance was unlawful. By a majority decision, the House of Lords held that “the parental right to determine whether or not their minor child below the age of sixteen will have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed” (Lord Scarman). This decision has huge implications for schools in

ordinary nature of children, their tendency to do mischievous acts and their propensity to meddle with anything that comes in their way, if a father has phosphorous in the house, being a careful father, he would not leave the phosphorous in a place where his child could reach it. In other words, while a child is at school, “each teacher acts in loco parentis (*in place of the parents*) and has to adopt the standards which would be expected of the reasonable caring parent” (parenthesis mine) (Wenham, 1999, p. 366).

One of the criteria looked at by the courts when determining whether there is a breach of the standard of care is that of the adequacy of supervision. Lord Denning in the case of *Ward v. Hertfordshire County Council* (1970) made the comment that it was impossible to supervise children to the extent that they never fall down and hurt themselves. It is therefore important for schools to ensure that they provide *adequate* although not constant supervision while their children are in the school premises (emphasis mine).

4.3.4 Foreseeability of Harm

A defence that is available to a defendant in a negligence suit is that the accident is “not foreseeable by any reasonably competent and prudent school or teacher” (Palfreyman, 2001, p. 232). In the case of *Government of Malaysia & Ors v. Jumat Bin Mahmud & Anor* (1977), a student lost his eye when it came into contact with a sharp end of a pencil that another student was holding. The other student had pricked the victim’s thigh with a pin, causing the victim to receive a shock and thereby to turn directly into the sharp pencil. The victim and his parent alleged that the teacher was negligent by not exercising adequate supervision. The trial

that school nurses can potentially consider providing contraceptive treatment to young students under 16 based on the *Gillick* competency guidelines without parental permission.

judge gave judgment to the child, but, on appeal, the Court of Appeal found that there was no evidence to show that the class was inadequately supervised. Even if the teacher was negligent, it was not reasonably foreseeable that an injury of this nature would result from the teacher's wrongful act.

The word "foreseeable" is used objectively. Lord Wright in the English case of *Wray v. Essex County Council* (1936) made that clear when he said the mere fact that one did not foresee the harm would not be an excuse if it was something that a reasonable person in the same circumstances would have foreseen.

4.3.5 Causation

Causation is usually the most complex issue to be decided by the court. On the evidence before him, a judge has to determine whether it is logical and reasonable to infer that what the teacher did or should not have done, in his or her performance of duty, caused the injury which the student complains of - the notion of causal connection. In other words, was the teacher's negligence the cause of the accident? In *Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v. Hadba* (2005), 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. The majority of the High Court judges in Australia held that it is unlikely that even a teacher watching the equipment uninterruptedly would have been able to prevent the plaintiff's fall once her legs were grabbed. Thus the High Court judges were not satisfied that causation was established.

4.4 Other Legal Issues Arising from the Tort of Negligence

Negligence cases can easily arise from the lack of or inadequate supervision in a variety of school activities and settings. These activities and settings may include classrooms, physical education lessons, science laboratory activities, craft workshops, cookery classes, art classes, activities before and after school hours, school grounds, sports activities and field trips. It is thus acknowledged by Chan Soo Sen, Minister of State at the Ministry of Education and Ministry of Community Development and Sports, in the Initial Report of Singapore to the Committee on the Rights of the Child that “the safety and the best interest of a child could not be compromised either by parents or teachers” (United Nations Press Release, 2003³⁹).

The law in Canada, Australia and England expects teachers to exercise a duty of care to safeguard the physical health and safety of their students by protecting them from all reasonably foreseeable risks of injury or harm (Berryman, 1998, Stewart, 1998a & 1998b; Palfreyman, 2001). The law in Singapore is no different in this respect. However, two questions arise. First, does the physical health and safety of students involve protection from peer aggression such as bullying, or abuse or neglect by their care-givers, and would failure on the educator’s part to act amount to negligence? Second, can schools be liable for educational malpractice such as negligent teaching or failure to diagnose a learning disability? These are interesting questions that can form separate studies of their own, but the survey of the international trends and developments in these areas discussed in Chapter Five may provide some indicative answers and guidance to educators and policy makers in Singapore.

³⁹ United Nations Press Release (2003, September 26). *Committee on the Rights of the Child considers initial report of Singapore*. Retrieved 20 June, 2004, from <http://www.hrea.org/lists/child-rights/markup/msg00227.html>

4.5 Criminal Force, Assault And Corporal Punishment

A relief teacher slapped a student because he forgot to bring his maths book to school and another relief teacher knocked his students on their heads during a maths lesson. Parents complained about the teachers' actions and both relief teachers were sacked ("Relief Teacher", 2000). Had the teachers been taken to court, would there be any legal liability on the part of the teachers? A brief discussion of the use of criminal force, assault, intentional torts, the *United Nations Convention on the Rights of the Child (1989)* (CRC) and the Principal's Handbook may provide some answers to this question.

Simply put, criminal force is the intentional use of force on any person illegally to cause injury, fear or annoyance to the person on whom the force is used (Section 350, *Penal Code (Cap. 224, 1972)* [Penal Code]). An assault, on the other hand, is an overt attempt to physically injure a person or create a feeling of fear or apprehension of injury. There are three elements of assault: (1) lack of consent by the victim, (2) intention to cause injury and (3) an application of force to the victim (or threat of force that the victim believes will be carried out) (Section 351, Penal Code). The phrases "create a feeling of fear" and "threat of force" mean that there does not need to be actual physical contact in order for an assault to occur. So in a classroom context, if a teacher held up a book and threatened to throw the book at his or her student, and the student feared that the book was going to be thrown at him, technically speaking, the teacher has committed an assault. However, if the teacher has committed an assault, it is usually because he or she was attempting to administer corporal punishment. "Corporal punishment is a disciplinary measure which involves intentionally creating discomfort or pain in the student by physical means" (Brown & Zuker,

2002, p. 132). The common law does not prohibit corporal punishment, but where the extent of the force used is excessive or unreasonable, the teacher may be subject to either civil and/or criminal liability (Giles, 1988; Knott, 1997a; Brown & Zuker, 2002). Nevertheless, despite the principles of common law concerning corporal punishment, most countries, as will be seen in chapter five, have banned corporal punishment in schools.

A tort is a private wrong or civil injury committed by one against another. It deals with the duties of care imposed on individuals to be cautious of the rights of other individuals by operation of law (Russo & Mawdsley, 2003). Intentional torts include torts such as assault or force carried out with the intention to bring about harmful or offensive contact or an apprehension of such contact to another.

As a party to the CRC, Singapore has to uphold Article 19(1) which says:

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

However, in agreeing to the CRC, Singapore also expressly declared that Article 19 does not prohibit “the judicious application of corporal punishment in the best interest of the child” (UN Treaty Collection, 2001⁴⁰). The guidelines by the Ministry of Education (“MOE”) in the Principals’ Handbook set very clear principles

⁴⁰ United Nations Treaty Collection (2001). *Declarations and reservations*. Retrieved 19 June, 2004, from http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm

that give due regard to Article 19 but at the same time allow schools to mete out corporal punishment to maintain discipline.

According to B298 of the Principal's Handbook, only the principal has the authority to administer corporal punishment but he or she may delegate the task to the vice-principal, a head of department or another senior teacher in the school. In addition, only boys may be caned with a light cane and the maximum strokes are six to be given either on the palms or buttocks. Schools are advised to keep a proper record of the incident, which includes the date and time of the caning, the name of the student, the person who used the cane, witnesses, the nature of the offence and the number of strokes given. The student's parents should be informed immediately with details of the offence and the punishment meted out. The school should also take appropriate follow-up action to counsel the pupil concerned and, finally, corporal punishment should be used only as a last resort.

Going back to the examples at the beginning of this section (where the teachers slapped and knocked students on the head), the teachers' actions were clearly in breach of the MOE guidelines and the termination of their services by their principals was probably justifiable. Assuming the parents made a police report: was criminal force used against the students? Probably not, since Section 350(i) of the Penal Code clearly states that a schoolmaster, in the reasonable exercise of his discretion as a master does not use force illegally even if he flogs one of his students. However, the term "reasonable exercise of his discretion" is open to interpretation. Similarly, if a civil suit is brought to court for intentional tort, the court will look for factors such as whether a teacher's action was a reasonable exercise of his or her discretion to discipline students and if there was clear

intention to injure (see *R v. Hopley* (1860) cited in Giles, 1988, p. 139). While a teacher may have overstepped the discretion given to him to exercise discipline, the second test of “intention to injure” would usually be difficult to establish.

Principals frequently mention incidents of threatened legal suits against teachers for assault or use of force against a student. Fortunately for teachers, such cases have not reached the Singapore courts but, even if they do, the courts will probably give teachers a great deal of latitude. This is because the courts are aware that, in a classroom setting, a teacher may be guilty of assault or use of force because of his or her attempt to exercise discipline or break up a fight. But what is appropriate discipline in an educational setting, and if teachers are to be considered as professionals, should they then be able to discharge their duties without recourse to violence? Mr Justice Phillimore, in *Mansell v. Griffiths* (1908), clearly laid down the common law principles that: it is enough for a teacher to say that the punishment which he or she administered was moderate; it was not driven by any bad motive but was such as is usual within the school; and it was the kind of punishment that a parent of a child might expect the child to receive if the child behaved badly. If these principles are strictly adhered to, it could be argued that since teachers stand in place of the parent in the school, a teacher should be justified in using force by way of correction toward a pupil who is under his or her care, so long as the force does not exceed what is reasonable under the circumstances, and is not administered with malice and obvious intention to injure. However, as seen in the CRC and the policies of many jurisdictions (see Chapter Three), corporal punishment is viewed as a controversial practice. Its proponents argue that it is an educationally sound disciplinary measure, while its opponents view the practice as archaic, cruel and inhuman (La Morte, 1999).

There is thus no broad agreement on the appropriate discipline in an educational setting. But until such time that a universal agreement on this issue is formed, some would take the view that Singapore has moved in the right direction by reserving the right for school principals to carry out corporal punishment as a judicious means of maintaining discipline in the school.

4.6 Wrongful Confinement

Wrongful confinement occurs when one restrains a person in a manner to prevent that person from proceeding beyond certain circumscribing limits (Section 339, Penal Code). Locking a child in a closet is therefore wrongful confinement. In the educational setting, confining children in the ordinary course of teaching is inevitable. It is not uncommon for students to be sent to the principal's office or to after-school detention. So when can an educator be liable for wrongful confinement?

Under common law, the teacher who is acting in loco parentis has implied authority to detain a student, so long as the power is used reasonably and moderately. Where the power is used unreasonably or excessively, the tort of wrongful confinement would be committed (*Fitzgerald v. Northcote* [1865]).

Under the *Children Act (1989)* in England, detention for improper purposes might even constitute child abuse (Harris, 2002). There is no equivalent of the English *Children Act (1989)* in Singapore, but familiarity with the common law and the policy guidelines given by MOE in the Principals' Handbook may be very useful to educators in this area. The MOE guidelines on detention can be summarised as follows: (1) detention should not be used on the same students on a regular basis; (2) teachers should not detain a student alone after other students have been

dismissed; (3) appropriate written work must be assigned; and (4) parents must be informed in advance of the date, time and duration of the detention (B299, B300 & B301, Ministry of Education, 2000b). Many schools in Singapore may be unknowingly breaching these guidelines by confining students to a room without assigning them any written work or, worse, making them perform cleaning jobs, such as picking up litter. For example, there was a case involving Kent Ridge Secondary School, where the school detained 17 students for seven hours without food or drinks for possessing and viewing pornography on VCDs. One of the students had Hirschsprung's disease, a condition where the walls of his intestines may have fused together if he had been deprived of food and drink, and the school had been informed about this condition. Although the offence committed by the students was criminal, and appropriate police action was required, the students should have been given meal breaks during the detention hours. The MOE, in a press statement, said that the school should have "handled the situation" better, and the school admitted that it "should have explained the situation to the parents more effectively" (Ng, 2004). If the sick student had suffered any serious injury due to the detention, there could have been serious legal implications for the school. Adherence to item (4) of the MOE guidelines on detention would have avoided this situation.

4.7 Expulsion and Suspension - Due Process

Schools operate to facilitate the education of young people in a wholesome environment. Where a student behaves in a manner that disrupts this process, such as persistent truancy, persistent retaliation against teachers and principals, wilful destruction of property and causing injury to fellow students, schools may be prepared to consider extreme discipline measures like suspension and

expulsion. In the Constitution of most developed countries, the government normally guarantees that a person's basic rights to life, liberty or property, will not be taken away without due process of law. By “due process”, it means that laws and legal proceedings must be fair. In the school context, when a school decides to suspend or expel a student, it must exercise procedural fairness, that is, to show that the procedure used by the school to arrive at a decision to expel or suspend a student is fair (Brown & Zuker, 2002). Schools in various jurisdictions generally have policies governing the grounds for suspension or expulsion, and in some jurisdictions, for example, Ontario, Canada, there is even a law enacted that allows mandatory expulsion to be imposed⁴¹.

4.8 Anti-discrimination Legislation - Special Needs Children

The Black's Law Dictionary defines “discrimination” as “unfair treatment or denial of normal privileges to persons because of their race, age, sex, nationality or religion” (Black, 1990, p.467). However, in jurisdictions where anti-discrimination legislation is enacted, the prohibition of discrimination also extends to persons with disabilities. In the education context, it is generally acknowledged that some special needs children may have to be treated differently in order to gain effective and equal access to education (Brown & Zuker, 2002; Ramsay & Shorten, 1996). A study by Varnham (2002) shows that most of the comparable jurisdictions implement various processes (for example, “statementing” or an individualised education plan) in their respective legislation to provide for the needs of children who require special help.

⁴¹ Ontario, a law has been passed to establish mandatory grounds for suspension or expulsion of students (Section 306 of the Education Act).

4.9 Sexual Misconduct of Teachers - Non-delegable Duty of Care?

The concept of “duty of care” was briefly explained earlier in this chapter as duty to take “reasonable” care. If a teacher had acted reasonably and a breach of the standard of care cannot be proven, liability cannot be established. Non-delegable duty of care is more stringent. It goes a step further to hold a school responsible for injury or loss suffered even if the school had engaged a competent person to carry out the school’s duties. All the plaintiff needs to show is that the school had not taken all reasonable care to provide an adequate system to avoid a foreseeable risk of injury (*Commonwealth v. Introvigne* [1982]).

While it is understandable that courts would expect schools to exercise immaculate care when it comes to safety of children, the imposition of non-delegable duty of care on schools for the sexual misconduct of teachers may just be too onerous and demanding for schools. Recent cases in Australia and Canada⁴² have dealt extensively with this issue and the courts have raised the possibility of imposing vicarious liability on schools for a teacher’s intentional misconduct, even if it is criminal in nature. Vicarious liability is defined as “the imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons...for example, the liability of an employer for the acts of an employee” (Black, 1990, p. 1566). The House of Lords decision in *Lister v. Hesley Hall* (2002) gave some guidance as to when an employer (or a school or education authority) could be held vicariously liable for the intentional wrong of its employees:

⁴² See the discussion on the Australian High Court decisions of *New South Wales v. Lepore*; *Samin v. Queensland*; *Rich v. Queensland* (2003) and the Canadian Supreme Court cases of *Bazley v. Curry* (1999) and *Jacobi v. Griffiths* (1999) in the next chapter.

- (a) where the conduct complained of was done in the intended pursuit of the employer's interests or in the intended performance of the contract of employment; or
- (b) where the conduct complained of was done in the ostensible pursuit of the employer's business or the apparent execution of the authority which the employer held out the employee as having. (*Lister v. Hesley Hall* (2002) at p239)

An example of how the above can occur is this: teacher strikes a student, and student makes a police report. The school authority can be held to be vicariously liable for assault if it can be proven that the incident took place in the context of punishment and the teacher exceeded what was reasonable in the circumstances (example given by the High Court in *New South Wales v. Lepore*; *Samin v. Queensland*; *Rich v. Queensland* (2003)[“*Lepore*”]). Applying the example to a sexual abuse case, the High Court went on to say that a school could potentially be vicariously liable for a teacher's sexual assaults if it can be shown that the teacher's responsibilities at the time of the assaults placed the teacher in a position of power and intimacy towards the children in his care. His conduct towards them could then be regarded as so closely connected with his responsibilities as to be in the course of his employment (Gleeson J in *Lepore*).

In an analysis of Australian, English and Canadian cases of sexual misconduct of teachers carried out by Stafford (2003), it was shown that the courts are reluctant to impose a non-delegable duty of care on education authorities for injury caused by the deliberate criminal act of a teacher. Callinan J, in *Lepore*, indicated that non-delegable duties of an education authority include the following: the engagement of reliable, carefully screened and trained employees, the provision

of suitable premises, an adequate system of monitoring employees and an efficient system for the prevention and detection of sexual abuse (Stafford, 2003).

4.10 Privacy Laws

Privacy laws vary in every country and they encompass laws that protect a person's right to be left alone (i.e. free from intrusion into matters of a personal nature) and laws that restrict access to personal information (Black, 1990). This is a huge area of law, as it involves human rights issues and possibly constitutional matters. However, as this study attempts to identify legal issues that affect the administration of schools, a brief review of privacy laws in connection with student records will be discussed later in the study.

4.11 Defamation

This area of the law has relevance in the educational arena. As part of their job, school administrators are called upon to formally evaluate the performance of teachers and students. An irrational prejudice, or gross or exaggerated language leading to the making of defamatory remarks in written form may land school administrators in a libel suit. There are also times when teachers may be provoked into telling parents in the most untactful way what they think of the parents or their child. This could lead to complaints by the parents, but sometimes a teacher may be accused of libel or slander, and legal suits may be threatened. Conversely, it has been known that parents have told teachers very blatantly what they think of them and this has led to teachers threatening to take the parents to court for defamation.

Defamation involves the publication of false information or statements that tend to lower the reputation of a person in the eyes of “right-thinking” people, or cause him to be exposed to hatred, contempt or ridicule, or shunned or avoided (Evans, 1993; The Common Law Library No. 8, 1998). Defamation can be in the form of spoken or written words. Defamatory words that are spoken involve the tort of slander, while defamatory words that are in written form fall under the tort of libel. A statement would also be defamatory if it disparages a person with reference to his profession or employment.

“Publication” means transmitting information to a third party. If the defamatory information is made directly to the person concerned with no other person present, these words cannot be said to be injurious to that individual’s reputation. “Words” can include caricatures or cartoons, pictures, visual images, gestures, signs, statues and effigies, which can all convey defamatory imputations (Evans, 1993, Section 2 *Defamation Act (Cap. 75, 1985)* [Defamation Act]).

Where a potential defamation situation arises in schools, several defences may be raised. In a case where the alleged defamatory statement was published unintentionally (a valid defence), an apology is usually issued (Section 7, Defamation Act). Another defence is that of justification. If the statement made is true or substantially true, the defence of justification will succeed (Section 8, Defamation Act). The next defence is that of fair comment. If in expressing an opinion, a person genuinely believes the facts on which the opinion is based, he or she will have a defence (Section 9 Defamation Act). The final defence to be discussed here is the common law defence of qualified privilege.

As mentioned above, school administrators are called upon to formally evaluate the performance of other teachers and students. Such evaluations are protected by qualified privilege because they involve an official responsibility. Qualified privilege occurs when statements are made in the protection of a common interest or in the performance of a public or private duty, whether legal, moral or social. In other words, to establish qualified privilege, the person who makes the communication must show he or she has an interest or a duty (legal, social or moral) to make it and the person to whom it is so made must have a corresponding interest or duty to receive it. Therefore, qualified privilege can be lost if the statement is published more widely than is necessary. Another way in which qualified privilege can be lost is if it is proved that the statement published was motivated by malice (Evans, 1993).

Giles (1988) correctly observed that very few teachers appreciate the pressures and problems faced by principals and, similarly, after leaving the classroom for several years, many principals forget the pressures of the classroom. This results in mutual evaluations not being entirely fair or objective. To avoid misunderstanding and its potential for incurring defamation suits, it may be advisable for school administrators to ensure that evaluations are discussed and even to be prepared to change preliminary evaluations once greater understanding has been achieved. Again, the guidelines given in Section B101 to B105 in the Principals' Handbook offer some useful hints to school administrators on achieving a fair and objective assessment of their teachers.

4.12 Conclusion

Legal issues can affect education, as can be seen from legal principles gleaned from statutory and common law. This chapter has addressed legal concepts that have a bearing on student supervision and discipline, in particular the area of negligence and duty of care. It has also dealt with the legal concepts of due process, privacy, defamation, and showed how they can affect the education sector and the administration of schools. However, as stated in the introduction to this chapter, the key legal concepts introduced here are by no means exhaustive and there are several other legal concepts, such as copyright, contract law and family law, which may play a role in schools. Also, the legal principles that have been discussed are far more complex than this overview might suggest.

Nevertheless, the aim has been to show that there is a need for a greater understanding of the role of the law in education and how it may have a direct impact on schools and their personnel. This chapter has also demonstrated the need for educators - whether in the classroom or the administrator's office - to be aware of general legal principles relating to civil legal liability that can be applied in the education context.

In the next chapter, a survey of legal issues in education from the international scene is carried out. The focus is primarily on commonwealth countries. The overview from these other jurisdictions can give us clues about averting legal risk in the education sector in Singapore.

CHAPTER FIVE

LITERATURE REVIEW

AN OVERVIEW OF AREAS OF LAW IN EDUCATION FROM THE INTERNATIONAL SCENE

5.1 Introduction

The 10th December 1948 was Human Rights Day. On that momentous day, the Universal Declaration of Human Rights (“UDHR”) was adopted by the General Assembly of the United Nations. Since Human Rights Day, many nations have enshrined the principles of the Declaration in their constitutions and, with these principles, nations have seen a continuing growth in the use of the legal process by individuals to enforce and protect their rights. Singapore, as a member of the UN⁴³, has on various occasions reaffirmed and pledged its commitment to achieving and promoting universal respect for and observance of human rights and fundamental freedoms⁴⁴, and the rights of the Singapore people are entrenched in the nation’s constitution.

Education is a fundamental human right, and now more so since the adoption by the United Nations of the *Convention on the Rights of the Child 1989* (“CRC”). It has come as no surprise, therefore, that, since the UDHR and CRC, the law has had an influence on education systems, schools, schooling and participants in the education process. So far, in many common law countries, most notably Australia, Canada, New Zealand and the UK, there has been an increase in the legal processes being used to frame and challenge policies, practices and decision-making; and in all educational institutions, but in particular, schools (Russo &

⁴³ Singapore became a member of the United Nations on 21 September 1965.

⁴⁴ See the UN Conference on Human Rights in Vienna 1993 and the United Nations Millennium Declaration adopted by the General Assembly on 8 September 2000.

Stewart, 2001). In the United States, where people are generally considered to be more litigious than those in other jurisdictions, the Courts have been dealing with education-related cases for over a century. In this chapter, a survey of education and the law in these common law countries is set out and an analysis provided on how these jurisdictions can give clues about averting legal risk in the education sector in Singapore.

5.2 Areas of Legal Issues in Education in the US and the Comparison with other Commonwealth Countries

In 1954, the landmark case of *Brown v. Board of Education of Topeka* (1954) (“*Brown*”) was decided and paved the way for the growth of “education law” in the US. In *Brown*, the US Supreme Court struck down the racially segregated public schools by overruling an earlier case (*Plessy v. Ferguson* [1896]) which upheld the “separate but equal” principle. The Court also rejected the argument that the Fourteenth Amendment was never meant to apply to schools. The Fourteenth Amendment reads “...nor shall any State deprive any person of life, liberty, or property without due process of law (*being treated basically the same as another person has been under similar circumstances*); nor deny to any person within its jurisdiction the equal protection of the laws (italics mine).” In this case, the Court showed that the Constitution and its amendments must be read in the light of new and changing conditions. The Court recognised that education had become

perhaps the most important function of state and local governments. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his

environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms. (*Brown*, 1954, p. 493).

Since *Brown*, the US has undergone a wide range of educational, legal and social transformations, such that it can be argued that *Brown* ushered in an era of equal educational opportunities for all children and saw the birth of “education law” as a field of study and professional practice (Russo & Stewart, 2001).

It is not surprising that the US Supreme Court has had a great influence on the course of public education, because many of the amendments in the Constitution involve problems directly associated with education. These problems stem mainly from Americans’ knowledge of and interest in their civil rights. Yell and Katsiyannis (2001) examine three areas in which the federal courts have reviewed federal laws that have had a huge impact on education in the US. These areas are: (a) privacy (student records), (b) the education of students with disabilities and their civil rights, and (c) school safety. Before these areas and other areas of law in education are reviewed, the topic of compulsory education will first be examined.

5.3 Compulsory Education

5.3.1 Compulsory Education in the US

It is not surprising that after the case of *Brown*, the education of children in the US has become very important. Every state in the US has some form of laws ensuring children between certain ages attend public, private or home school. Failure to comply with the compulsory education law may result in criminal

prosecution. Litigation pertaining to compulsory attendance in schools involves mainly the issue of balancing the state's interest in ensuring the student receives an appropriate education and the rights of parents to decide when and where their child attends school (La Morte, 1999, p. 19). The landmark case of *Pierce v. Society of Sisters* (1925) established the principle that a state's requirement of compulsory attendance in schools can be met through private schools and not just public schools. If the school is private, it may be either a religious school or a secular school. This case highlighted the Court's philosophy that parents should be given freedom to exercise their choice for the education of their children.

This freedom of choice has led today to all states making allowance "for alternatives to public schools as long as such alternatives are 'equivalent' in scope and quality" (Fischer, et al., 2003, p. 391). This effectively means that parents can even "home school" their children if it can be proved that the home teaching is adequate and equivalent to that of the public schools. This interpretation was confirmed in the case of *People v. Levisen* (1950) when the Supreme Court of Illinois held that the purpose of the law "is that all children shall be educated, not that they shall be educated in a particular manner or place". The Court was satisfied that the Illinois law, which specified "private school" as an alternative included the "place and nature of instruction" and, in this case, the fact that the place was the home and that the instruction was given by the mother of the child (who was trained in pedagogy and educational psychology) was acceptable.

For various reasons, home schooling in the US has increased significantly over the years. According to La Morte (1999, p. 26), sixty per cent of the states have

adopted home schooling statutes or regulations, and half the states even require home schooled students to participate in standardised testing or evaluation.

5.3.2 Compulsory Education in Australia

Education in Australia is compulsory and the ages (generally between 6 and 15) are specified by the various states (Department of Foreign Affairs and Trade, n.d.). The early cases (around the late 19th century) concerning education in Australia were cases that challenged the compulsory schooling provision of the various Education Acts. Like the US, some parents argued for the right to home school their children and other cases examined the concept of appropriate and adequate schooling.

In *Fleming v. Greene* (1907), the Chief Justice criticised the ambiguity of the regulatory provisions of the now repealed *Victorian Education Act (1890)*. Some of the provisions that were criticised related to the extent, amount and quality of education provided in government schools. Another case, *Minister for Education v. Maunsell* (1923), which was decided in Western Australia, saw the Supreme Court laying down the principle that decisions as to what constituted adequate schooling and who had the right to compel a parent to send a child to a “proper” school were held to be that of the Minister. Legislation in all Australian states now place an obligation on parents to ensure that their children attend school and failure to do so may result in penalties (Ramsay & Shorten, 1996).

5.3.3 Compulsory Education in New Zealand

State education in New Zealand is free and compulsory for children between the ages of 6 and 16 and within the education system there are three different types

of school: state schools, integrated schools and private schools. Integrated schools are schools that used to be private and have now become part of the state system. For state and integrated schools, the ultimate legal responsibility for the students in their care lies with locally elected boards of trustees, while for independent schools, the responsibility lies with similar governing bodies. The National Education Guidelines contain statements of goals for education in New Zealand as well as administrative requirements. One of the guidelines specifically directs schools to provide “a safe physical and emotional environment” and in taking reasonable steps to deal with peer harassment or bullying as seen earlier, New Zealand is arguably reaching towards one of the goals for education, that it, to enable all students to realise their full potential as individuals.

5.3.4 Compulsory Education in England

In England, children are required by law to have an education until they are 16 years old. Interestingly, Section 7 of the *Education Act (1996)* (“EA 1996”) states:

The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable-

- (a) to his age, ability and aptitude, and
 - (b) to any special educational needs he may have,
- either by regular attendance at school or otherwise.

“Or otherwise” suggests that children are not required to attend school. In other words, education is compulsory, but school is not. They could be educated at home. However as the term “education” in section 7 is not defined in EA 1996, the case of *Harrison & Harrison v. Stevenson* (1981) provides us some guidance. In this case, the judge defined education as “the development of mental powers and character and the acquisition of knowledge through the imparting of skills and

learning by systematic instruction”. He went on to describe an efficient system of education as one which “achieves that which it sets out to achieve”. In the end, he defined education as suitable if it is such as, first, to prepare the children for life in modern civilised society; and second, to enable them to achieve their full potential (Education Otherwise, 2007). Having such a broad definition, it will be interesting to see as a separate study how the local education authorities in England manages or monitors a child’s education in school and at home.

5.3.5 Compulsory Education in Canada

Following the case of *Brown*⁴⁵, it can be argued that education is probably the most important function of a government. In Canada, the government provides free public education to all Canadian citizens and permanent residents. *The Constitution Act (1867)* in Canada provides that “In and for each province, the legislature may exclusively make Laws in relation to education.” As such, in the 13 jurisdictions, the departments or ministries of education have the autonomy and responsibilities for the organisation, delivery and assessment of education. The ages for compulsory schooling vary from one jurisdiction to another, but most require attendance in school from age 6 to age 16. In some provinces, compulsory schooling starts at 5, and in others, it extends to age 18 or graduation from secondary school (Council of Ministers of Education, Canada, n.d.).

Like most jurisdictions, the compulsory education legislation in Canada provides for home schooling by parents who do not think public education is suitable for their children. In *R v. Jones* (1986), which was heard in the Supreme Court of Canada, the appellant, the pastor of a fundamentalist church, refused to send his

⁴⁵ See page 97, the case of *Brown v. Board of Education of Topeka* (1954).

children to public school as required by section 142(1) of the *Alberta School Act (1980)* and also refused to seek an exemption under section 143(1)(a). Instead, he educated his three children and others in a schooling program operating in the church basement. He argued that he had a God-given mandate to do so. Under section 143(a), non-attendance was permitted if the relevant authorities issued a certificate attesting that the appellant's children were receiving "efficient instruction" at home or elsewhere. As a consequence, he was charged with three counts of truancy under s. 180(1) of the *School Act*.

Pastor Jones invoked sections 2(a) and 7 of the *Canadian Charter of Rights and Freedom, Constitution Act (1982)* as his defence⁴⁶ and maintained that the requirement in sections 142(1) and 143(1) of the *School Act (1980)* contravened his religious beliefs that God, rather than the Government, had the final authority over the education of his children, and deprived him of his liberty to educate his children as he pleased contrary to the principles of fundamental justice. The Supreme Court of Canada decided that Section 2(a) did not apply to this case and that "there was no deprivation of "liberty" ... as the state has legitimate interest in monitoring and imposing minimum standards on private schools" (Brown & Zuker, 2002, p. 205).

5.3.6 Compulsory Education in South Africa

In an interview, Mr Kader Asmal, the Minister of Education in South Africa admitted that South Africa did not have compulsory education in the country until 1996. During the 40 years of apartheid education, schooling was first for whites,

⁴⁶ Section 2(a) of the *Canadian Charter of Rights and Freedom* says "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion", while section 7 states: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".

then the coloured, next the Indians and finally for the black Africans (Education Today, n.d.).

The passing of the *Constitution of the Republic of South Africa* in 1996 (“the Constitution”) gave several directives which had serious implications for education and the law in this country. The Constitution also allows parents to home school their children so long as the educator or parent provides the child or children with one to one interaction in a loving, safe and secure environment (Davis, n.d.).

The fundamental rights enshrined in the Constitution (which contains the Bill of Rights) include a free basic education for everyone financed out of state funds. However, although schooling today is compulsory between the ages of 7 and 15 and all learners (students) guaranteed access to quality learning, the main challenge is providing free education to the rural areas in the country (“Education In”, 2006). The success of compulsory education in South Africa will depend on how the government can reconcile legislative intent and practical application.

5.4 Privacy (Student Records)

5.4.1 Student Records in the US

Prior to 1974, teachers and administrators in the US were not concerned about the confidentiality of student records, because there were no restrictions on who could see or be granted access to them. It was also common practice for schools to deny parental requests for inspection of their children’s educational records, as it was time consuming and costly; and, further, schools felt that it would increase their accountability by opening up the educational process to public scrutiny (Yell & Katsiyannis, 2001).

The problems with this practice were that it led to abuses, such as a parent not being able to see records that resulted in his or her child being transferred to a class for the mentally retarded, and students' records being released to outsiders easily. Students and their parents did not have knowledge of the information about them in school records and how they were used, and policies for regulating access to records by non-school personnel were non-existent in most school systems. Parents also did not have any formal procedures to challenge erroneous information that existed in the school records (Fischer et al., 2003, p. 375).

Because of these abuses, the *Family Educational Rights and Privacy Act (1974)* ("FERPA") was passed in 1974. With FERPA, parents were guaranteed parental access to student records and schools were prohibited from granting access to these records to persons who did not have legitimate reasons to know their contents. FERPA also established procedures that now enable parents to challenge the accuracy of student records.

5.4.2 Student Records in Australia

In Australia, there are privacy laws at both federal and state levels that govern the provision of personal information. Where personal information about an individual is actively collected by an agency, including government agencies, such information cannot be divulged to another without the permission of the individual (Cumming & Mawdsley, 2005 & 2006). The implications of these laws are that schools need to be familiar with the privacy laws and policies in their respective states when reporting personal information about a student to parents, or in granting access to information to a third party about students or their parents.

5.4.3 Student Records in New Zealand

In New Zealand, the *Privacy Act (1993)* was passed to protect the privacy of individuals. While allowing agencies to gather, store and use private information, the Privacy Act also requires such agencies to adhere to privacy principles. For example, a parent may request the address of the custodial parent or a family may contact the school about information pertaining to interviews conducted by a social welfare agency with a child concerning allegations of child abuse. In such situations, the school is prohibited from supplying the information to the parent or family (Varnham, 2001a).

5.4.4 Student Records in England

Teachers and schools have long had a duty of care to keep accurate records on pupils' progress, achievements and problems. This duty now extends to allowing parents and pupils, who make a written request, to see their school records (Lowe, 2002; The Campaign for Freedom of Information, n.d.). Legislation, namely the *Data Protection Act (1998)*, ensures that one's personal information will not be released to a third party without one's consent (unless certain specified exemptions apply).

In 2000, the *Freedom of Information Act (2000)* was passed, which imposed a statutory duty on schools to make information available proactively through a publication scheme (Information Commissioner's Office, n.d.). With this scheme, schools can make a significant amount of information available without the need for a specific request. However, all publication schemes must be approved by the Information Commissioner, so that the Commissioner (being an independent body)

can oversee and enforce both the *Freedom of Information Act (2000)* and the *Data Protection Act (1998)*.

5.4.5 Student Records in Canada

There is federal government legislation that governs the use of personal information in commercial activities in Canada, but as far as personal information collected by schools is concerned, provincial legislation applies (Office of the Privacy Commissioner of Canada, n.d.). For example, in Ontario, the *Municipal Freedom of Information and Protection of Privacy Act (1990)* (“FIPPA”) sets out a scheme that requires the local government (including school boards) to protect the privacy of an individual’s personal information. The scheme consists of rules that regulate the collection, retention, use, disclosure and disposal of personal information (Information and Privacy Commissioner, n.d.). The FIPPA further allows an individual to write a complaint to the office of the Information and Privacy Commissioner where the complainant believes that personal information has been unlawfully disclosed, or to appeal against a school board’s decision to deny a request for access to a student’s record⁴⁷.

5.4.6 Student Records in South Africa

In upholding the constitutional mandate to promote human rights, South Africa passed the *Promotion of Access to Information Act (2000)* (“PAIA”) to give all South Africans the right to access to records held by the state, government institutions and private organisations (South African Human Rights Commission, n.d.). The Constitution of South Africa provides that everyone has a right of access to information held by the State and similarly requires private bodies to grant

⁴⁷ See <http://www.accessandprivacy.gov.on.ca/english/order/mun/m-104.html> and http://www.ipc.on.ca/images/Findings/Attached_PDF/MC-020008-1.pdf for examples of a complaint and an appeal under the Act.

right of access to information to everyone who requires it for the exercise or protection of rights (Section 32 of the *Constitution of the Republic of South Africa*). One reason for this legislation is probably to stem corruption in public institutions and to promote transparency and accountability. Like elsewhere, South African schools will have to develop policies to preserve the privacy rights of students, but, at the same time, allow access to information to those who have a legitimate right to it.

5.5 Students with Disabilities

5.5.1 Students with Disabilities in the US

Earlier, it was mentioned that the case of *Brown* ushered in an era of equal educational opportunities for children in the US. Indeed, the advocates of the rights of children with disabilities relied heavily on this case to establish disabled children's right to education. The "*PARC*" (*Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* [1972]) and "*Mills*" (*Mills v. Board of Education of the District of Columbia* [1972]) cases were the two landmark cases that paved the way for the conviction that the equal protection and due process clauses in the Constitution protect the right of children with disabilities to be given access to public schools, and to free and appropriate education (Fischer et al., 2003, p. 348).

Prior to *PARC* and *Mills*, many children with disabilities were completely excluded from public schools, and those few who were admitted did not receive an education that was appropriate to their needs (Yell & Katsiyannis, 2001). The result of the *PARC* and *Mills* cases was the enactment of the *Education of All Handicapped Children Act (1975)* ("EAHCA"), the goal of which was to ensure that

all students with disabilities received a free and appropriate education. Under EAHCA, it became a legal requirement that “students with disabilities receive special education and related services (a) that are provided at public expense, (b) that meet the standards of the state educational agency, (c) that include an appropriate preschool, elementary, or secondary school education in the state involved, and (d) that are provided in conformity with the individualised education program (“IEP”) (Yell & Katsiyannis, 2001, p. 84). The IEP is both a collaborative process between the parents and the school in which the educational programme is developed, and it is a document that contains the essential components of a student’s educational programme (Gorn, 1997).

Since the enactment of EAHCA in 1975, several changes were made to the law to expand the rights of students with disabilities, and EAHCA was subsequently renamed the *Individuals with Disabilities Education Act (1990)* (“IDEA”)⁴⁸. In 1997, the IDEA was amended pursuant to the *Individuals with Disabilities Education Act Amendments of 1997* to more clearly reflect the government’s effort to provide handicapped children with a beneficial education (Schaefer, 2000). Some of the more important cases relating to special education deal with issues such as whether a disabled child would benefit from special education, what constitutes “free appropriate public education” and “related services” provided by the schools. These cases were federal cases heard by the US Supreme Court, the highest court in the US.

In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) the parents of the disabled child argued that the school failed to provide

⁴⁸ Pursuant to *Education of the Handicapped Act Amendments (1990)*

services that would enable their child to gain the maximum from her school experience. The US Supreme Court held that, so long as the state provides students with sufficient support services and an IEP reasonably calculated to permit a child to receive meaningful benefit, the law is satisfied that free appropriate public education has been provided. The maximisation of the potential of the child is not required. In *Cedar Rapids Community School District v. Garret F.* (1999) the parents of a physically handicapped child requested the school district to pay for the nursing services required by the child. The school district refused on the basis that the services required by the child were “medical services” and not “related services”. The US Supreme Court held that school districts must provide any and all necessary health services to qualified students with disabilities, regardless of the intensity or complexity of the services, as long as they do not need to be provided by a physician. These cases and others following EAHCA/IDEA suggest that the education of students with disabilities is probably an area of education that is most highly litigated in the US.

Legislation and case law in the US show that much has been done to extend equal protection of the law and due process to all school-aged children with disabilities. As Fischer et al. (2003, p. 370) state, “The legal standards and tools are substantially in place to help these students achieve their full human potential”.

The civil rights of students with disabilities

Apart from the IDEA, two other major federal laws established the rights of children with disabilities. They are section 504 of the *Rehabilitation Act (1973)* (Section 504) and the *Americans with Disabilities Act (1990)* (“ADA”). Both Section 504 and the ADA protect children and adults from discrimination on the basis of

their disability (Taylor, 2001). For Section 504, discrimination takes the form of excluding a child from participating in any programme or activity receiving federal funds solely by reason of that child's handicap. However, the handicapped child must be otherwise qualified for participation in the programmes or activities, and reasonable accommodation for the child must be possible. For example, the exclusion of a blind student from driving in a driver's education programme would not violate the mandates of Section 504, because the student could not be safely accommodated in the activity. The ADA applies to private employers and commercial entities serving the public and also applies to all state and local government programmes, including public schools. An example of how the ADA impacts the operation of schools is in the requirement for schools to make public accommodation, such as athletic stadiums, auditoriums and other facilities, barrier-free for individuals with disabilities attending school events (La Morte, 1999; 337 & 349).

5.5.2 Students with Disabilities in Australia

Although it can be argued that the people of Australia are not as litigious as their counterparts in the US, Williams (1995), based on research in Australia, argues that the "legalisation of education" in Australia is indicated by

educational decision making and practices... being challenged by those who feel disaffected or disadvantaged by the education system. It is the law that is increasingly providing both the grounds upon which such challenges can be made and the remedies many complainants seek (Williams, 1995, p. 2).

An area of law concerning education that has been developing in Australia is one that concerns student rights. The Human Rights and Equal Opportunity

Commission⁴⁹ (“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 (Australian Human Rights and Equal Opportunity Commission, n.d.).

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 (Russo & Stewart, 2001). An example of State legislation that was passed to protect the rights of students with special needs was the *Anti-Discrimination Act (1991)* of Queensland. This Act was enacted to promote equal opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including education. There is also similar legislation in the other Australian states, but for the purpose of this chapter, the *Anti-Discrimination Act (1991)* of Queensland is put forward as representative of how the area of special needs has developed in Australia. In the same way that the *Individuals with Disabilities Education Act (1990)* and Section 504 of the *Rehabilitation Act (1973)* in the US safeguard the rights of American children with disabilities, the *Anti-Discrimination Act (1991)* of Queensland makes it unlawful to discriminate against prospective students on the grounds of any impairment. It is also unlawful to

⁴⁹ Established in 1986 by an Act of the federal Parliament, the *Human Rights and Equal Opportunity Commission Act*.

exclude a student or treat the student unfavourably on the basis of the student's impairment in the course of his or her training or instruction received (Stewart, Russo & Osborne, 2002). Like Section 504 of the US *Rehabilitation Act (1973)*, an exception to the anti-discrimination rule is in a situation where providing the special facilities or services causes an institution to suffer unjustifiable hardship. In such a situation, lawful discrimination will be permitted, as the case of *L v. Minister for Education for the State of Queensland (1995)* illustrates.

L, seven years old, suffered from severe mental and physical disorders and was placed in an integrated elementary school classroom at the insistence of her parents. After a process of assessing her needs and developing an Individual Education Programme, funding was approved to hire a teacher's aide to assist her at school. In 1994, L started attending the integrated unit in the school for three days a week. However, from the beginning, teachers were concerned about the way L behaved and the excessive amount of time spent caring for her needs. Some specific problems identified by the teachers were L's crying and loud vocalising, the inability to concentrate on her work, the failure to return to class after breaks, a tendency to regurgitate, and toileting incidents. L was suspended from school in July 1995 and subsequently recommended to be excluded from the integrated school programme, as her behaviour was "prejudicial to the good order and discipline of the school; and heightened health and hygiene risks to other students". L's parents initiated legal action, claiming direct discrimination within the meaning of the *Anti-Discrimination Act (1991)*. Having examined the facts of the case and the provisions of the Act, the Tribunal held that the school had subjected L to discrimination, but it was not unlawful discrimination, since her retention would cause unjustifiable hardship to other students.

In a later case heard by the High Court of Australia, the case of *Purvis v. New South Wales (Department of Education and Training)*(2003)(“*Purvis*”), the High Court had to determine whether a pupil was discriminated against on the ground of his disability and whether the school had an obligation to provide reasonable accommodation or make reasonable adjustments for persons with a disability.

In *Purvis*, Daniel suffered brain damage when he was a baby and, as a result, he had intellectual disabilities which affected his thought processes, perception of reality and emotions. The disability also led to behavioural problems, which manifested themselves in aggressive behaviour such as hitting or kicking. Daniel was periodically suspended from school after incidents involving injury caused by him to other students and teachers. Having gone to great lengths to accommodate Daniel but still not being able to resolve the issue of Daniel’s violent behaviour with his legal guardian (Mr Purvis), and in the interest of the safety of the other students and the staff, the principal finally decided to exclude Daniel from the school. Mr Purvis lodged a complaint with the Commission, alleging that the school had breached the *Disability Discrimination Act (1992) (Cth)* (“*DDA*”) by discriminating against Daniel. The Commission found that there had been a contravention, but that decision was set aside by Emmett J in the Federal Court of Australia. Emmett J was of the view that less favourable treatment on the ground of the behaviour is not the same as less favourable treatment by reason of the disability. Mr Purvis appealed to the Full Court of the Federal Court, which upheld Emmett J’s decision. Mr Purvis then appealed to the High Court of Australia.

Mr Purvis argued that Daniel’s behaviour was brought about by the disorder from which he suffered, and by excluding him “because of” of his behaviour, he was

treated less favourably than a person without the disability. The High Court, by way of a 5 to 2 majority, dismissed this argument. It held that the school, by virtue of the CRC, owed a duty of care to all its pupils. Thus, in seeking to protect the rights of disabled pupils pursuant to the DDA, it cannot be the intention of Parliament to disregard Australia's obligations to protect the rights of other pupils. Further, the High Court felt that it would be unlikely that federal legislation would impose on a State educational authority the adoption of measures that would require it to tolerate criminal behaviour, no matter how difficult, disruptive, expensive or ineffectual those measures might be.

Australian government and community now encourage a more inclusive attitude towards students with disabilities at all levels of education but it is "difficult to provide a definitive guide as to what is and what is not discrimination on the grounds of disability" (Stafford, 2004, p. 451). However, the courts have shown that in determining the rights of students with disabilities, the rights of other students are not disregarded.

5.5.3 Students with Disabilities in New Zealand

The anti-discrimination legislation in New Zealand is contained in the *Human Rights Act (1993)* ("HRA"). The applicable section for schools is Section 57, which prohibits discrimination in all educational establishments. This section states that it is unlawful for an educational establishment to "subject" a student to any detriment by reason of any of the prohibited grounds of discrimination. The prohibited grounds are set out in Section 21 of the HRA and they include sex and sexual orientation, religious and ethical belief, colour, race, ethnic or national origins, and physical impairment and disability (Varnham, 1999). Further, Section

62 of the HRA deals specifically with sexual harassment, and it applies even to education.

The second issue is that of special education. Prior to the *Education Act (1989)*, parents of special needs children were responsible for the education of their children and if a child was required to be sent to a special school, it was at the parents' expense⁵⁰. Following the widespread shift in attitudes towards the place of the disabled in society as a whole, the issue of special needs was specifically addressed in the *Education Act (1989)*. The legislative effect of the relevant section is that children with special educational needs are to be placed in a regular school environment. The basis for this is that special needs children have the same right to education⁵¹ in the mainstream system as all other persons. It is also believed that not only will special needs children benefit from a regular school environment, but all other members of the school community will also benefit from the assimilation of these special needs children into the regular classroom. However, the *Education Act (1989)* allowed for the continued operation of special schools, classes, clinics or services, with the power given to the Minister of Education to disestablish any of those facilities if he is satisfied that sufficient provision is made by another similarly established facility by any other school or class in or near the same locality (Varnham, 2002).

⁵⁰ Section 115 of the now repealed *Education Act 1964*. S115 - Director-General may in certain circumstances direct that a child be sent to special school, etc.---(1) It shall be the duty of the parent of every child who has attained the age of 7 years and is of school age and is suffering from disability of body or mind of such magnitude as to require special education to take steps to provide efficient and suitable education for the child.

⁵¹ Section 8 of the *Education Act 1989*.

In 1997, the Minister of Education introduced a policy known as Special Education 2000, which was aimed at eventually disestablishing all existing facilities that provide special education and replacing them with a system of resources that enable existing regular state schools to meet the requirements of special needs students. This policy was implemented without legislative change in 1998 but was very quickly met with an application by parents of some special needs children to the High Court of New Zealand for judicial review (Varnham, 2002). In the High Court⁵², Baragwanath J found that there was a justiciable right to education to the extent that such education must be suitable, regular and systematic. However, on appeal to the Court of appeal⁵³, it was held that the right of special needs students is a right to an education system, and not to any substantive right to education that is suitable, regular and systematic as indicated by Baragwanath J.

There are various issues regarding special education that are raised by this case, but it is beyond the scope of this study to discuss them here. What needs to be mentioned, however, is that legal obligations in respect of children with special educational needs have almost universal application and may well eventually find their way into all countries that claim to have developed nation status.

5.5.4 Students with Disabilities in England

There is now a greater awareness of protecting the rights of disabled people. As seen in the earlier developed countries, there is some form of anti-discrimination legislation that provides equal opportunity and access for people with disabilities.

⁵² *Daniels v. Attorney-General* (2002).

⁵³ *Attorney-General v. Daniels* (2003).

England is no exception, with this area of law receiving increasing political recognition.

The *Disability Discrimination Act* was enacted in (1995) (“DDA”) to complete a set of anti-discrimination legislation alongside the *Sex Discrimination Act* (1975) and the *Race Relations Act* (1976). The main objective of these statutes is to provide immediate protection against discrimination on the grounds of disability.

Although the DDA applies to various fields of employment, one of the implications for schools arising from this Act is that employers are obliged to appoint disabled people who are deemed medically fit to teach. Also, reasonable adjustments as defined under the DDA may have to be made to ensure that disabled teachers are able to carry out their duties satisfactorily (Lowe, 2002). As far as disabled pupils are concerned, the *Special Educational Needs and Disability Act* (2001) was enacted to extend the DDA to pupils by placing two key duties on education providers. The first duty is “not to treat disabled pupils/prospective pupils less favourably”; and the second is “to make reasonable adjustments to avoid putting disabled pupils at a substantial disadvantage” (Riddell, 2003, p. 64).

For pupils with special educational needs, the *Education Act* (1996) (“EA 1996”) stipulates the duties of the Local Education Authority (“LEA”) with respect to this group of children. It requires an LEA to identify and to determine the provision for the special needs of any child in its area. The term used in the legislation for this process is the “statementing of children”. In addition, the EA 1996 also established the Special Educational Needs Tribunal (“SENT”), which is an appellate body for appeals against LEA decisions (or lack of decisions) on statementing of children with special educational needs. The legal members of

SENT are appointed by the Lord Chancellor, while the "lay" members are appointed by the Secretary of State for Education (The Head's Legal Guide, Croner, 1999). Since its establishment, SENT has heard numerous appeals. As disabled people and parents continue to push for their rights, legislation and policies concerning disability, anti-discrimination and special educational needs will, arguably, be given increasing prominence.

5.5.5 Students with Disabilities in Canada

Our discussion so far reveals that the right of pupils with disabilities to have fair access to special education in schools is an important issue. Similarly, in Canada, legislation is enacted to provide some form of protection to pupils with disabilities. For example, in Ontario, pupils who are in need of special education are identified as "exceptional". Where a pupil is exceptional, the law requires the school to determine her "placement", and have an individual "plan" for each exceptional pupil. In most provinces, the school board is delegated the responsibility to provide special education programmes and services. The actions of the school board in this area are deemed as "state actions" and hence are subject to the Canadian Charter of Rights and Freedoms (Brown & Zuker, 2002). School boards are sometimes left in a quandary when some people argue that "failure to provide special treatment is discriminatory and others argue that the provision of special treatment is, in itself, discriminatory" (Brown & Zuker, 2002, p. 298).

The issue of the integration of an exceptional pupil into a regular class of a neighbourhood school was extensively dealt with in the case of *Eaton v. Brant County Board of Education*, first heard by the Ontario Special Education Tribunal

in 1993. The parents of the exceptional child in this case had challenged the board's decision to place their child in a special class rather than a regular class. After a long drawn out legal tussle, the case reached the Supreme Court of Canada, which held that in determining an appropriate placement of an exceptional pupil, the best interests of the child are of paramount importance (the Supreme Court of Canada in *Eaton v Brant County Board of Education* [1997]). The Court agreed with the Tribunal that, having balanced the various educational interests of the child, it was clear that her needs were best met in a segregated classroom. The result of this case is that school boards now do not have to overcome a legal presumption in favour of integration. So long as the board can show evidence that its placement of an exceptional child meets the "best interests" test, the board's assessment will be accepted by the tribunal or court (Brown & Zuker, 2002). This is good news for school boards, for in a culture of rights, where parents often seek to integrate special needs children into the mainstream, this decision can help parents and schools to seek mutually satisfactory solutions without protracted litigation in the courts.

5.5.6 Students with Disabilities in South Africa

Unlike the other commonwealth countries mentioned in this study, where legal issues in education are becoming more and more prominent, legal issues in education in South Africa are still relatively new, and it was the passing of the *Constitution of the Republic of South Africa* in 1996 ("the Constitution") that gave several directives which had serious implications for education in this country. The fundamental rights enshrined in the Constitution (which contains the Bill of Rights) include the following:

- (1) a free basic education for everyone financed out of state funds;

- (2) that a child's best interests are to be of paramount importance in every matter concerning the child;
- (3) that everyone has the right not to be treated or punished in a cruel, inhuman or degrading way and everyone has the right to have his human dignity respected;
- (4) that the state (or a person) may not unfairly discriminate directly or indirectly against anyone on grounds which include race, colour, ethnicity, religion, culture and language; and
- (5) that a court, when interpreting the Bill of Rights, must have regard to international law, and, in relation to the educator's duty of care, and, as to student safety, the most significant international law instrument is that of the CRC.

It is not disputed that each of the constitutional rights mentioned at the beginning of this section apply to children with disabilities. The *National Education Policy Act (1996)* ("NEPA") and the *South African Schools Act (1996)* ("SASA") both make provisions for all children to receive an education. The NEPA protects persons against unfair discrimination within or by an education institution on any ground whatsoever and ensures that all persons have basic education and equal access to education institutions (Anderson, 2001). As regards SASA, public schools are required under this legislation to admit all students and provide the necessary educational requirements without discrimination. This suggests inclusive education, which acknowledges and respects differences in children, whether due to age, gender, ethnicity, language, class and disability. Further, to promote constitutional democracy, an independent and impartial body, known as the South African Human Rights Commission ("SAHRC"), was also established. The SAHRC is

mandated to promote and protect human rights in South Africa by ensuring that the provisions of the Bill of Rights are properly effected.

At the international level, besides ratifying the CRC, South Africa also looks to the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities when making policies affecting people with disabilities (McClain, 2002). All this shows that at a constitutional and governmental level, the rights of children with disabilities are given considerable attention. It is not within the scope of this study to comment on the effectiveness of the legislation and policies affecting the disabled in South Africa, but one might hope that all this will translate into better lives for children with disabilities and it is clear that the country is making a conspicuous attempt to address such issues head on.

In the following paragraphs, the legal issues surrounding the tort of negligence discussed in Chapter Four will be reviewed. The issues fall under the headings of student injuries, bullying, sexual misconduct of teachers and educational malpractice.

5.6 School Safety - Student Injuries and Negligence

5.6.1 Student Injuries in the US

A quick review of cases across jurisdictions of physical injuries suffered by students while in school or on official outings shows an increasing willingness by the courts to hold schools and educational authorities liable for negligence. Where a student is hurt because of the inadequate supervision of teachers or the lack of maintenance of school facilities or equipment, the student may have a valid cause of action against the teacher for injury resulting from the teacher's negligence.

Interestingly, in the US, even where it is found that a school has been negligent in some way and as a result has caused an injury to a child, the school can rely on the defence of governmental immunity to absolve itself from liability in a civil action. In *Whitney v. City of Worcester* (1977), a child was struck by a door just above his right eye and lost his vision. The school had been informed by the janitor that the door had a defective closing mechanism but failed to rectify the defect. The Supreme Judicial Court of Massachusetts, while agreeing that the child had a good cause of action, held that the school could not be made responsible, as it is protected by governmental immunity in that state. The Court further stated that it is the legislature that must change the government immunity law and not the Court.

The doctrine of immunity originated from the old English law notion that “The King can do no wrong”, the rationale being that an individual may not sue the authority that granted the right to sue in the first place. Although in 1946 the *Federal Tort Claims Act (1946)* was enacted to allow tort actions to be taken against the federal government, the Act nevertheless contained several restrictions on the types of claims that could be brought and under what circumstances. In recent years, however, many states have passed legislation to abolish governmental immunity, or where immunity is kept for the benefit of teachers and administrators, such immunity is only available where the teacher acted within the scope of the teacher’s employment (Fischer et al., 2003, p. 66). Increasingly, the public and the courts are closely monitoring the standard of care expected of them over children placed in their care.

5.6.2 *Student Injuries in Australia*

In 1910, what appears to be the first school-related negligence case was decided in the case of *Hole v. Williams* (1910) in New South Wales. In that case, a teacher was held to be negligent when he failed to provide a student with adequate safety instructions concerning the carrying of a beaker of diluted sulphuric acid and, as a result, another student was seriously burned. From 1910 onwards, there were not very many school-related cases heard in the Australian courts. Students and parents had, for various reasons, been reluctant to bring legal actions against teachers and other school staff. These reasons include respect for the teaching profession, cost of litigation, a lack of knowledge of legal rights and the possibilities of being compensated, and students or families having their own insurance cover for injury (Stewart, 1994). Another reason for the lack of court cases during this period is that in order to avoid unwelcome publicity, education departments of all Australian States and Territories tended to settle such matters before they reached the courts (Stewart, 1998a). However, from the 1970s, changing attitudes, greater demands for accountability and greater awareness of legal rights and the means of enforcement led to a significant increase in the level of court actions involving allegations of school or departmental negligence. 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 (Stewart, 1998a, 1998b).

A welcomed decision by Australian educators on the standard of care expected by the courts was heard by the High Court of Australia in 2005. In the case of *Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn*

v. Hadba (2005)⁵⁴, 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 (para. 25).

They also agreed with Spender, J. who in his dissenting judgment at the Court of Appeal stage said 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 schools some guidance on the standard of care required by the courts in Australia 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.

5.6.3 Student Injuries in New Zealand

Unlike most jurisdictions, where liability for harm suffered by an individual is based on the concept of fault to be established in the courts, the accident compensation scheme in New Zealand since 1974 prohibits any actions for compensatory damages for personal injury caused either by accident or negligence. The result of this legislative framework is that there is a scarcity of New Zealand case law on a school's liability for personal injuries suffered by students at school or while under the school's control. "In its present form it is

⁵⁴ See page 81 for summary of the case.

contained in the *Accident Insurance Act (1998)*⁵⁵ which has as its aim to maintain a no-fault, comprehensive, insurance based scheme to rehabilitate and compensate persons who suffer personal injury.” (Varnham, 2001a, p. 80). Schools in New Zealand are, therefore, immune from actions for damages in the law of negligence as far as physical safety is concerned. Although this scheme has received general acceptance in the country, many have also felt that the payouts under this no-fault scheme are inadequate.

In *Donselaar v. Donselaar* (1982), the New Zealand Court of Appeal⁵⁶ established that the courts may grant exemplary (or punitive) damages in personal injury cases. The reasoning given was that such damages arise out of the conduct of the defendant and not from the injury to the plaintiff. Such damages will be awarded where the defendant’s conduct is so flagrantly and outrageously careless as to justify an award of damages by way of punishment (*McLaren Transport Ltd v. Sommerville* [1996]). What this means for schools in New Zealand is that a student who suffers injury as a result of a school’s negligence may be able to claim exemplary damages if it is shown that the school conducted itself in such a way that there was reckless disregard for the student’s safety. The courts would likely hold that such conduct merits condemnation and punishment, and award exemplary damages in addition to the compensation paid under the no-fault compensation scheme. However, the courts are also aware that potential claimants may claim exemplary damages as a “backdoor” method of obtaining

⁵⁵ It’s now the *Injury Prevention, Rehabilitation, and Compensation Act 2001* (IPRC) which was passed in September 2001. The majority of the provisions in the Act did not come into force until 1 April 2002. This means that the new entitlements, for example lump sum compensation, can only be paid for injuries that occur on or after 1 April 2002.

⁵⁶ The next level of appeal would be the Judicial Committee of the Privy Council located in London. However, the Supreme Court of New Zealand replaced the Judicial Committee of the Privy Council from 1 January 2004 - Section 3 of the *Supreme Court Act 2003*.

compensation for personal injuries and are thus very cautious not to give exemplary damages merely because the statutory benefits may be considered inadequate.

It is precisely for the purpose of curbing the expansion of exemplary damages claims for personal injury that the *Injury Prevention, Rehabilitation, and Compensation Act (2001)* was passed. This Act allows for lump sum payments to be made to persons who suffer actual loss of bodily function, up to a maximum payout of \$100,000 (Hay-Mackenzie & Wilshire, 2002).

Health and Safety in New Zealand Schools

The running of each state and integrated school is devolved to a body known as the school board. This was one of the results of the educational reform (known as the *Tomorrow's Schools*) that took place in New Zealand in 1989, that is, to enable school boards to exercise a large degree of autonomy. In return for this autonomy, the school boards not only have the ultimate legal responsibility for students in their care, but, as employers under the *Health and Safety Employment Amendment Act (2002)* ("HSEA"), they have the responsibility for the health and safety of employees, students and other visitors to the school. In the context of physical safety, although schools are immune from actions for damages in the law of negligence under the accident compensation scheme, school boards may potentially be criminally liable under the HSEA. School boards must take all practicable steps to ensure that an employee undertaking any work activity does not harm any other person. For schools, non-compliance with HSEA could arise where equipment is not safely or properly installed or maintained. Another implication of the HSEA is where a teacher fails to prevent an accident that can

be prevented or fails to provide adequate supervision of an activity at school or during a school excursion. An example is seen in the case of *Christian Youth Camps v. Department of Labour* (2000). The incident in this case happened during a school trip. The organisation that operated a waterslide had placed a chain at the bottom of the slide to prevent trespassers from using it. A ten year old boy used the slide before camp operator removed the chain. The child suffered a concussion, neck injuries, chipped teeth and a bitten tongue when he struck the chain. The operator pleaded guilty and was fined under the HSEA. However, what was interesting about this case was the judge's sentencing notes, which said that the boy's school could have been made a second defendant. This implies that the court was of the view that the school had breached the standard of care required under the HSEA when carrying out its supervisory duties.

Another piece of legislation which may have potential implications for schools as far as safety is concerned is the *Criminal Justice Act (1985)*. Under section 26 of this Act, where a party is convicted of an offence that arises out of an act or omission, and physical or emotional harm is suffered by another person, a court will impose a fine. When imposing the fine, the court may consider whether it should award, by way of compensation to the victim, the whole or any part of the fine. "This is another means by which the courts can compensate a victim of a personal injury over and above the allowances payable under the Accident Compensation Scheme" (Hay-Mackenzie & Wilshire, 2002, p. 54). In the Christian Youth Camp case mentioned above, the entire amount of the fine (\$6,500 reduced from \$30,000 on appeal) was awarded to the child.

5.6.4 Student Injuries in England

The common law in England is very well-established, and many commonwealth jurisdictions look to English case law for legal principles and precedents when dealing with cases of their own. The teacher's common law standard of care was described as early as 1893 in the case of *Williams v. Eady*⁵⁷ where the court held that the teacher is expected to take care of his students as a careful father would take care of his children. This case was the starting point of the concept of *in loco parentis* (in place of the parents), which has since been used in many jurisdictions. From the 1890s to 1960s, the traditional approach in England to the standard of care in preventing injury on school premises was to look at the normal practice in schools and at home across the country (Palfreyman, 2001). The attitude of the courts during that period is summed up as follows: "A balance must be struck between the meticulous supervision of children every moment at school and the desirable object of encouraging sturdy independence as they grow up" (*Jeffrey v. London CC* (1954)). In this case, a five-year-old boy was killed after falling through a glass roof which he had climbed onto. The parents argued that children should have been supervised until they were collected but the Court concluded that although this would be true in the case of children in the nursery, it was not necessary or reasonably expected for children five and above. In later cases, however, the courts have recognised that attempting to equate the role of the reasonable parent with that of the teacher may not be without difficulties. First, the teacher has many times more children than the parents to control and supervise at any one time. Second, children are exposed, as part of the education

⁵⁷ In this case, Williams was burned when another pupil got hold of a bottle of phosphorus, put a match to it and shook it up. The bottle naturally exploded. The bottle of phosphorus was kept with other bottles and equipment, including cricket gear. The room was locked but the pupils had easy access to the key.

process, to risks they would not face elsewhere. In *Lyes v. Middlesex County Council* (1962), the judge said:

I hold that the standard (of care) is that of a reasonably prudent parent judged not in the context of his own home but in that of a school, in other words, a person exhibiting the responsible mental qualities of a prudent parent in the circumstances of school life. School life happily differs from home life (p. 446).

Thus, if the Jeffrey case were to be decided today, the attitude of the courts may well be different, bearing in mind the environment of the school and how teachers are expected to foresee risks and safeguard against potential problems. Where the safety of children in schools is concerned, the English courts are now more likely to define the standard of care in terms of what a “reasonable and responsible” teacher will do in similar circumstances, instead of simply making a comparison of the duty with the notion of “in loco parentis” (Lowe, 2002). This view is shared by Boyd (1998, p. 480-483), who defines the modern approach of standard of care as the expansion of the prudent parent test to the reasonably competent professional *in loco parentis* test. In other words,

it would seem that the trained and experienced teacher, well used to the behaviour of children en masse, might be expected to provide a higher standard of care even than a reasonably careful and prudent (but untrained) parent could achieve in supervising 20 or more of his/her own children(!) (Palreyman, 2001, p. 231).

While the duty to ensure the physical safety of children in schools is beyond dispute, the question arises as to whether this duty extends to ensuring that children do not suffer any harm, physically or psychologically, from bullying that

occurs on the school premises. This is an issue that has arisen in many countries and England is equally confronted by it.

Other Statutory Duties Concerning Safety of the Child

In addition to common law duties and the SSFA 1998, there are other statutory duties that should be mentioned. The first is the *Health and Safety at Work Act (1974)*, which sets out guidelines to ensure that all school authorities in England provide a safe environment for employees and visitors of the school. Under this Act, the employer has a mandatory duty to take care of the health, safety and welfare of those who work in the school or who visit it, as far as it is reasonably practicable (Kaye, 2003).

The Health And Safety At Work Act 1974

The scope of *the Health and Safety At Work Act (1974)* (“HSAWA 1974”) is very wide but for the purposes of this discussion, this section will only look at the aspects that relate to schools. The HSAWA 1974 and its regulations impose on Local Education Authorities (“LEA”)(democratically elected local councils responsible for providing education in their areas), private school proprietors, senior post holders in schools and all teachers a duty to take care of the health, safety and welfare of the teachers and pupils in schools. LEAs are required to keep a school healthy and safe “so far as is reasonably practicable” (Lowe, 2002). The requirements of the HSAWA 1974 as summarised in *The Head’s Legal Guide* (Croner, 1999) are as follows:

- (a) that all employers are to adopt health and safety policies and to set precise standards guiding the use of certain types of machinery and equipment in schools;

- (b) that employers are to provide detailed guidance to their employees (this guidance may be used to determine the standard of reasonableness);
- (c) that criminal penalties will be imposed for breach of its provisions;
- (d) that new systems of enforcement of safety requirements be introduced and the Health and Safety Inspectorate is empowered to demand repairs or improvements or order that equipment or premises may not be used.

The standard of care required by the HSAWA 1974 clearly reinforces the common law duty to behave reasonably. The only addition to the common law standard of care is the requirement that regulations are made and guidance given as to how the duty is to be performed in the use of equipment or materials of known risk. In doing so, teachers are then better able to take reasonable care of their own health and safety as well as the health and safety of others at work. Therefore, so long as teachers show a proper regard for their own and others' health and safety, it would be difficult to find them negligent or criminally liable if something did go wrong (Lowe, 2002).

Two other statutes that have a bearing on the safety of students in the schools in England are the *Occupier's Liability Act (1984)* (first enacted in 1957) and the *Standards for School Premises Regulations (1972)* (first enacted in 1959). In the case of *Reffell v. Surrey County Council (1964)*, the plaintiff, twelve years of age, was a student at a school which had been built about 1919 and was a school controlled and maintained by the LEA. As she was walking quickly along a corridor, she put out her hand to stop a swing door that was swinging towards her. Her hand went through the glass panel of the door and she was injured. The plaintiff claimed damages for breach of statutory duty under the *Occupier's Liability Act (1957)* and the *Standards for School Premises Regulations (1959)*. The court held

that there was a breach of the duty under the *Standards for School Premises Regulations (1959)* in that the glass panel was made of materials and properties that were not of such a standard that the safety of the occupants was reasonably assured. The court also held that there was a breach of a duty of care under the *Occupier's Liability Act (1957)*. Damages were awarded.

5.6.5 Student Injuries in Canada

The education statutes across Canada demonstrate a concern for the health and welfare of pupils. Most provincial statutes and regulations stipulate specific duties, such as the duty to supervise pupils, inspect equipment, provide ventilation and ensure cleanliness. Where specific provisions are absent, one would find the statutory obligation for the principal or teacher to maintain “order and discipline” in the school. This is seen by the courts in Canada to be sufficient to establish a statutory duty of care (Brown & Zuker, 2002). Besides a statutory duty of care, the common law clearly establishes a duty of care by teachers toward pupils in their charge. Where the supervision of children is concerned, the Canadian courts look to English law. The standard of care expected of teachers is that of a “careful or prudent parent”, a standard that was established in *Williams v. Eady*⁵⁸ and this standard has served as the starting point of almost all Canadian school negligence cases (Giles, 1988; Brown & Zuker, 2002). However, in 1968, the case of *Mckay v. Board of Govan School Unit No. 29 Saskatchewan (1968)* (“*Mckay*”) saw a shifting standard of care. In *Mckay*, the Supreme Court of Canada (the highest court of the land) had to deal with the issue of whether a physical education instructor had a higher duty of care toward pupils than the traditional prudent parent standard. In this case, a student who had minimal experience on

⁵⁸ See previous section “Student Injuries in England” for a summary of this case.

the parallel bars was severely injured when he attempted a dismount. Although the Supreme Court held that the “careful father” test was the applicable test in this case, it went on to state that in some situations, a higher standard of care than that of the “careful parent” can apply. Some cases subsequent to *Mckay* saw the courts applying higher standards of care such as the “reasonably skilled physical education instructor” test and the “reasonably prudent sewing teacher” test when establishing liability (MacKay & Dickinson, 1998, p. 37; Brown & Zuker, 2002, p. 98). The standard of care exhibited by teachers will no doubt continue to be scrutinised by the courts in Canada as they attempt to correctly define and extend the “careful parent” rule.

5.6.6 Student Injuries in South Africa

As noted earlier, one of the principles in the Constitution of South Africa is that the best interest of the child is of paramount importance in all matters concerning the child. The notion of the best interests of the child is interpreted very strictly when determining the rights of the child in the education context. The scope of the duty of care of educators in respect of the child’s safety in school includes not only the physical safety but also the psychological safety of the child (De Waal, 2002). Further, as educators are deemed to be professionals, their conduct is judged according to the degree of care expected of one who is trained and experienced in handling students and such a duty cannot be taken over by a child’s parent. In *Minister of Education and Culture v. Azel and Another* (1995), Azel, whilst still a minor and a student, was transported on a school tour by a Mrs J., a biology teacher, employed by the Minister of Education. Azel was seriously injured in a motor car accident due to Mrs J’s negligent driving. As Azel’s mother had signed a letter of indemnity that excluded the school’s liability for medical

and other costs incurred by the parent, she did not file a suit. However, on obtaining majority, Azel instituted action against the Minister of Education and won. The Minister appealed to the Supreme Court of Appeal (the final court of appeal in all non-constitutional matters) but the Supreme Court upheld the lower court's decision to award damages to Azel. The significance of this judgment is that even if parents sign indemnity forms to waive their children's rights to safety, care and recourse, the constitutional approach of "a child's best interests are of paramount importance" would override the effectiveness of the forms and treat the parents' action as one that is detrimental to the child (Oosthuizen, 2002, p. 178).

5.7 Bullying in Schools

5.7.1 *Bullying in the US*

School violence has escalated over recent years in the US, and federal lawmakers have reacted to the problems of violence by passing regulations intended to make schools safer. Two such laws are the *Gun-Free Schools Act (1994)* ("GFSA") and the *Safe and Drug Free Schools and Communities Act of (1994)* ("SDFSCA"). Under the GFSA, all states receiving federal education funding are required to pass laws mandating school districts to expel, for at least a year, any student bringing a gun to school. The SDFSCA provides federal assistance to schools and even non profit organisations to prevent school violence, provide training and technical assistance, fund violence education programmes and deter the use of illegal drugs and alcohol (Yell & Katsiyannis, 2001). Recent US Supreme Court cases have shown that the Courts, although recognising the constitutional rights of students in public schools in relation to such matters as privacy, have tended to promote the cause of a safe environment. Thus, a student's right to privacy gives way to a school's

duty to maintain a safe environment (*Vernonia School District 47J v. Acton* [1995]). This was confirmed in the later case of *Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls et al* (2002) where the Court of Appeal upheld the Vernonia principle that a student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety.

Some cases of school violence are closely related to bullying, which result in serious injuries and in some instances even suicides. A law magazine in Washington, *Trial* ("The Bully Pulpit", 2002) reports that lawsuits over bullying have been increasing significantly since 1997. However, owing to the doctrine of governmental immunity (which is discussed below) the success of such cases is rare. Despite the lack of judicial decisions in this area, lawyers in America believe that this is an emerging area of law. The fact that at least a dozen states in America have enacted anti-bullying legislation requiring schools to train teachers and students about harassment and to report incidents of bullying clearly supports this view. Schools will not be liable if a student bullies another student per se, but a school will be liable if, having the knowledge about the bullying, it fails to act (*Davis v. Monroe County Board of Education* (1997)⁵⁹).

5.7.2 Bullying in Australia

Legal actions arising out of bullying in Australian schools escalated in the late 1990s. The types of school bullying involved taunting, homosexual vilification, physical attacks, abuse, sexual harassment and combinations of these (Bothe, 1997). As the effects of bullying on both the bully and the victim can be extremely

⁵⁹ See next section - "Bullying in New Zealand" for a discussion of this case.

negative, schools, school authorities and supervising teachers can be liable for failing to discharge their duty of care. The cases in Australia show a common trend, where the victim alleged that the school failed to respond to complaints or information about the bullying, thus resulting in injury. One example is the case of *Haines v. Warren* (1987). This case involved a 15 year old boy studying in a coeducational school in Sydney, who was a known bully. One morning, during recess, while on the school grounds, he picked up a 15 year old girl and dropped her onto a block of concrete. As a result, she hurt her spine and suffered severe back injuries. Although teachers were on playground supervision duties, not one was placed in a position to see what was going in the area where the incident took place. Further, even though the boy was known to be a bully and had a history of acting aggressively towards others on previous occasions, none of the incidents were officially reported. The Court of Appeal, by a majority, agreed with the trial judge that the school had failed to take reasonable care to prevent the foreseeable risk of injury. The failure on the school's part had probably led the bully to believe that his behaviour was acceptable. The plaintiff was awarded \$250 000 in damages.

In 2007, what is believed to be the biggest school bullying damages award of approximately one million dollars was awarded to a young man in the New South Wales case of *Cox v. State of New South Wales* (2007). Evidence was given in court as to how the victim, Ben Cox, was bullied over an eighteen month period since the age of six by an older student. The bullying involved repeated assaults and harassment and at one point, Ben had a tooth knocked out and was made to "eat" his jumper. Ben suffered headaches, nightmares and consequential

psychiatric problems but the dual attempt to seek assistance from the Education Department only ended up with the advice that “bullying builds character”.

Both cases reinforce an author’s view that schools in Australia “are now under considerable pressure, both from legal and moral perspectives, to take active steps to minimise the risk of bullying by setting up systems of training, communication, monitoring, review and enforcement. Inactivity or insufficient activity may result in legal liability” (Bothe, 1997, p. 162).

5.7.3 Bullying in New Zealand

One safety issue of major concern that has recently emerged in New Zealand schools is that of peer harassment in the form of bullying. Due to the accident compensation scheme discussed earlier, the ability of parents or students to sue a school for damages, say, for negligence in failing to prevent bullying, is severely limited since compensatory awards for personal injury are barred. However, where a student suffers a mental injury (for example, post traumatic stress disorder) as a result of sustained psychological bullying at school, he or she will be able to sue the school for compensatory damages based on the common law principles of negligence, since the accident compensation scheme will not apply to his case. Non-physical bullying in the form of verbal harassment, such as name-calling or loud public comment on physical characteristics, clearly exposes the victim to harmful consequences that can potentially cause mental injury.

According to Hay-Mackenzie (2002), the increased use of the internet in schools also raises the potential for damages claims based on mental trauma suffered by students who are exposed to bullying in the form of email, text messaging and the like.

The *Education Act (1989)* (Section 77) requires schools to take all reasonable steps to ensure not only that individual students receive guidance and counselling, but also that the student's parents are informed of any factors that are impeding that student's educational progress. This section thus raises the possibility that the school's duty extends to actual consultation with parents in relation to factors such as bullying and harassment, which may act as an impediment to a child's education (Varnham, 1999). In other words, a school may be held to be negligent if it fails to take adequate steps to eliminate anti-social behaviour, which in turn adversely affects a child's education. Victims of bullying may also potentially allege discrimination against the schools.

The anti-discrimination legislation in New Zealand is contained in the *Human Rights Act (1993)* ("HRA"). The applicable section for schools is Section 57, which prohibits discrimination in all educational establishments. This section states that it is unlawful for an educational establishment to "subject" a student to any detriment by reason of any of the prohibited grounds of discrimination. The prohibited grounds are set out in Section 21 of the HRA and they include sex and sexual orientation, religious and ethical belief, colour, race, ethnic or national origins and physical impairment and disability (Varnham, 1999). Further, Section 62 of the HRA deals specifically with sexual harassment and it applies even to education.

It is posited by Varnham (1999 and 2001b) that the anti-discrimination provisions of the HRA may apply to a school in the area of bullying in that generally, students who are victims of bullying are singled out because of their difference, for

example, their race, colour, sexual orientation, disability or physical impairment. Therefore, where a school has failed to take remedial action in a bullying situation, it is very possible that a complaint under the anti-discrimination legislation will be made.

In 2001, New Zealand experienced a wake up call about bullying from the case of *Queen v. Castles (2000)* (“*Taradale Broomstick Case*”). In an extreme case of bullying, some boys sexually violated a fellow student with a broomstick on the premise that it was a rugby prank. The incident occurred away from the school at a private party and the school was not implicated in terms of liability. However, the parents of the victim laid a formal complaint with the school about the way it handled matters after the incident and about previous alleged bullying incidents at the school (“*Complaint Laid*”, 2002). An argument that could have been forwarded by the parents of the victim in the *Taradale Broomstick Case* was that the school had subjected their child to detriment within the educational environment by failing to deal with their child’s complaints of harassment and in doing so, the school had breached the anti-discrimination legislation. In this regard, the principles set out by the US Supreme Court in the case of *Davis v. Monroe County Board of Education (1997)* (“*Davis*”) provide clear indication of the factors that may be argued by victims to establish liability in New Zealand. The case of *Davis* concerned anti-discrimination legislation similar to the New Zealand HRA and a school’s liability in respect of peer harassments. In that case, the victim of harassment and her mother had complained to the teacher and school principal frequently over a period of some years of the bullying that was taking place, but the school had failed to take remedial action. The Supreme Court by a majority held that in order for a school to be liable, two factors must be

established: (1) the school has shown deliberate indifference and by doing so, the school has subjected the victim student to discrimination; (2) the harassment must have been so severe, pervasive, and objectively offensive that it deprives the student of educational opportunities. Applying these principles, it can be argued that a school in New Zealand will be liable under the HRA if the school has actual knowledge of the bullying, and is in the position to take remedial action but fails to do so, and if the bullying is of such a severe nature that it deprives the victim student from an effective educational experience.

5.7.4 Bullying in England

It is shown so far that school bullying is a widespread phenomenon and is a prevalent problem in many societies across the world. The school, being seen as the “agents of social control” (Furniss, 2000, p. 13) would have a moral duty to manage and reduce bullying problems in schools. In the case of *Bradford-Smart v. West Sussex County Council* (2001) (“*Bradford-Smart*”), the plaintiff had been bullied between the ages of 9 and 12 while she was a pupil at a primary school under the charge of West Sussex County Council. The bullying took place mainly on the bus going to and from school. Applying the principles laid down in *Phelps* (see Chapter one and the section on Educational Malpractice below), the judge held that teachers owed a duty in relation to their pupils to “exercise the skill and care of a reasonable teacher on the basis of what would have been acceptable to reasonable members of the teaching profession” (*Bradford-Smart*, 2001, para. 30). In this case, the plaintiff’s class teacher had taken reasonable steps to prevent her from being bullied while at school, and that was sufficient to relieve the defendant from liability. However, the trial judge held, and the Court of Appeal concurred, that it is fair, just and reasonable to place a duty on the school

to take such steps as were necessary to ensure that a pupil was not bullied while on the school premises, or possibly even in school activities outside school premises. It can be argued that this ruling is consistent with the provisions in the *Human Rights Act (1998)* (“HRA 1998”), which incorporates into the domestic law of England the Articles of the *European Convention on Human Rights (1950)* (“ECHR”). Article 3 reads “No one shall be subject to torture or to inhumane or degrading treatment or punishment.” It is thus “possible that public bodies such as schools can be held responsible for violations of Art. 3 by private actors” (Parry & Parry, 2000, p. 283).

Apart from case law and the implications of the HRA 1998, the responsibilities for dealing with pupil behaviour and discipline are also set out in legislation called the *School Standards and Framework Act (1998)* (“SSFA 1998”). Section 61 of the SSFA 1998 stipulates that the head teacher must “determine measures... encouraging good behaviour and respect for others on the part of pupils, and, in particular, preventing all forms of bullying among pupils”. In doing so, the head teacher must have regard to the policies and written principles produced by the governing body (Section 61, SSFA 1998). The policies and principles are mainly in the form of guidelines designed to promote good behaviour and discipline among pupils and the head teacher and parents must be consulted before these are made or revised (Harris, 2002).

5.7.5 Bullying in Canada

As discussed in earlier sections, bullying is a problem that permeates every society, and many educators and parents may even feel that it is part and parcel of the process of growing up. It is no different in Canada, except that the

Canadian Courts are beginning to see more liability claims involving school bullying (Anderson & Fraser, 2002). In *Board of Education for the City of Toronto v. Higgs* (1959), the issue was whether the school was negligent in failing to provide adequate supervision, thereby resulting in a student being injured by another student bully. The Supreme Court of Canada was not convinced that increased supervision would have prevented the incident, so it was held that there was no liability on the part of the school. However, the Court indicated that if the school had known the mischievous tendencies of the bully, the position may have been different, since the range of foreseeable risks would be expanded (Mackay & Dickinson, 1998).

Cases of bullying in Canada have escalated since 1959, and they range from passive participation to vicious attacks leading to death. In 1983, a student was jailed for four years for standing by with a club on his shoulder while his brother and a friend beat and maimed a student⁶⁰. In 1998, students were suspended for five days for not only watching a gang assault at school, but also providing encouragement and added intimidation⁶¹. The case of *R. v. Glowatski* (2001) saw the cruel bullying of Reena Virk that led to her horrific death. In that case, Reena was despised because she was not one of the “in group” and one day, a group of teens (mostly girls) attacked her to show their dislike of her. The attack was unprovoked and extensive. Reena was kicked, jumped on, beaten, burned with a lit cigarette and finally held down by two of the attackers in a bay to drown. This case may be an extreme case, but a study of the many cases involving bullying in schools in Canada shows that bullying is a very real risk for students, and it is a

⁶⁰ *R. v. Keizer* (1983).

⁶¹ *Hopkins (Guardian ad litem of) v. Mission School District No. 75* (1998).

problem for which “neither the legal nor the educational system has found sufficient solutions” (Anderson & Fraser, 2002, p. 193).

5.7.6 *Bullying in South Africa*

In a conference paper presented in the University of Granada by Professor Nita Corene De Wet in 2005, it was shown that bullying, to a lesser or greater extent, is a problem at most schools in South Africa (De Wet, 2005). The Children’s Movement and the Children’s Resource Centre in South Africa also has an ongoing anti-bullying campaign that develops and implements practical steps within the Children’s Movement to stop bullying among children (Children’s Resource Centre, n.d.). Knowing the importance of managing bullying in schools, the North West Education Department announced, in January 2007, that a School Safety Conference would be held to educate and assist teachers on aspects of school safety, including the effects of bullying among students, so as to build a safer school environment in South Africa (Ntuane, 2007).

5.8 Sexual Misconduct of Teachers

5.8.1 *Sexual Misconduct in the US*

An area of “injury” that has crept into the law of negligence is that of sexual misconduct by teachers in schools. The question has that arisen is whether a school could be held liable for sexual assaults committed on students by a teacher. One only needs to go into “Google”, type “Sexual misconduct in schools”, and find millions of articles and reports on the issue. Sexual misconduct in schools has become a problem that has even reached the courts in many jurisdictions.

In 2004, the US Department of Education contracted an academic to conduct a study to determine the prevalence of educator sexual misconduct in the US⁶². Allegations of sexual misconduct are now reported by journalists and these stories lead to more public awareness of the problem. For example, in February 2003 alone, eleven incidents were reported in the newspapers⁶³ in the US, and they represent only a small sample of incidents that come to the attention of school and law enforcement officials. The rise in incidents of teacher sexual misconduct “has given cause for school officials to develop a more formative and proactive approach to monitoring and shaping appropriate teacher-student relations beyond the initial employment phase, regardless of gender (Sutton, 2004, p. 8).

5.8.2 Sexual Misconduct in Australia

In Australia, whether a school could be held liable for sexual assaults committed on students by a teacher is a controversial issue. Where personal injury is concerned, the High Court of Australia (the highest court in Australia) has held in *Commonwealth v. Introvigne* (1982) (“*Introvigne*”) that a school has a non-

⁶² “Educator Sexual Misconduct: A Synthesis of Existing Literature”. Prepared for the US Department of Education, Office of the Under Secretary Policy and Program Studies Service by Charol Shakeshaft, Hofstra University and Interactive, Inc. Huntington, N.Y. (Web source: <http://www.ed.gov/rschstat/research/pubs/misconductreview/report.pdf>).

⁶³ • Henderson, N.C.: The Henderson Count School Board agrees to pay \$1.78 million to the families of 17 children who are alleged sexual victims of a former teacher assistant.

• Augusta, Wisc.: Family alleges sexual assault of 12 year old boy by male teacher.

• Ann Arbor, Mich.: Male high school teacher assaults female student.

• Indiana: Former principal of a Baptist school to be sentenced for taking an 11 year old female student across country to have sex with her.

• Omaha, Neb.: Wrestling coach sentenced to 45 days in jail and required to apologize publicly to female student he assaulted.

• Sarasota, Fla.: Former female high school assistant coach pleads no contest to unlawful sexual activity and committing a lewd and lascivious act with two students on her basketball and softball teams.

• Westminster, Colo.: Male coach gets six years in prison for sexually assaulting seven girls on his softball team. • Amelia, Ohio: Former male high school administrative assistant gets 18 month sentence for having sex with female high school student.

• Hackensack, N.J.: 42 year old female middle school teacher admits sexual intercourse with sixth grade male student.

• Yonkers, N.Y.: 50 year old male Montessori teacher fondles 7 year old student in bathroom.

• Bullhead City, Ariz.: Male ESL teacher has sexual contact with 12 year old female student. Teacher is a registered sex offender in Florida. (These case summaries are taken from the Report in footnote 26).

delegable duty to take all reasonable care to provide an adequate system so that no child is exposed to unnecessary risk of injury. The issue that has arisen here is whether the non-delegable duty as set out in *Introvigne* should be extended to intentional criminal acts committed by teachers. As there was a conflict of opinion between the Court of Appeal of New South Wales and the Court of Appeal of Queensland, the cases involving this issue were brought to the High of Australia for resolution (*New South Wales v. Lepore; Samin v. Queensland; Rich v. Queensland* [2003]) (“*Lepore*”).

The three cases arose out of allegations that teachers had sexually assaulted students at school. In the New South Wales case, Lepore was a seven year old pupil who alleged that he had been sexually assaulted by a teacher in the context of punishment for misbehaviour, while Rich and Samin were pupils at a one-teacher state school in rural Queensland between 1963 and 1965. They were between seven and ten years old when the alleged assaults (during school hours in the classroom or adjoining rooms) took place. The judgment of the High Court was delivered on 6 February 2003 and it laid down serious implications for schools and school authorities in Australia in respect of their duty of care towards the safety of students. To summarise, the High Court analysed in detail the circumstances under which the school or school authority will have a non-delegable duty of care as opposed to situations where vicarious liability may be imposed for injuries sustained by a student in a school. 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. However, what the Court had to deal with here was the more difficult question of whether unauthorised acts of the teacher can be said to be so connected with the authorised acts for which the school authority should be held vicariously liable.

In *Lepore*, the High Court held that a school cannot be held liable for an intentional act of one of its teachers on the basis of non-delegable duty. However, a school can be held vicariously liable for a teacher's act (e.g. sexual assault) if a close enough connection between the act and the employment can be established. This is a complex legal issue and it is not within the scope of this study to discuss it in detail, although two cases heard by the Supreme Court of Canada (see below) do provide some guidelines for schools. For now, both Justice Atkinson's comments (see section on Educational Malpractice) and the High Court's judgment clearly point to the fact that the law will continue to have an increasing impact on schools and professional educators in Australia in the coming years.

5.8.3 Sexual Misconduct in New Zealand

It is posited by Varnham (1999 and 2001b) that the anti-discrimination provisions of the *Human Rights Act (1993)* (as seen in section on Bullying in New Zealand above) may also apply to a school in the area of sexual abuse, in that in a situation involving the sexual abuse of a student by a teacher, the school could face an action under the anti-discrimination legislation where it could be shown

that the school had failed to take remedial action when informed of a sexual or any misconduct by a teacher in respect of a student.

The Mahurangi College case in New Zealand was a case involving the sexual abuse of several female students by a teacher and sports coach at the school over the period 1978 to 1995. The teacher, Leigh, was a paedophile, who was sexually attracted to adolescent female students. From 1983 onwards, various teachers and other personnel were alerted to Leigh's behaviour, but the school responded in a half-hearted and dismissive manner. After a formal complaint was lodged with the School Board, disciplinary procedures were instigated against Leigh. In 1996 Leigh was charged with 28 offences involving violation and indecent assault. He pleaded guilty and was sentenced to 17 years imprisonment. Two of the students who alleged abuse complained to the Human Rights Commission for breach of the HRA and were paid a settlement sum by the college. In failing to take remedial action when faced with allegations by a student of sexual misconduct by a teacher, the school had acted in a manner that was discriminatory, in that it subjected a student to detriment on the basis of gender, which is a prohibited ground of discrimination under the HRA (Varnham, 2000). The inaction of the school had the effect of creating a hostile or abusive school environment, which basically deprived the student of a proper educational opportunity. One of the outcomes of this case was an inquiry carried out by the Commissioner of Children, and the Commissioner's findings are discussed below. Varnham, (2001b) believes that if a situation arises where sexual abuse of a student is perpetuated by a teacher, a school could similarly face an action under the anti-discrimination legislation.

On a positive note, the *Education Standards Act (2001)* (“ESA”) is enacted to amend the *Education Act (1989)* and its aim is to improve standards across the education sector. It includes the establishment of the New Zealand Teachers Council, which replaces the former Teachers Registration Board. This new Council is given a wider professional leadership and quality mandate, including mandatory police vetting for teachers who are not registered and for other non-teaching staff at schools and early childhood institutions. In the context of safety in schools, this new Council has wider powers to receive and inquire into complaints of misconduct when it has reasonable grounds to believe that a school employer is not able to deal satisfactorily with the issues. The ESA also provides for a range of statutory interventions that may be used by the Ministry of Education to avert risks in schools. One such intervention is the introduction of mandatory reporting by employers about specified matters of concern. The Ministry of Education is also given the power to require the School Board to engage specialist help or to prepare and carry out an action plan. There is even power to appoint a statutory manager to take over the functions that the board is not able to manage without dismissing the board (Breakwell, 2002; Varnham, 2001c). There are other forms of statutory intervention that are aimed at addressing specific problems, but all these interventions can only be triggered where there are “reasonable grounds to believe that there is a risk to the operation of the school or the welfare or educational performance of its students” and such intervention is “reasonable to deal with the risk without intervening more than necessary in the affairs of the school” (Section 78I(2) & (4), *Education Act [1989]*).

A useful feature of the ESA is the ability of school boards to request formal intervention or assistance before any problem becomes entrenched. As a result,

feedback has suggested that the boards feel more in control of the situation, more able to manage any community fallout and keep relationships positive. The education system has moved towards the setting of standards and the possibility of early intervention, and the self identification of problems has led to a partnership approach to real improvement (Breakwell, 2002).

5.8.4 Sexual Misconduct in England

Teachers are vulnerable to accusations of abuse because of their daily contact with children in a variety of situations. Their proximity to and relationships with pupils may lead to allegations against them being made by pupils or even parents. However, as seen above, there are many genuine cases of sexual misconduct by teachers. Therefore school procedures for handling suspected cases of abuse in England include procedures to be followed if a teacher or other member of staff is accused of abuse (Lowe, 2002). Like section 153 of the *Criminal Code of Canada 1985* (see next section on Sexual Misconduct in Canada), the *Sexual Offences (Amendment) Act (2000)* in England makes it an offence of “abuse of trust” if teachers and other school staff have any sexual activity with someone below 18 years of age.

Although generally, teachers are personally liable for such abuse of trust, it will be recalled in Chapter Four, that schools and education authorities could be held vicariously liable for the intentional wrong of its employees where certain criteria are satisfied - *Lister v. Hesley Hall (2002)*⁶⁴. In this particular case, the victims were boys aged 12 to 15 staying in a boarding house owned and managed by Hesley Hall Ltd. The warden of the boarding house exercised such control over the

⁶⁴ See Chapter Four page 90.

boys that eventually, it led to sexual assaults on some of the boys. The House of Lords found Hesley Hall vicariously liable for the assaults of the warden because Hesley Hall placed the warden in such a special position that a close connection between the warden's duties and his wrongdoing can be established.

5.8.5 Sexual Misconduct in Canada

Legal principles from two Supreme Court cases provide some guidelines for school leaders in Canada where sexual misconduct in schools is concerned. In *Bazley v. Curry* (1999) ("*Bazley*") and *Jacobi v. Griffiths* (1999) ("*Jacobi*"), the Supreme Court of Canada had the difficult task of deciding whether non-profit employers can be held vicariously liable for the sexual abuse of children committed by their employees. In *Bazley*, the victim was a child in a residential care facility (the Children's Foundation) for emotionally troubled children, and the carers were authorised to act as parent figures for the children. As substitute parents, the carers practised "total intervention" in all aspects of the children's lives including intimate duties like bathing and tucking in at bedtime. In *Jacobi* on the other hand, the non-profit organisation ran a club that conducted activities after school and on Saturdays. The victims were a brother and a sister, who developed an intimate relationship with the programme director, which culminated in sexual assaults. After reviewing the facts of the case, analysing case law and considering policy issues, the Supreme Court of Canada arrived at the following guiding principles when determining whether an employer is vicariously liable for an unauthorised and intentional wrong committed by an employee:

- (1) whether the wrongful act is sufficiently related to the conduct authorised by the employer;
- (2) where there is a significant connection between the "creation or enhancement of a risk" and the wrong that follows from it, imposing vicarious liability will

serve the policy considerations of providing adequate and just remedy and deterrence;

- (3) In determining (1) and (2) above, some factors may be considered:
- (a) the opportunity the organisation afforded the employee to abuse his or her power;
 - (b) the extent of power conferred on the employee in relation to the victim and the vulnerability of potential victims to wrongful exercise of the employee's power (i.e. the existence of a power or dependency relationship).

The Supreme Court found the Children's Foundation guilty of vicarious liability for the sexual misconduct of its employee. By providing both the opportunity and environment in the terms of the employment, the Children's Foundation actually increased the risk that led to the sexual abuse. This meant that between the Children's Foundation that created and managed the risk and the innocent victim, the Children's Foundation should bear the loss. To rule otherwise would not have been fair to the victim and would not have deterred others who care for vulnerable children.

By a majority of 4 to 3, the Supreme Court of Canada in the *Jacobi* case distinguished the *Jacobi* case from the *Bazley* case. Justice Binnie held that "unlike Children's Foundation the enterprise here had only two employees and its emphasis was on developing (horizontal) relationships among the members (*i.e. the children who go to the Club*), not vertical relationships to persons in authority" (italics mine). The Club offered group recreational activities to be enjoyed in the presence of volunteers and other members, and the opportunity afforded to the offending employee (Griffiths) to abuse his power was slight.

Thus, it was felt that the requirement for a strong connection between the employment and the assault (enhanced by a job-created power and intimacy) was not present to the requisite degree to justify the imposition of vicarious liability on the Club. However, the Court went on to say that if the Club was negligent in hiring Griffiths, or supervising him, or in using Griffiths to discharge its own duty of care to the children, then a direct liability of negligence would result.

The *Bazley* and *Jacobi* cases have application for schools. While teachers can be said to have some level of “job created power” and are said to act *in loco parentis*, the courts will likely look for a “job created intimacy” imposed by the education authority or school board and a close connection between the teacher’s duties and his or her wrongful acts before they are willing to hold the education authority or school board liable without proof of negligence on its part.

Otherwise, “we see a significant and unacceptable risk that school districts would be dissuaded from permitting teachers to interact with their students on any but the most formal and supervised basis” (Supreme Court of California in *John R. v. Oakland Unified School District* [1989]).

A section in the Criminal Code of Canada that has a significant impact on the professionalism of teachers in Canada is Section 153. This section was introduced in 1983 and it states, “ Every person who is in a position of trust or authority towards a person 14 years or older but younger than 18 and who for a sexual purpose touches any part of the body of that young person is guilty of sexual exploitation”. The questions that arise from this code are: when is the teacher in a position of trust and authority, and is a teacher’s conduct outside school within the ambit of Section 153? These questions were addressed in 1996 by the Supreme

Court of Canada in the case of *R. v. Audet*. Audet was a 22 year old teacher who met a former student (who had just turned 14) at a club in New Brunswick. Audet and his friend spent the evening at the bar with the victim and her female cousins. Audet's friend then suggested that they went to a cottage and the victim and her cousins agreed. Audet developed a headache and went to lie down in an adjoining bedroom. Some time later, the victim joined him in the bed without permission and eventually, they engaged in some mutual oral sex. Both the trial judge and the Court of Appeal held that Audet had not been in a position of trust or authority at the time of the alleged offence. Consideration was also given to the apparent consent of the victim and Audet's inexperience and age. The case was brought to the Supreme Court of Canada who found Audet guilty. Justice La Forest (for the majority) said this:

in the absence of evidence raising a reasonable doubt in the mind of the trier of fact, it cannot be concluded that a teacher is not in a position of trust and authority towards his or her students without going against common sense...the purpose of section 153 is to make it clear that a person in a position of authority or trust towards a young person is not to engage in sexual activity with that young person, even though there is apparent consent (p. 4).

The case of Audet suggests that in most cases, teachers in Canada will be viewed to be in a position of trust and authority towards their students. It was irrelevant that the teacher did not use or abuse his authority, or that the child consented to the act, as the teacher was expected to resist the wrongful activity (Anderson & Fraser, 2002). This is sound reasoning and it would be hard to believe that other jurisdictions would not apply similar principles.

All Canadian provinces have some form of provincial legislation and codes of professional conduct requiring teachers to behave in a manner that ensures the physical and emotional safety of their students⁶⁵ (Anderson & Fraser, 2002). In one case, a 25 year old female teacher was acquitted of criminal charges for having an affair with a 17 year old male student. Nevertheless, the Professional Conduct Committee found that the teacher had violated her position of trust as a teacher, and had compromised the honour and dignity of the profession. Her membership of the profession was revoked and her teaching certificate cancelled (*Jaster v. Professional Conduct Committee, n.d.*). In Canada, losing one's teaching certificate in one jurisdiction means that the teacher cannot obtain another certificate elsewhere (Anderson & Fraser, 2002). The ability of the teaching profession to self-discipline members of the profession indeed sets a high standard for teachers in Canada.

5.8.6 Sexual Misconduct in South Africa

Employment of Educators Act of 1998

An item of legislation that aims to improve the teaching profession in terms of the quality of educators in South Africa is the *Employment of Educators Act (1998)*. In this Act, special attention is given to teacher appointments, promotion and transfer, termination of service of educators, description of teacher misconduct and incapacity, and, most importantly, the founding of the South African Council for Educators, which is effectively the teaching profession's watchdog

⁶⁵ In Ontario, a teacher can be found guilty of misconduct under the law for abusing a student physically, sexually, verbally, psychologically or emotionally or for an act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional (*Ontario College of Teachers Act, 1996*). In Alberta, any conduct of a teacher that, in the opinion of a hearing committee, is detrimental to the best interests of the students (as defined by the *School Act [1980]*), the public, or the teaching profession, whether or not that conduct is disgraceful or dishonourable, may be found by a hearing committee to constitute unprofessional conduct (*Teaching Profession Act [2000]*).

(Oosthuizen, 2003). The functions of the South African Council for Educators include the registering of educators, promoting of professional development of educators, and setting, maintaining and protecting ethical and professional standards for educators (*South African Council for Educators Act [2000]*).

Of particular concern to the South African Council for Educators is the sexual misconduct of educators, and one of the actions taken by them to ensure safety in schools in this respect is to force teachers to report colleagues involved in sexual relationships with pupils (Pretorius, 2002). If the South African Council for Educators came to know of a case of misconduct and it was found that other teachers knew about the problem but did not report it, those teachers' actions could amount to aiding and abetting. In September 2006, the South African Council for Educators, in a press release, informed the public that 30 teachers had been sacked for sexual misconduct occurring from 2001 to 2006 ("Sexual Misconduct", 2006). Such information is reassuring to the public, as it shows that actions are being taken against teachers found to be sexually abusing pupils.

Another policy that targets the integrity of the teaching profession in South Africa is that of performance evaluation. In April 2003, the Education Minister announced that, in order to qualify for annual increments and to merit awards, teachers are to face performance assessments (Govender, 2003). One can conclude that for educators to be regarded as professional people and if the best interests of the child are of paramount consideration, the legislation and policies discussed above will go a long way towards achieving these goals and, at the same time, provide quality education for children in South Africa.

Another issue in South Africa in particular is that of the incapacity of teachers to carry out their duties due to HIV or Aids. Since the HIV or Aids pandemic is currently devastating African countries, some schools in Sub-Saharan countries (South Africa is one of them) are regarded as high risk areas, in which HIV or Aids can be contracted more easily (Rossouw & Rossouw, 2002). This explains why the South African Council for Educators takes a serious view of sexual misconduct by teachers and adopts drastic measures to combat this problem. Where a teacher is unfit for duties due to suspected HIV or Aids, the *Employment of Educators Act (1998)* provides for the employer to initiate an investigation or the teacher may apply for a discharge. However, there are procedural safeguards for the teachers, such as the requirement for employers to obtain the permission of the Labour Court before employers can test a teacher for HIV or Aids (Section 7, *Employment Equity Act [1998]*). The legislation examined so far suggests that the essence of education and the law in South Africa is in creating an environment that is safe, secure and predominantly focused on the best interests of the child.

5.9 Educational Malpractice: Educational Malpractice in Australia, the US and England

For educators, the notion of being negligently legally liable for poor teaching that results in the failure of students being able to achieve expected educational outcomes is an unthinkable prospect, but two of the principals in the research study conducted in Australia by Stewart revealed that this was precisely the type of threat that they had received (Stewart, 1996a). Although no legal action of this nature has in fact taken place in Australia, Harbord and Crafter (2000) noted that in other parts of the world, there is an emerging trend of legal proceedings being brought against teachers, blaming them for low scores in literacy, numeracy or

even the failure to pass an examination. The duty implied on educators to ensure the educational well-being of their students and the breach of such duty is what is commonly termed in the literature “educational malpractice” or “educational negligence”. In fact, a case of educational negligence has been successfully brought to the courts in England, and this will be discussed later on in this section.

The position of the US courts with regard to the issue of educational malpractice will first be reviewed. The first case in the US was heard in 1976 [*Peter W v. San Francisco Unified School District* (1976)] where the student sued the school authority for failing to discharge its duties by providing adequate instruction, guidance or supervision in basic skills such as reading and writing. The Court concluded that there was no general duty of care owed by educators to students in respect of educational outcomes. The next US case was *Donohue v. Coptague Union Free School District* (1979) (“*Donohue*”) where a similar allegation to the earlier case was made. While the claim against the school district was unsuccessful due to policy considerations, the Court of Appeals of New York noted that a suit for “educational malpractice” could be made to fit the traditional negligence principles. They also made the comment that “if doctors, lawyers, architects, engineers and other professionals are charged with a duty owing to the public whom they serve, it could be said that nothing in the law precludes similar treatment of professional educators” (*Donohue*, p.443).

A third case that arose, which had a significant effect on the meaning of “educational malpractice”, was the case of *Hoffman v. Board of Education* (1979). In contrast to the earlier two cases, the student in this case alleged specific incidents of negligence. The negligent act of the school authority involved the

incorrect assessment of his IQ level and failure to reassess him two years after the first assessment, as recommended by the clinical psychologist. As a result, he was placed with the intellectually impaired, causing him emotional and intellectual injury, and his ability to obtain employment was greatly reduced. The Court agreed that this was a case that could be classified as one of “educational malpractice”, but in line with the earlier cases, the claim was rejected because it was precluded by public policy considerations. Public policy considerations would include: putting the courts into an improper position of interfering with the day to day policies that are entrusted to a school authority, a flood of cases inundating the courts and the placing of undue burden upon the limited resources of schools.

In England, the expression “educational negligence” rather than “educational malpractice” is used and the first of such cases, *X v. Bedfordshire County Council* (1995) (“*X v. Bedfordshire*”), was heard by the House of Lords (the highest court of appeal in the country) in 1995, 19 years after the first US case. *X v. Bedfordshire* was a consolidation of five appeals⁶⁶ involving allegations that the Local Education Authorities (“LEAs”) had caused injury to the plaintiffs by breaches of statutory duty under the Education Acts. Although the House of Lords held that damages were not available for breaches of statutory duty under the legislation, the House nevertheless laid down the principle that in an appropriate case, there is scope for argument as to the liability of the LEAs for the negligence of their servants or agents. Lord Browne-Wilkinson said this in *X v. Bedfordshire*:

⁶⁶ *P1 and Others (Minors)(Appellants) v. Bedfordshire County Council (Respondents), In Re M (A Minor) (1994) and another (A. P.) (Appellant), In Re E (A Minor) (1994) (A.P.) (Respondent), Christmas (A.P.) (Respondent) v. Hampshire County Council (Appellants), Keating (A.P.) (Original Respondent And Cross-Appellant) v. Mayor etc. Of The London Borough Of Bromley (Original Appellants And Cross-Respondents).*

In my judgment a school which accepts a pupil assumes responsibility not only for his physical well-being but also for his educational needs. The education of the pupil is the very purpose for which the child goes to school. The head teacher, being responsible for the school, himself comes under a duty of care to exercise the reasonable skills of a headmaster in relation to such educational needs. If it comes to the attention of the headmaster that a pupil is under-performing, he does owe a duty to take such steps as a reasonable teacher would consider appropriate to try to deal with such under-performance. To hold that, in such circumstances, the head teacher could properly ignore the matter and make no attempt to deal with it would fly in the face, not only of society's expectations of what a school will provide, but also of the fine traditions of the teaching profession itself (p. 766B).

The judgment in *X v. Bedfordshire* led to speculation as to when and how claims of educational negligence can be brought and as to what the appropriate level for the standard of care and extent of the duty of care for these cases are (Berman, Burkill, Russell & Rabinowicz, 2001). Traditionally, the English courts, like their counterparts in the US, have protected the LEAs from liability, because they are seen as public authorities that are bringing positive benefits to the community and therefore should not be subject to wider claims than those faced by private bodies (Greenwold, 2000). As a result, public bodies have enjoyed a blanket legal immunity, even if a few individuals have been negligently harmed by them. However, Greenwold, 2000, observed that parents and pupils are increasingly seen as “consumers” of public services and have equivalent rights to those found in all commercial transactions. The effect of this social change is that the courts will no longer allow “policy” considerations to prevent an otherwise valid claim against the LEAs, thus destroying the virtual blanket immunity enjoyed by the LEAs. This

trend was confirmed in the appeal cases of *Phelps v. London Borough of Hillingdon*, *Anderton v. Clwyd County Council*, *Jarvis v. Hampshire County Council*, and *Re G (a minor)* (2000) ("*Phelps*"). The facts of the first appeal case (which is representative of the other three cases) will be briefly described.

Ms Phelps has dyslexia. The school in which Ms Phelps was a pupil employed an educational psychologist who did not diagnose her dyslexia but instead reported that the testing revealed no specific weaknesses. After leaving school, she obtained a job but was subsequently dismissed because she had difficulties with anything requiring literacy. Ms Phelps claimed that because of the failure of the school, she failed to receive the necessary educational provision for her dyslexia and did not learn to read and write as well as she could have done. She sued the LEA in the High Court and the High Court held that the LEA was vicariously liable for the psychologist's negligence. The LEA was ordered to pay compensation to Ms Phelps. On appeal to the Court of Appeal, the Court felt that the function of the psychologist was to provide information to the LEA and thus there was no direct duty owed to the child. The first requirement (that is, duty of care owed to the plaintiff) for bringing a negligence case was not satisfied. The Court was also concerned that "the immunity of the LEA from suit granted for powerful policy reasons will be completely circumvented" if an individual psychologist or teacher can be sued and the employer held vicariously liable (Lord Justice Stuart-Smith, Court of Appeal, *Phelps*, p. 15). For these reasons, the High Court's ruling was reversed and Ms Phelps appealed to the House of Lords.

The House of Lords (which consisted of a panel of seven Law Lords) disagreed with the Court of Appeal and instead concurred with the principle laid down by Lord

Browne-Wilkinson in *X v. Bedfordshire*. The House held unanimously that claims for education negligence could be brought against the teacher/psychologist/LEA. The Law Lords were of the view that the educational psychologist owed a direct duty of care to Ms Phelps because she was specifically asked to give advice on the child's needs and was to recommend suitable educational provision for that child. It was also clear that Ms Phelps' parents and teachers would follow that advice. There was therefore no reason why the LEA, as employer of the psychologist, could not be vicariously liable for the breach of duty of care by the educational psychologist. The Court of Appeal's decision was overturned and damages of almost £50,000 were awarded to Ms Phelps (*Phelps*, 2000).

The House of Lords recognised the difficulties of the teaching profession and the dedication, professionalism and standards exhibited by those involved in the education service, and acknowledged that the courts should not find negligence too readily. At the same time however, the House of Lords pointed out that "the fact that some claims may be without foundation or exaggerated does not mean that valid claims should necessarily be excluded" (Lord Slynn in *Phelps*, 2000, p. 11). The outcome of this case for educators and the LEAs in England is that LEAs and other professional people working in the education service do owe a legal duty of care to all their pupils. "While claims based merely on allegations of poor-quality teaching would fail, claimants would receive compensation if they could point to specific errors caused by incompetence." (Greenwold, 2000, p. 246). Lawyers and education in England would agree that the case of *Phelps* has indeed marked a legal revolution. However, one commentator noted that while the *Phelps* case did endorse the duty of care in the education context, in practice, it is unlikely that actions for educational negligence will become widespread. The

difficulty of establishing the breach of duty of care in the context of education, and the causal link between such breach and the consequential loss to the child, would limit such cases to exceptional situations. Nevertheless, the commentator's statement is very compelling: that "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" (Meredith, 2000, p. 142).

"Should Australia follow the Americans or the British?" This is a question asked by an academic (Hopkins, 1996) after the *X v. Bedfordshire* case. Hopkins' view is similar to that of Meredith above in that the threat of litigation may not necessarily operate as a disincentive to good teaching. Rather, "it could lead to greater professionalism among teachers, as they are made aware they might have to account for, and justify on educational grounds, what they are doing in the classroom. Better, not worse, teaching might result." (Hopkins, 1996, p. 54). It is true that the teaching profession is demanding and pressuring as it is, without adding to teachers the fear of a negligence action for poor teaching. Nevertheless, Hopkins correctly argued that this does not exempt school authorities from the responsibility of putting in place systems for all students (including students with learning disabilities) to pursue their right to a sound education. 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 (Atkinson, 2002, p. 14).

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 (Hudson, 2008). As this case had only just started at the time of writing this section, the outcome is not known. In the researcher's opinion, if the father of the twins cannot identify specific incidents that culminated in the twins' inability to perform academically, it is unlikely for his claim to succeed. Nevertheless, this case reinforced the point made by the judges and academics in the preceding paragraphs that parents are increasingly expecting a high level of professionalism in the delivery of education.

5.10 Other Areas of Law Concerning Education

Besides student records (privacy), rights of students with disabilities and the tort of negligence in the areas of student injuries, bullying in schools, sexual misconduct of teachers and educational malpractice, there many other legal issues that concern schools. It is beyond the scope of this brief overview to review all the issues, and so only a limited number of comparatively important issues have been mentioned in this chapter so far. Another two areas that are of importance to this review are mandatory reporting of child abuse and school discipline. In closing, criminal law, the law on defamation and issues in family law relating to schools will also be mentioned briefly.

5.11 Child Abuse - Schools: Mandatory Reporting

5.11.1 Child Abuse in the US

A topic closely related to that of “Sexual Misconduct” is that of “Child Abuse” and the reporting requirements. In the US, child abuse is a state crime and state statutory definitions vary. However, all the states use a combination of two or more of the following elements to define abuse and neglect: (1) physical injury, (2) mental or emotional injury, (3) sexual molestation or exploitation (Fischer et al., 2003, p. 95). All states require teachers, administrators and school counsellors to report known or suspected cases of child abuse and neglect, and failure to do so can subject them to criminal penalties under the law. As accusations against the parents tend to get a very negative response towards the accuser, the law has provided protection to individuals who report suspected abuse cases in good faith and without malice. The protection takes the form of civil or criminal immunity from liability associated with such reporting. (Child Welfare Information Gateway, 2005).

5.11.2 Child Abuse in Australia

In Australia, there is legislation in all States and Territories that involves the community in protecting children from harm or abuse. As for the teaching profession, it was noted by Ramsay and Shorten (1996) that it is only from the early 1980s that teachers and principals were increasingly involved in the mandatory reporting of child abuse. For example, Northern Territory, New South Wales, South Australia, Tasmania and Victoria all have legislation that impose obligations on teachers and principals to report known or suspected abuse or neglect of a child since early 1980s. In the Northern Territory, Section 14 of the *Community Welfare Act (1983)* mandates every member of the community to

report any suspected child abuse. This broad provision includes teachers. In New South Wales, mandatory reporting requirements are set out in section 24 of the *Children and Young Persons (Care and Protection) Act (1998)*⁶⁷, while in Victoria, it is section 64 of the *Children and Young Persons Act (1989)*. Similarly in South Australia, the *Children's Protection Act (1993)* requires teachers to report suspected cases of child abuse. In Tasmania, the *Children, Young Persons and Their Families Act (1997)* replaced the *Children's Protection Act (1975)* to impose a duty on teachers to report children who are "at risk" (not just school principals as previously legislated under the *Children's Protection Act [1975]*). Mandatory reporting in the Australian Capital Territory was only introduced into legislation in the late 1990s. The *Children and Young People Act (1999)* mandated groups of people to report physical and sexual abuse, and teachers are listed as one of the groups (Australian Institute of Health and Welfare, 2005).

In Queensland, reporting of suspected child abuse and neglect is carried out through policy rather than legislation. Education Queensland requires school principals to report suspected child abuse cases to the relevant authorities, while teachers are required to do so through their principals (Department of Education, Training and Arts, n.d.). However, under the *Education (General Provisions)(2006)*, if a staff member of a State school becomes aware, or reasonably suspects, that a student under 18 years attending the school has been sexually abused by someone else who is an *employee* of the school (italics mine), that staff member must give a written report about the abuse, or suspected abuse, to the school's principal or the principal's supervisor immediately (Section

⁶⁷ Formerly the *Children (Care and Protection) Act 1987*. The new *Children and Young Persons (Care and Protection) Act 1998* adopts a less formalistic approach to the involvement of children, and provides for relevant departments and agencies to give children information, and requires the courts and others to take account of their wishes (Parkinson, 2001).

365). In other words, it is mandatory to report suspected sexual abuse cases if the alleged perpetrator is an employee of the school.

Western Australia is the only State in Australia that does not have mandatory requirements to report child abuse. The philosophy in Western Australia is that the primary responsibilities of protecting children belong both to the government and the community. As such, the Department for Community Development (the “DCD”) is empowered under the *Children and Community Services Act (2004)* to take protective action on behalf of children with the help of the community. In the same way that New Zealand has her inter-agencies protocols, the DCD has the Reciprocal Child Protection Procedures agreement with all the relevant Western Australian government departments as a way of working together. Referrals about possible harm to children are facilitated by a series of reciprocal protocols that have been negotiated with key government and non-government agencies, rather than by mandatory reporting. Thus teachers and principals have a duty as employees of the Department of Education or otherwise to follow the agreed procedures as outlined in the Reciprocal Child Protection Procedures whenever there are concerns about possible child abuse or neglect (Department for Communities, n.d.).

As children spend a significant amount of time in school, teachers and principals are in a very strong position to notice suspected cases of child abuse or neglect. For Queensland, it is an anomaly that it is only mandatory to report suspected sexual abuse committed by an employee of the school. In New Zealand and Western Australia, reporting child abuse is voluntary. It would be interesting to see research being carried out to determine whether mandatory or voluntary

reporting better achieves the objective of preventing or reducing the incidents of child abuse and neglect.

5.11.3 Child Abuse in New Zealand

The *Children, Young Persons and Their Families Act (1989)* (“CYPTFA”) was first enacted in 1989 and was regarded as the key piece of legislation that guards the welfare of the child. In January 1995, many changes were made to the CYPTFA, but the main concern at the time was whether mandatory reporting should be introduced. After much debate, the government decided on education and voluntary reporting rather than mandatory reporting. The approach is proactive, in that emphasis is given to raising public awareness of child abuse and its unacceptability, to ways of preventing and reporting child abuse, and, finally, to developing and implementing protocols with inter-agencies for reporting child abuse (Department of Child, Youth & Family Services, 2001).

Although reporting in New Zealand is entirely voluntary, School Boards have been issued with booklets detailing the Interagency Protocols for child abuse management. The booklets set out the joint national protocols for the management of reporting procedures for cases of child abuse, and schools are strongly advised to follow the policies and procedures for the voluntary reporting of child abuse as recommended in the interagency protocols (Ministry of Education (New Zealand), 2006).

5.11.4 Child Abuse in England

In England, the teacher has a role to play in protecting a child from child abuse.

The *Children Act (1989)* places a duty on the local education authorities and their

schools to assist social services departments in their investigation of child abuse cases (Section 27 and 47, *Children Act [1989]*). In this regard, the role of the education service in helping to protect children from abuse is recognised. Whitney (1993, p. 39) claims that:

studies have indicated that more children disclose the existence of abuse to school staff than to anyone else...entirely to be expected bearing in mind the amount of time which children spend at school and the extremely valuable nature of the relationships with teachers and others which are formed there.

As an added measure to the Children Act, the government also issues guidance to schools in the form of circulars requiring an appointment of a responsible member of staff in every school who is able to deal with child protection issues. This member of staff must possess skills such as knowing how to identify the signs and symptoms of abuse, and have adequate knowledge of the role and responsibilities of child protection and investigating agencies (Webb & Vulliamy, 2001). All members of staff should be aware of the role of this designated member of staff and any disclosure of possible abuse by a child should be passed on to this designated member of staff (The Head's Legal Guide, Croner, 1999). However, it should be noted that while teachers have the duty to cooperate with the social services to prevent child abuse, reporting child abuse is not mandatory under the English criminal law (Stretch, 2003), and it is argued that introducing mandatory reporting in England may not necessarily be better than the current system of shared responsibilities between government agencies (Stretch, 2003; Sinclair, 2003-2004).

5.11.5 Child Abuse in Canada

Child protection is an issue that extends beyond the school, and when it comes to reporting child abuse, the various provinces and territories in Canada have their respective legislation that deal with it. For example, the state of Ontario Section 72 of the *Child and Family Services Act (1990)* (“CFSA”) makes it an offence for someone having charge of a child to inflict abuse on the child. Section 72(4) and (5) further creates the offence of “failing to report” for persons who perform professional or official duties relating to children (Brown & Zuker, 2002, p. 328). Thus if a teacher suspects a caregiver or even a colleague of abusing a child, physically or sexually, he or she has a duty to report it, failing which, an offence would have been committed and a penalty imposed. In this legislation, “the best interests of the child” is of paramount importance and only a standard of “reasonable grounds to suspect” is required of the reporting person (Section 72(1) of CFSA). Other provinces in Canada also have similar legislation. Another example in Alberta where, under the *Child Welfare Act (2000)*, a teacher who reasonably believes (and has probable grounds to support this belief) that a child has been physically ill-treated or is in need of protection has a duty to report it to a child welfare director (Fraser, 2003). Arguably, even if there is nothing in the law that compels teachers to report cases of child abuse, teachers are seen to have a “moral duty” to act on evidence or suspicion of such cases to the relevant authority.

5.11.6 Child Abuse in South Africa

The protection of children from abuse and neglect is a concern that educators have long been aware of and are becoming increasingly so. Principle 2 of the

*United Nations in the Declaration of the Rights of a Child 1959*⁶⁸ recognised the child's right to be protected by stating:

The child shall enjoy special protection, and shall be given opportunities and facilities, by the law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

The *Child Care Act of (1983)* thus concentrates on the protection of children. Under this Act, educators in South Africa are compelled to report cases of child abuse and neglect. Failure by educators to report constitutes an offence but, at the same time, educators are protected from legal proceedings in respect of "good faith" reports (De Wet, 2002).

5.12 Behaviour Management

5.12.1 Corporal Punishment in the US

The use of physical contact such as smacking, striking, spanking or caning of a student by an educator constitutes corporal punishment. It is a controversial practice that generated much debate until 1977, when the US Supreme Court intervened by upholding the practice of corporal punishment in the case of *Ingraham v. Wright (1977)* ("*Ingraham*"). The two issues addressed by the Court were whether the administration of corporal punishment represented cruel and unusual punishment in violation of the Eighth Amendment, and whether prior notice and an opportunity to be heard was required before the punishment (La

⁶⁸ The *United Nations in the Declaration of the Rights of a Child 1959* is a document that expands and amplifies the special rights of the child as enunciated in the *Universal Declaration of Human Rights 1948*. Unlike the *United Nations Convention on the Rights of the Child 1989*, it is a non-binding resolution of the United Nations General Assembly (The Circumcision Reference Library).

Morte, 1999, p. 129). The Eighth Amendment of the US Constitution states “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”. The Court studied the history of the Eighth Amendment and concluded that it was never intended to apply to schools but was formulated to control the punishment of criminals who are incarcerated in closed institutions. The Court was of the view that the decision as to whether children or youths should be physically punished is not a legal matter but rather a policy question for educators to decide, having considered factors such as the psychological or developmental outcomes of such punishments. The Court further held that where such punishment is allowed by legislation and local school boards, it must remain within reasonable limits, in that it must relate to an educational purpose and not be merely an expression of a teacher’s anger, frustration or malice. Where punishment is excessive and unreasonable, students have the legal avenue of suing the perpetrators for money damages for the suffering endured and can even make out a criminal charge for assault and battery. The Court ruled that these traditional remedies are enough to deter educators and minimise abuse (Fischer, 2003, p. 242).

With regard to the second issue concerning the student’s rights for prior notice and a fair hearing, the US Supreme Court ruled that the existing remedies enunciated above would suffice and that by adding procedural safeguards to protect student’s rights, schools would suffer a “significant intrusion into an area of primary educational responsibility” (*Ingraham*, p. 680). One can conclude from the case of *Ingraham* that, in the absence of legislation to the contrary, teachers may inflict corporal punishment on their students. It should be noted, however,

that, despite the ruling in *Ingraham*, more than half of the states in the US do not allow the practice of corporal punishment (La Morte, 1999, p. 134).

5.12.2 Suspension and Expulsion in the US

Earlier, it was mentioned that laws are passed to mandate school districts to expel students who bring guns to school. But there is other disruptive conduct that requires severe disciplinary action. Suspension or exclusion is sometimes used as a means of disciplinary action, and usually for violation of school rules. In the US, the Fourteenth Amendment is strictly observed, and thus a student who is issued with a notice of suspension or expulsion has a right to procedural due process (Russo & Mawdsely, 2003). This position was firmly established in the case of *Goss v. Lopez* (1975) (“*Goss*”) for short term suspension. In *Goss*, the Supreme Court laid down the minimum procedures school administrators must follow when suspending students: mainly, that the student must be given oral or written notice of the offence committed and the evidence available. The student must then be given an opportunity to present his or her version of events.

The rights of students in the case of expulsion proceedings were not clearly addressed in the case of *Goss*. The Court merely commented that “longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures” (*Goss*, p. 584). However, the case of *Gonzales v. McEuen* (1977) (“*Gonzales*”) may give some indication of what these procedures might be. According to *Gonzales*, a notice of expulsion hearing must set out the nature of the proceedings, and include the specific charges and the basic rights available to the student. These rights encompass the right of representation, the right to present evidence, and the right to confront and cross-

examine adverse witnesses (*Gonzales*; La Morte, 1999, p. 125). The outcome of this case was a response to the challenge of the impartiality of the School Board conducting the expulsion hearing. Given the importance of this issue, a few states in the US have enacted statutes to delineate the various rights of students in expulsion proceedings (Russo & Mawdsley, 2003).

5.12.3 Corporal Punishment in Australia

Section 280 of the Australian Criminal Code states “it is lawful for a parent or person in the place of a parent, or for a school teacher or master to use, by way of correction, discipline, management, or control, towards a child or pupil, under the person’s care, such force as is reasonable under the circumstances”. In *Sparks v. Martin* (1908), a teacher gave a pupil five to nine strokes of the cane on the back of his thighs, leaving several bluish marks, when the pupil refused to answer questions put to him by the teacher. It was held that pursuant to the criminal code, the punishment was not excessive. In another case in 1959, when a 15 year old boy was rude to the teacher, the teacher responded by slapping the boy twice across the face, and several times on the left shoulder. The magistrate concluded that while facial punishment is unreasonable, it was not likely to and did not cause the boy any real injury. Thus, the magistrate held that the punishment was not excessive (*White v. Weller* [1959]).

Educators who are from the same era as the magistrate in the latter case may agree that the teacher’s punishment was not excessive. However, in the 1970s and 1980s, disapproval of such harsh discipline has escalated to the extent where methods of corporal punishment such as smacking, caning, or even psychological techniques like the dunce’s cap are prohibited (Atkinson, 2002). For example in

Queensland, due to the increased support by teachers and parents for the total abolition of corporal punishment in schools, a decision was made by the Department of Education in 1992 to phase out corporal punishment. As part of the reform of student behaviour management, each school community, including teachers, students and parents, was given the responsibility to develop a code of behaviour. At the beginning of the 1995 school year, corporal punishment in Queensland state schools was finally abolished as a policy (Annual Report of the Minister of Education, n.d., p.6).

Corporal punishment in the other states of Australia is regulated at the respective state levels, and there is a noticeable trend against the use of corporal punishment (Ramsay & Shorten, 1996, p. 43). The move is certainly towards prohibiting the use of corporal punishment, either by way of policy or by legislation. For example, in New South Wales, the Australian Capital Territory and Victoria, legislation specifically bans corporal punishment⁶⁹. It is interesting to note that where education policy is used to curb corporal punishment, the common law defence of “reasonable chastisement” will arguably be available to teachers. 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” (Stolz, 2008⁷⁰). Perhaps some may consider

⁶⁹ In New South Wales, section 35 of the *Education Act 1990*; in the Australian Capital Territory, section 7(4) of the *Education Act 2004*; and in Victoria, section 4 of the *Education and Training Reform Act 2006*.

⁷⁰ 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>.

this not to be a bad thing in a culture where educators' authority to discipline in *loco parentis* can be undermined by a child's individual rights.

5.12.4 Suspension and Expulsion in Australia

Each jurisdiction in Australia has its own legislation and policy to guide the important issue of suspension and expulsion (Jackson & Varnham, 2007). These, however, only apply to students in government schools. For non-government schools, common law applies and it is based on the contract between the parents and the school (Knott, 1997b; Butler & Mathews, 2007).

As pointed out by Jackson and Varnham, 2007 and Butler and Mathews, 2007, the legislative powers concerning suspension and expulsion for government schools in Australia differ in various aspects. In some States, only the Director-General of Education or the Minister (on the recommendation of the principal) has the power to suspend or expel a student, while in others the principal has the power to suspend a student for misconduct, or to expel the student for very serious misconduct. Similarly, long suspension (for up to 20 days) is usually ordered only for serious misbehaviour. The issue of alternative education is also addressed in some states. This issue will be discussed further when reviewing the English position.

5.12.5 Corporal Punishment in New Zealand

Corporal punishment in schools in New Zealand is illegal. Section 139A of *Education Amendment Act (1989)* prohibits the use of force, by way of correction or punishment, towards any student or child enrolled at or attending the school, institution, or centre. Although this law has been passed many years ago, there is

still a conflict between the concept of children's rights and the traditional concept of parental rights to discipline their children. This is seen in the call on the Education Minister, by a member of Parliament, Sue Bradford, in February 2007, to take action to protect children who attend schools that continue to allow corporal punishment with the "blessings" of parents ("Schools Flouting", 2007). One reason for this is the legal defence available to parents in section 59 of the *Crimes Act (1961)* which provides the legal defence of the use of reasonable force "by way of correction". However, as at 1 January 2008, this defence is no longer available. Under the new section 59 of the *Crimes Act 1961*, parents are allowed to use reasonable force for the purposes of protection from danger or prevention of damage to people or property but the section then goes on to specifically disallow parents to use force (even if reasonable) for the purpose of correction.

It will be interesting to see how schools and parents react to this new legislation and how it is enforced in New Zealand, but, at least for the time being, the law in section 59(4) ensures that minor assaults will not easily be brought to the courts⁷¹. As in most countries, corporal punishment will continue to be a controversial issue in New Zealand.

5.12.6 Suspension and Expulsion in New Zealand

The *Education Act (1989)* and the *Education (Stand-down Suspension, Exclusion, and Expulsion) Rules 1999* stipulate the law on suspension and expulsion of a student from a state school by providing a range of responses for: various cases of misconduct; minimising the disruption to schooling; and ensuring that natural

⁷¹ Section 59(4) *Crimes Act 1961* - Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

justice is observed (Section 13 of the *Education Act [1989]*). In addition, the Secretary of Education, pursuant to section 18AA of the *Education Act (1989)*, is also empowered to make rules to regulate the practice and procedure of suspension and expulsion.

A comprehensive summary of the legislation and rules on suspensions and expulsions can be found in the guidelines issued by the New Zealand Ministry of Education⁷². Like most jurisdictions, suspension or expulsion is a response of the last resort, and for expulsion cases, only the most serious incidents will warrant this course of action. In New Zealand, the principal is the only person who can make the decision to suspend a student (Section 14 of the *Education Act [1989]*). The Board then has powers under Sections 15 and 17 to decide whether the suspension should be lifted or extended, or whether the student should be excluded or expelled. For students under the age of 16, the principal must arrange for the excluded student to attend another school, failing which the Secretary (the chief executive of the Ministry of Education) has the power under section 16 of the *Education Act (1989)* to intervene.

As can be seen from the above, legislation governing the suspension and expulsion process is complex. The school board must thus ensure that the process is correctly followed according to legislation and the rules. In this regard, judicial interpretation proves useful in assisting principals and school boards in observing the law. The leading authorities in New Zealand on school suspensions and expulsions are the cases of *M and R v. S and Board of Trustees Palmerston North Boys High School (1990) (Palmerston case)* and *S v. M and Board of Trustees*

⁷² See New Zealand Ministry of Education from <http://www.minedu.govt.nz/index.cfm?layout=document&documentid=8652&data=l&goto=00-01>

Auckland Grammar School (1998). These cases addressed the criteria of “gross misconduct” and observing natural justice when considering suspension and expulsion. Gross misconduct, in the court’s view, must be “striking and reprehensible to a point where it warrants removal from school...all individual circumstances must be considered...there are no absolutes” (*Palmerston case*, p. 28). Natural justice, on the other hand, requires the principal and the school board to observe due process before making a decision. In the *Auckland Grammar School* case, both the student and the parents were not notified of the reason for the suspension, and the issue was not discussed with the parents at the suspension meeting. This failure amounted to a breach of natural justice. In light of all the procedural requirements, New Zealand schools will be well advised to protect a student's rights by taking note of the legislation, policies and case law surrounding this issue.

5.12.7 Corporal Punishment in England

Corporal punishment in all schools (both state and private) is prohibited by legislation, namely the *School Standards and Framework Act (1998)* (SSFA), which amends the *Education Act (1996)* to state “corporal punishment given by, or on the authority of, a member of staff to a child...cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such” (Section 548 *Education Act [1996]*) (Diamond, 1999, p. 45). The decision to ban corporal punishment was the result of a ruling made by the European Court of Human Rights in the case of *Campbell and Cosans v. United Kingdom* (1982)(“*Campbell and Cosans*”). The issue in this case was not so much Article 3 of the *European Convention on Human Rights (1950)* (ECHR), which read, “No one shall be subject to torture or to

inhumane or degrading treatment or punishment”, but Article 2 of the First Protocol of the ECHR, which provides that

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

The parents in *Campbell and Cosans* were opposed to corporal punishment and the European court held that, although the use of corporal punishment was not “degrading”, the State must respect the “religious and philosophical convictions” of parents as declared by Article 2 Protocol 1 of the ECHR (Diamond, 1999). The Government decided that abolishing corporal punishment for all pupils was the only effective means of complying with the ruling in *Campbell and Cosans* (Harris, 2002). The wider consequence of this decision is the issue of human rights. In supporting the parents’ objections, the European court is supporting the idea that parents have a basic human right to (at least) ensure that their offspring are not educated in a way which is thoroughly offensive to them (The Head’s Legal Guide, Croner, 1999).

But after the *Campbell and Cosans* case, there was another group of people (principals, teachers and parents) at four Christian schools that similarly used Article 2 Protocol 1 of the ECHR, but this time, to argue for corporal punishment. In the case of *R. v. Secretary of State for Education and Employment; ex parte Williamson* (2005) (“*R. v. Secretary of State for Education*”), the protagonists for corporal punishment argued that parents who believe in the teachings of the Bible should be allowed to educate their children in accordance with their “religious and philosophical convictions”. Although section 548(1) of the *Education Act* (1996) specifically prohibits the use of corporal punishment by all teachers in all

schools, the parents in this case argued that this statutory provision did not apply, because, having the common law right to discipline their child, they have expressly delegated this right to a teacher. This interpretation, they claimed, is in accord with their “religious and philosophical convictions” and hence safeguarded their freedom of religion as purposed by the ECHR. 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” (*R. v. Secretary of State for Education*, para. 86). But whatever arguments or debates that may emanate from this judgment, this case has provided “a powerful precedent against corporal punishment in any form in any school” in England (Jackson & Varnham, 2007, p. 156).

Although corporal punishment is prohibited, there are other disciplinary measures that the schools can implement under the *SSFA 1998*. One such scheme is the home-school agreements and accompanying parental declarations. The agreement spells out for parents the school’s aims and values, and its responsibilities, and the declaration allows parents to acknowledge and accept the parental responsibilities and the school’s expectations of its pupils (Section 110(2) *SSFA 1998*). Parents cannot be compelled to sign the declaration and the agreement does not give rise to any legal obligation under the law of contract or tort. Nevertheless, it is hoped that by introducing this scheme, parents are pressured

“to take responsibility for ensuring that their child completes his or her homework and is well behaved at school” (Harris, 2002, p. 60).

There are other disciplinary measures introduced by the *Education Act (1997)*.

One is the power of staff to use physical restraint in certain circumstances.

Examples are situations where reasonable force is used for the purpose of preventing a pupil from committing an offence or causing personal injury or damage to property (*Education Act (1997)*, Section 4); and the power to detain pupils outside school hours without obtaining parental consent (*Education Act (1997)*, Section 5), provided certain conditions are met. But perhaps the most powerful disciplinary sanction available to schools is permanent exclusion (expulsion from school), discussed below.

5.12.8 Suspension and Expulsion in England

In England, the *Education Act (1997)* and the *School Standards and Framework Act (1998)* give schools the power to exclude pupils either for a fixed period (limited to a maximum of 45 school days per year) or permanently (Section 6 and section 64 respectively). This power is only exercisable by the head teacher, and in deciding to exclude a child, the head teacher must have regard to the Secretary of State’s guidance, which stipulates that “exclusion should occur only in response to `serious breaches of the school’s discipline policy; and if allowing the pupil to remain in school would seriously harm the education or welfare of the pupils or others at the school’ ” (Harris, 2000; Harris, 2002, p. 64). In addition, the head teacher must (without delay) inform the pupil of the period of exclusion and the reasons for the exclusion. The pupil must also be given the opportunity to make representations about the exclusion to the governing body and the local education

authority (Section 157(2), *Education Act (1996)*, Section 67, *School Standards and Framework Act [1998]*).

Although exclusion is a powerful sanction against indiscipline in schools, research in England (Harris, 2000) shows that the most affected groups are the educational underachievers and the socially disadvantaged groups. According to the research, it is believed that there is a link between these groups of people and criminality, and that the government is constantly proposing amendments to the guidance on exclusion in the hope of seeing a reduction in the use made of the power of exclusion (Harris, 2002). The *Education Act (1996)* (Section 19) places a duty on the Local Education Authority to make suitable provision for excluded pupils, but such provision does not have to be full time, and many excluded pupils receive as little as three or four hours of tuition each week, and some actually do not get any (The Stationery Office⁷³, 1998). With the incorporation of the *European Convention on Human Rights (1950)* (“ECHR”) into English domestic law in the form of the *Human Rights Act (1998)* (Diamond, 1999), a controversial issue that may arise with regard to the exclusion of pupils is the “right to education” under Article 2 of the First Protocol to the ECHR (Harris, 2000).

Two recent cases that have arisen under Article 2 of the First Protocol are the House of Lords decisions in *Ali (FC) (Respondent) v. Headteacher and Governors of Lord Grey School (Appellants)* (2006) (“Ali case”) and *R (on the application of Begum (by her litigation friend, Rahman)(Respondent) v Headteacher and Governors of Denbigh High School (Appellants)* (2006) (“Begum case”). In the *Ali case*, Ali sought damages under sections 6 and 8 of the *Human Rights Act (1998)*

⁷³ Her Majesty's Stationery Office (HMSO).

for breach of his right to education under the *Education Act (1996)* and article 2 of Protocol 1 to the ECHR. The brief facts of the case revealed that Ali was one of three pupils seen leaving the classroom before a fire was discovered in a classroom. He admitted to the police that he had been present but denied any involvement. The three pupils were subsequently charged with arson. The school authorities decided to exclude Ali from school pending the criminal investigation and any ensuing prosecution. When the 45-day cap on the aggregate of periodic exclusions expired, the school did not exclude the claimant permanently as required by domestic legislation, because it was awaiting the outcome of the criminal proceedings. Initially, Ali was sent work to do at home, and later the school informed the parents to arrange to collect work from the school. However, Ali's parents failed to do so. The school further referred Ali to the Pupil Referral Unit for tuition, but the offer of tuition was declined.

Later, when the Crown Prosecution decided not to proceed with the case for the lack of evidence, the school wrote to Ali's parents for a meeting to discuss Ali's return to the school. Ali's parents did not turn up for the meeting. A few months later, Ali's father wrote to the head teacher seeking his son's reinstatement. The school replied that having heard nothing from the father, the claimant's place had been allocated to another pupil, and the claimant's year group was now over-subscribed, so the school could not take him back. The majority of the Law Lords agreed that Lord Grey School had failed to follow the procedures laid down by statute and regulations when excluding Ali, and thus had acted unlawfully under the domestic education law of England.

The issue before the court then was whether the failure of the Lord Grey School to comply with the domestic law of exclusions meant that it breached the pupil's right to education under Article 2 of the First Protocol to the ECHR. The House of Lords upheld the school's case that there was no breach of Article 2 of the First Protocol, because there is no Convention right to be educated in a particular school and the facts showed that from the moment of exclusion, the school and the Local Education Authority did not deny Ali effective access to the educational facilities provided by the country. This case shows that it does not necessarily mean that a school will be liable in damages for a violation of Article 2 of the First Protocol, even when it breaches the domestic law of exclusion.

The *Begum case* was heard immediately after the *Ali case* and it concerned Articles 9 and Article 2 of the First Protocol to the ECHR⁷⁴. In this case, Shabina Begum, a pupil of Denbigh High School, turned up in school one day in a jilbab, in breach of the School's uniform policy. Begum had in the two years preceding the wearing of the jilbab complied with the uniform policy. Begum argued that as she was turning into a young woman, the school uniform was not an acceptable form of dress for her in public. She was sent home to change and asked to return wearing the correct uniform. Begum went home, but for two years, she neither attended Denbigh High School nor went to an alternative school where she would have been permitted to wear the jilbab. Instead, she claimed that she had been excluded by the school and that her rights under Articles 9 and Article 2 of the First Protocol to the ECHR had been infringed.

⁷⁴ Article 2 protects the rights of a child to have an education while Article 9 protects one's freedom of thought, conscience and religion.

The House of Lords, by a majority, held that Denbigh High School had not interfered with Ms Begum's rights, because she had freely chosen the school knowing what its uniform policy was, and because there was an alternative school, she could attend where she could manifest her religion. They then went on to hold, unanimously, that if there was an interference, it was justified because of the desire of the school to promote inclusiveness in a diverse community and the fear the pupils had expressed that if the jilbab was permitted they would be forced to wear it against their will. A shrewd observation made by Blair (2002, p. 46) is that a child could do very little to exercise his or her rights "or challenge the exercise of arbitrary authority if their parents chose not to support them". It is arguable that rights in education are in fact the rights of parents and not the child. As for the allegation that Begum was constructively excluded from school and therefore denied of her right to education, the House of Lords held that she was never excluded, since she was not directed to stay away, but rather, encouraged to return to the school wearing the correct uniform.

The fact that the *Ali case* and the *Begum case* reached the House of Lords shows that challenges to any breach of the ECHR or the *Human Rights Act (1998)* as it relates to education require careful scrutiny and evaluation, and usually do not have simple solutions in the first instance.

Expulsion is a severe disciplinary measure and thus, under Section 67 of the *School Standards and Framework Act (1998)*, the parents of an excluded child may appeal to an independent panel that has the power to direct that the excluded child be reinstated. From a principal's point of view, having made a professional judgment to exclude a child, such an order would be the last thing a principal would want to

deal with. The case of *Re L (a minor)*, (2003) was a House of Lords case which looked at the meaning and effect of “reinstate” and “reinstated”, an issue that is of importance not only to individual pupils, but also to education authorities, school governing bodies, principals, teachers and parents.

It was not disputed that “L” was involved in a fight that resulted in another pupil sustaining serious injuries. The matter was investigated by the principal immediately and the decision taken to exclude L permanently. L exercised his right to appeal under Section 67. On reviewing the evidence, the independent panel was of the view that L was not guilty of the specific behaviour of which he was accused (i.e. kicking the victim repeatedly) and that exclusion was not the appropriate response. The independent panel allowed the appeal and directed that L be reinstated immediately.

If L’s teachers had readily reintegrated L into the class, this case would not have reached the courts, let alone the House of Lords. Instead, the teachers informed the principal categorically that they were unwilling to teach or supervise L and were in fact balloting on industrial action⁷⁵. This left the principal with the difficult task of deciding how to reinstate L without involving his teachers. To overcome the problem, the principal decided to institute a special regime whereby L was taught separately from the rest of the pupils, making use of a specially engaged retired teacher and a small room about 10 feet square. L was also segregated socially by imposing on him certain “out of bounds” rules.

⁷⁵ In *P v. National Association of School Masters/Union of Women Teachers* (2003), the House of Lords had to consider whether it was lawful for teachers to threaten industrial action in opposition to the decision of the independent appeal panel. It was held by the House of Lords that the teachers’ actions were lawful. This leads to the unsatisfactory situation of the school having to comply with the appeal panel’s direction to reinstate L on the one hand while on the other hand, none of the teachers is required to teach or supervise L in or out of the classroom.

L took the School to court, alleging that the regime set out by the school did not amount to reinstatement and that the school had breached the appeal panel's decision that he be reinstated. The judge who heard the application applied the reasoning given in an earlier case⁷⁶ dealing with a similar question and dismissed L's application. In the earlier case, the presiding judge had said:

...In my judgment reinstatement is not to be given any elaborate meaning: what is intended to be achieved is the removal of the exclusion. It does not follow that everything has to be put back exactly as it was before the exclusion. What matters is that the regime applied to the pupil after the date for reinstatement is a regime that does not involve the continuing exclusion of the pupil from the school...I do not think that reinstatement necessarily entails full reintegration into the classroom even where that was the previous state of affairs (p. 294).

L then appealed to the Court of Appeal⁷⁷, which unanimously upheld the lower court's judgment. L appealed to the House of Lords.

The House of Lords, by majority, dismissed the appeal and went on to define the meaning of "reinstatement". To the Law Lords, "reinstatement" means neither restoring the pupil to *status quo ante* nor does it mean simply replacing the pupil's name on the school roll. Since legislation does not define the word "reinstatement", it then becomes an ordinary English word, the precise meaning of which depends on the context in which it is used. In the present case, it could not be denied that L had committed an offence that required disciplinary action by the school. Even if L

⁷⁶ *R (C) v. Governors of B School* (2001).

⁷⁷ *In Re L (a minor)* (2001).

had not been permanently excluded, his indiscipline and the threat and damage it caused to the functioning of the school would have had to be dealt with in some other way. The introduction of any disciplinary measures or special regime for an offending pupil, where no permanent exclusion is proposed, is wholly outside the scope of Sections 64 to 67 of the Act. As such, the same principle should apply when, after reinstatement, the school finds it right to introduce such a regime for the reinstated pupil. As for the meaning of “reinstatement”, it is simply a resumption of the pupil-school relationship, and if the school is acting in good faith, and if the purported reinstatement is not a sham, then it is an inescapable fact that L was reinstated...

It is wrong to treat a requirement of reinstatement as involving a judgment on the quality of the educational and managerial decisions which the school makes after resuming its relationship with the pupil...it gives the decision of the independent panel a content beyond that authorised by the statute (paras. 46 & 48).

The case of L reminds us that, while the law should provide avenues for pupils who are excluded to appeal, a balance must be struck in requiring a school to reinstate a child and what form the reinstatement should take, because interfering with a principal’s professional judgment on how a pupil should be reinstated would deprive the principal of his or her right and duty to manage the school (Teh & Stott, 2006).

Suspension and expulsion of children from schools for disciplinary reasons are a grave matter and has serious consequences for students. Thus schools across jurisdictions will continually review legislation and policies to ensure that the school environment is kept safe through appropriate disciplinary measures, but at

the same time, combine discipline with opportunities for students to continue their education.

5.12.9 Corporal Punishment in Canada

Most school districts in Canada disallow the use of physical discipline on students, as it is generally agreed that it can lead to abuse rather than serve as an effective means of dealing with misbehaviour (Anderson & Fraser, 2002). Improper physical discipline can lead to an allegation of assault, which is illegal. However, Section 43 of the *Criminal Code of Canada 1985* provides a defence for teachers who do mete out corporal punishment. Section 43 states, “Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.”

While Section 43 gives teachers some leeway in meting out corporal punishment, it is not without challenge. In 2001, in the case of *Canadian Foundation for Children, Youth and the Law v. the Attorney General in Right of Canada* (2002) (“*Canadian Foundation for Children*”), the validity of Section 43 was challenged. The issue here did not concern the merits or ill-effects of corporal punishment, but rather it was concerned with whether Section 43 violated the Canadian *Charter of Rights and Freedom, Constitution Act (1982)* (“Charter”), in particular, Sections 12 and 15, which prohibit(ed) cruel and unusual treatment or punishment and differential treatment on the grounds of age. The case reached the Court of Appeal, which released its decision on 15 January 2002. In summary, the Court of Appeal held that Section 43 did not violate the Charter, because it “simply creates a criminal law defence for certain persons who apply reasonable force to children

by way of correction [and] by enacting the section, the state cannot be said to either inflict...physical punishment or be responsible for its infliction” (Justice Goudge in *Canadian Foundation for Children*). As for the argument that Section 43 subjects children to differential treatment on the grounds of age, the Court rejected this argument on the basis that Section 43 is justified under Section 1 of the Charter. Section 1 of the Charter states “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. The courts found that since Section 43 defines the limits that must be observed by parents and teachers, it allows them to perform the important role of raising and educating children. For these reasons, section 43 is justifiable (Anderson & Fraser, 2002).

The Canadian public is divided over whether corporal punishment should be permitted and there is no agreement on the effects of Section 43. However, there was consensus that Section 43, in particular, the term “reasonable force”, should be clarified in order to guide parents, police and child protection workers better (Brown & Zuker, 2002).

5.12.10 Suspension and Expulsion in Canada

There are notable differences and similarities in the legislation regarding suspension and expulsion across Canada. These relate to the following: (1) the person empowered to suspend or expel a student; (2) the meaning of “suspension” and “expulsion” and the grounds for the same; (3) appeal procedures; (4) the role of school boards; and (5) the requirement to provide alternative education for

excluded students (Bell & Trépanier, 2001)⁷⁸. The laws and regulations are not vastly different from those of other jurisdictions. However, an interesting development that has taken place in Ontario will be briefly mentioned.

In Ontario, a law was passed in 2001 to establish mandatory grounds for suspension and expulsion of students (Section 306 of the *Education Act [1990]*). Under this law, school officials and school boards were required to impose a suspension or expulsion where an infraction, contained in the list of infractions set out in statute, had been committed. Contrary to the principles of natural justice and due process, this new law permits, in stipulated circumstances, a “zero-tolerance” policy, and a limited expulsion is to be imposed by a principal without a hearing, thus denying students the procedural protection normally enjoyed by them. However, on June 4, 2007, *Bill 212, Education Amendment Act (Progressive Discipline and School Safety) [2007]*, was passed to provide a more balanced approach. Under this new legislation, which came into effect on 1 February 2008, a principal can only recommend expulsion where an investigation has been properly conducted (Section 310 of the *Education Act [1990]*). But although the mandatory grounds for expulsion have been removed, they still apply for suspension, and in addition, bullying has been included in the list of infractions for which suspension must be considered⁷⁹ (Ontario Ministry of Education, 2007).

⁷⁸ Please refer to: *The Safe Schools Act of Ontario: A lesson for the rest of the country: How not to do it* Presented by John P. Bell and Jennifer E. Trépanier at the 2001 Conference for the Canadian Association for the Practical Study of the Law in Education, for a full summary of the differences and similarities.

⁷⁹ Section 306 - A suspension is possible if a student commits any of the following infractions:

1. Uttering a threat to inflict serious bodily harm on another person.
2. Possessing alcohol or illegal drugs.
3. Being under the influence of alcohol.
4. Swearing at a teacher or at another person in a position of authority.
5. Committing an act of vandalism that causes extensive damage to school property at the pupil's school or to property located on the premises of the pupil's school.
6. Bullying.

5.12.11 Corporal Punishment in South Africa

The relationship between teachers and students in South Africa was first established at common law, and corporal punishment was seen as a lawful means of disciplining students (Giles, 1988). However, in the Constitutional Court case of *S v. Williams* (1995), the dispute centred around the question of whether the use of corporal punishment to deal with juveniles was constitutionally justifiable. Applying the principle that everyone has the right to have his human dignity respected, the court held that corporal punishment is unconstitutional. The *South African Schools Act (1996)*, enacted subsequent to this case, stipulates that corporal punishment in a school is prohibited (Oosthuizen, 2003). This prohibition has created many problems for teachers, and also for schools that have previously used corporal punishment as the primary means of maintaining discipline. An investigation conducted by Matodzi (2000) reveals that educators perceive corporal punishment to be essential in maintaining discipline and this may suggest that corporal punishment is still widely used in South African schools despite the prohibition. But with the international pressure on preserving the rights of a child, South Africa will have to take more active steps in enforcing the ban on corporal punishment.

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7. Any other activity that is an activity for which a principal may suspend a pupil under a policy of the board.

Section 310 - A suspension is mandatory for the following infractions:

1. Possessing a weapon, including possessing a firearm.
2. Using a weapon to cause or to threaten bodily harm to another person.
3. Committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner.
4. Committing sexual assault.
5. Trafficking in weapons or in illegal drugs.
6. Committing robbery.
7. Giving alcohol to a minor.
8. Any other activity that, under a policy of a board, is an activity for which a principal must suspend a pupil and, therefore in accordance with this Part, conduct an investigation to determine whether to recommend the board that the pupil be expelled.

5.12.12 Suspension and Expulsion in South Africa

Suspension and expulsion, as discussed so far, are also employed by schools in South Africa to maintain discipline. A code of conduct is adopted by each school to manage the learning environment of the school and the code is to be adopted only after consultation with children, parents and educators (*South African Schools Act (1996)*, section 8(1) and (2))⁸⁰. Under section 8(5) of the *South African Schools Act (1996)*, the code of conduct has to contain provisions of due process, and in a report by *Maithufi, 1997*, he suggested that this implied that the code of conduct must comply with section 33 of the *Constitution of South Africa (1996)*, which provides that “everyone has the right to administrative action that is lawful, reasonable and procedurally fair”, and “to be given written reasons.” Thus, the principle of natural justice similarly applies in South Africa. Further, where a child who is subject to compulsory education is expelled from school, alternative arrangements for him or her must be made at another school (section 9(5) of the *South African Schools [1996]*).

5.13 Criminal Offences, Defamation and Family Law

Schools are confronted with many other areas of legal involvement besides those discussed above. These include criminal offences, defamation and family law. Criminal offences involving students may be in the form of breaking and entering, vandalism of school buildings and equipment, physical abuse such as indecent dealing or assault, the possession of illegal substances, and theft.

Defamation occurs when a person makes false statements that harm another’s reputation. In schools, this can occur in a number of ways. For example, when a

⁸⁰ See The *South African Schools Act 1996* from <http://www.info.gov.za/acts/1996/a84-96.pdf>

teacher writes an inaccurate comment in a student's school record, it can lead to a libel suit, or when he or she participates in a gossip session in the teachers' room, he or she may be guilty of slander. In Australia, a research study conducted by Stewart (1996a) revealed that school administrators had to manage litigation or threats of litigation associated with allegations of defamation. Defamation actions were initiated against or by teachers or school administrators and, in one case, by a parent against another parent.

With the high level of family breakdowns in society, teachers are experiencing an increased amount of exposure to the legal consequences of divorce and separation. As the nature of a teacher's job involves much interaction with students and families, the teacher's knowledge of the important aspects and development of family law becomes essential (Harris, 1997). To give one example, teachers frequently encounter court orders, such as parenting orders. Parenting orders can take the form of "residence orders", which deal with whom a child lives, "contact orders", which provide for a parent or other person to have contact with the child, and "specific issues orders", which deal with any other aspect of parental responsibility, including responsibility for the long-term or day-to-day care, welfare and development of the child.

Sometimes, teachers are confronted with orders that can affect a parent's contact or authority over a child, such as "family protection orders" and "child welfare orders". At other times, teachers have to deal with situations where parents deliberately breach court orders, as in the case of a parent abducting a child from school contrary to a residence or contact order. In all these situations, teachers are required to act in accordance with the parents' legal obligations created by

the court order and if necessary to report to the relevant authorities the breach of any orders. This area of law is and will be constantly changing as more emphasis is put on the rights of the child. As teachers spend a significant amount of time with students, the teachers' continued involvement with family law will be inevitable.

5.14 Summary and Discussion

The literature review of education and the law in the US, Australia, New Zealand, England, Canada and South Africa in the preceding pages reveals many areas of legislative and common law that concern education and influence policies and practices. A brief summary of the trends that have emerged in the comparative jurisdictions and the extent to which they have application to Singapore is discussed below.

5.14.1 Compulsory Education, Special Needs and Child Abuse

There is clear evidence that, in all the jurisdictions looked at, compulsory education is seen as very important, and they all have some form of legislation that regulate it. When Singapore acceded to the United Nations Convention on the Rights of the Child in 1995, it expressly reserved the right not to make education compulsory, but, subsequently, compulsory education was introduced in Singapore in 2003.

Legislation and policies concerning student records (privacy) and student with disabilities also feature prominently. In particular, there is a widespread trend towards protecting the rights of children with disabilities to have a proper education. In many of these countries, there is national legislation protecting the educational rights of these children, including human rights legislation to assist

parents who may feel aggrieved by the type of education provided for their special needs children.

In Singapore, education for children with disabilities is provided by Voluntary Welfare Organisations (“VWOs”), which run special education schools. Pupils who are capable of sitting for the Primary School Leaving Examination are encouraged to do so, and if they are successful, they leave the special education schools to continue their education in mainstream secondary schools (Ministry of Education, 2000a). Article 23 of the CRC states, in part, that in “recognising the special needs of the disabled child...the assistance extended...shall be designed to ensure that the disabled child has effective access to and receives education...in a manner conducive of the child’s achieving the fullest possible social integration and individual development...” As a signatory of the CRC, this provision will have significant implications for mainstream schools educating children with disabilities, in that there will be a need to develop policies on enrolment, management and discipline of disabled students.

With regard to child abuse, various items of legislation in different countries make it a legal requirement for teachers to report any signs of abuse suffered by a child (Webb & Vulliamy, 2001; De Wet, 2002; Fischer *et al.*, 2003; Brown & Zuker, 2002). This is clearly another issue that is relevant to the Singapore context. Children who suffer child abuse at home may suffer neglect, physical injury, and sexual and emotional abuse. The *Children and Young Persons Act (Cap. 38, 1993)* (“CYPA”) of Singapore enables any person who knows, or has reasons to suspect, that a child is abused to report his or her suspicion to the proper authority with impunity, so long as it is done in good faith (Section 87, CYPA). As it is not

mandatory in Singapore for teachers or the school to report suspicions of child abuse, the question arises as to what role a teacher or school has to play in protecting children from abuse and neglect. Research has shown that more children disclose the existence of abuse to teachers than to anyone else (Webb & Vulliamy, 2001). Instead of waiting for legislation to make it a statutory obligation for teachers to report suspected cases of child abuse, it may be argued that teachers in Singapore have a common law duty to report such cases, and failure to do so could amount to negligence resulting in foreseeable harm suffered by the child.

5.14.2 Tort of Negligence - trends

In the literature review, there was clearly an increased trend of school-related negligence cases being taken to court. While one would expect negligence cases to involve mainly physical injuries, the literature revealed that other issues, such as bullying, sexual misconduct and educational malpractice were also linked to the tort of negligence.

In the area of bullying, the cases showed that legal action was not taken because a child was bullied in school, but rather, because the school failed to respond adequately to complaints or information about the bullying, thus resulting in injury. Take the example of the bullying case in a Singapore school mentioned in Chapter One⁸¹: the mother of a bully victim had said in a newspaper interview that simply talking to the perpetrators was not the solution. “If they do not check the bullies, they will get bolder. Then, from verbal abuse, they will move on to bumping into you, then hitting you” (“Bullied”, 2003). In Singapore, where the

⁸¹ See Chapter One page 9.

government is making unprecedented efforts to increase the population, children are seen as precious commodities, and parents, naturally, are becoming more and more protective of their own children. The failure of a school to manage any incidence of physical violence on its premises can be seen by these parents as a breach of the school's duty of care to provide a safe learning environment for their children.

Another issue that emerged from the literature was that of sexual misconduct of teachers. Although it is reasonable to assume that teachers should be personally liable for any sexual misconduct, cases have shown that school authorities may be vicariously liable in those situations where the employment duties satisfy the "close connection" test, or when an organisation negligently affords the opportunity for a teacher to carry out the offence. No one would argue that schools are not under a duty to prevent sexual abuse or harassment occurring within the school premises. However, the question that needs to be considered is: "What is the school's role when there is an allegation of teacher misconduct towards a student outside the school?" As seen in Chapter Three, this issue has already emerged in the Singapore education scene⁸².

There are guidelines for teachers, set out by both the Ministry of Education ("MOE") and within the school, about the "student-teacher relationship". As rightly noted by Anderson and Fraser (2002, p. 184), "unlike other professions, teachers never lose their characterisation as a teacher, regardless of the circumstances of a situation". Although the age of sexual consent in Singapore is 16, a teacher, being in the position of "trust" or "authority", will unlikely be able

⁸² Chapter Three, page 65.

to use the defence of consent to escape “professional misconduct”, even if he or she is not guilty of a criminal offence. To ensure that teachers do not pose a risk to students in Singapore, schools and the MOE may have to take more steps than just setting out guidelines. Additional measures could be taken in the form of tighter screening during hiring processes, checking of references, investigating suspicions or allegations carefully, and ensuring that substantiated incidents are properly dealt with (Brown & Zuker, 2002).

Another surprising area of law that has emerged under the tort of negligence is that of educational malpractice. While cases of such a nature are usually dismissed, the House of Lords case of *Phelps*⁸³ established the principle that schools can be made liable to a pupil if the pupil can point to identifiable and specific reasons, within the school’s control, for his or her failure to learn.

5.14.3 Behaviour Management and Other Areas

Although common law does not prohibit corporal punishment, there is a universal trend, as seen in the overview, towards banning it, with a call to respecting a child’s right not to be “subject to torture or to inhumane or degrading treatment or punishment” (Article 3 of the ECHR). While advocates of corporal punishment may argue that the punishment administered in schools is generally not “degrading”, parents who are against it claim a right to have their child educated in conformity with their “philosophical convictions”. Schools therefore have a difficult task of striking a balance between providing a safe environment for the whole school community and a child’s individual rights. These rights include a

⁸³ See page 161 for details of the case.

child's right to natural justice and due process when suspension and expulsion are utilised as an alternative form of discipline.

Schools exist within society, and, in a way, they can even be described as a microcosm of society, with schools seeing more and more aspects of criminal, tort, corporate, administrative, constitutional and family law entering the school scene. In the area of family law, the breakdown of family relationships has consequences for schools, as they (the schools) have to deal with the effects of broken families. It is reported that divorce and annulments cases increased from 2,111 in 1982 to 5,825 cases in 2002 (Teo, 2003). With this increase in family breakdowns, Singaporean schools will inevitably experience an increased amount of exposure to the legal consequences of divorce and separation. As pointed out by Harris (1997), since the nature of a teacher's job involves much interaction with students and families, the teacher's knowledge of the important aspects and development of family law becomes essential. Conversations with principals and teachers reveal that they frequently receive requests from non-custodial parents to allow them to see their children on the school premises. In these situations, educators need to know the parents' legal obligations created by a court order and how to act appropriately.

5.15 Conclusion

Stewart (1998b) argues that the increase in legislation and case law involving education signifies that education has indeed become "legalised". In Singapore, though, there is neither sufficient case law nor a substantial increase in school-related legislation to suggest that education in Singapore has also become "legalised". However, the landscape of education in Singapore is changing and,

moreover, the survey of education and the law in this chapter has identified issues in other jurisdictions that are very much the same problems that are seen in Singapore education.

Singapore society is indeed changing. This can be observed from the way members of the public take on ministers and policies in public forums. The government is also leaning towards “de-controlling” and “de-regulating” more and more activities in the country in an effort to wean the people off dependence on the government. What does this mean for schools? The Education Minister, Tharman Shanmugaratnam, made it clear that MOE will adopt a “hands-off” approach when it comes to decision making by schools. “We can’t have them calling up the ministry to ask, ‘What shall I do in this instance?’ We won’t get strong schools and strong principals if we do that” (Nirmala, 2004, p.10). This gives a clear signal that the MOE is moving towards granting greater authority and responsibility to schools.

Schools are not unfamiliar with the stance taken by the MOE. Changes have been taking place in the education system. Autonomous secondary schools and increased decentralisation through the cluster schools system were implemented in the early 1990’s to give principals greater decision-making powers over a wide range of matters (Sharpe & Gopinathan, 2002). As Singapore continues to review the education system in order to overcome “the challenges of globalization and technological innovation”, there will be a corresponding move towards *professionalising* the teaching profession (Gopinathan & Sharpe, 2001, p. 23). With “the best interest of the child” as a guiding principle, it might be argued that professionalism is not limited to a teacher’s pedagogical competency, but will also

include the teacher's ability to take care of a child's physical and emotional well-being. This chapter has shown that the "law" does, amongst other things, place a duty on teachers and schools to exercise such a duty of care.

With society demanding a higher level of accountability from professions generally and the move by MOE towards granting more autonomy to schools, principals will be expected to be knowledgeable about and efficient in all matters affecting administration. This will include areas of law affecting education, and the literature has shown that schools' involvement with the law does have an impact on school administration. For example, in the area of negligence resulting in physical injuries suffered by students, inappropriate school policies or practices may result in allegations of negligence leading to personal injury. An awareness of the common law cases and legal principles regarding this area of law will enable school administrators to implement relevant policies to avoid such allegations. This is just one example, but it makes the point that principals need to be knowledgeable about various areas of law that are of central importance to school administrators. When principals have an understanding of the areas of law affecting schools, they will then be able to implement legal risk management strategies to meet the challenges and demands created by a constantly changing society, and, hopefully, in this way, avoid any unwelcome legal challenges.

In the next chapter, the findings of Phase 2 of the research strategies (the Pilot Study) are set out and discussed.

CHAPTER SIX

THE PILOT STUDY ON SCHOOLS AND THE LAW: A STUDY OF THE LEGAL KNOWLEDGE HELD AND NEEDED BY PRINCIPALS IN SINGAPORE SCHOOLS WITH IMPLICATIONS FOR THE LEGAL RESPONSIBILITIES OF SCHOOLS

6.1 Introduction

Singaporeans, in comparison with the Americans, the Australians or the British, are not a litigious people. At least, not yet. But as shown in earlier chapters, Singapore is caught up in a fast changing world where, among other things, the question of rights (especially of children) feature prominently. Do schools, then, today function in a complex legal environment where legal issues affect the lives of teachers, students, parents and administrators? If so, to what extent should teachers and administrators become legally literate? What are the norms, and what is the threshold?

In chapter one, “legal literacy” is defined as a basic knowledge of those areas of law that have a direct bearing on educators’ responsibilities. It means that teachers and principals should be armed with information about the law that affects them, not for the purpose of being their own lawyer, but rather to know their legal rights and responsibilities so that school practices can stand up to scrutiny. Some areas of law that affect educators were briefly discussed in Chapter Four. Although there are not as many statutes that govern the teaching profession in Singapore in as other Commonwealth countries, nevertheless, there are numerous regulations, by-laws and policies that dictate how teachers and principals are to carry out their professional responsibilities. Teachers may not realise this, but they face potential threat of legal action even as they carry out their daily routine. Incidents ranging from downloading software from the internet

for teaching purposes to students sustaining injuries during unofficial outings can have serious legal consequences.

In recent years, there has been much interest in and publicity about school related issues and incidents involving the law. Two such incidents were the Kent Ridge Secondary School pornography VCD case and the sexual assault cases concerning two male teachers and their students⁸⁴. To understand this notion of “legal literacy” among educators, in particular leaders in schools, a pilot study was conducted to gauge the relevance and importance of law to school principals, and to find out the views of principals with regard to “schools and the law”, and in particular the knowledge held and perceived to be needed by them.

6.2 The Sample

The six principals involved in this pilot study were chosen from three primary and three secondary government and government-aided schools. The educational institutions did not include junior colleges, special education schools and the institutes of technical education. Primary and secondary schools were chosen because they consist of the largest number of students in the 7 to 16 age range. Independent schools were also excluded, as they operate in a separate legal framework. In any similar research, they might thus receive separate attention.

The sample chosen was selected from a list of principals that the researcher knew personally or from recommendations by professors in the National Institute of Education. Eight principals (present and past) were approached to participate in the study and of the eight, six agreed to take part. The two who did not take part

⁸⁴ See Chapter Four, p. 88 and Chapter Three, p. 62, footnote 29 for case notes.

cited the lack of time as a reason for their inability to do so; and both were female principals, one from a government-aided secondary school and the other from a government secondary school.

Of the six respondents, two were female. Their ages ranged from 41 to 60. The youngest respondent was a female principal of a primary single-sex government-aided school and she had at least 16 years of experience in the education profession but less than five years' experience as a principal. All the other respondents had over 20 years of experience in the education service inclusive of principalship of at least 6 to 15 years. Five respondents attended leadership training before becoming a principal. Two of the respondents (a male and a female) were also formerly superintendents in charge of school clusters. One of the respondents was a recently retired principal who left the education service in January 2004. Another respondent had over 20 years of experience in the education service but less than five years' experience as a teacher and less than five years' experience as a principal. Further questioning revealed that, during the time that he was not in schools, he was an administrator in the Ministry of Education. During that period, he was seconded to the Foreign Service for four years to manage a student office in Los Angeles. He was the only respondent who had held a management or leadership position outside schools. However, his experience outside schools did not seem to make his responses significantly different from those of the other respondents. A summary of the sample is shown in Table 6.1 below.

Table 6.1
Sample - Gender & Types of School

School	Gender (Respondent-R)	Number	Yrs of Experience as Principal
Primary (Aided)	Female (R1)	1	< 5
Primary (Government)	Female (R2)	1	6 to 10
	Male (R3)	1	> 15
Secondary (Government)	Male (R4, R5, R6)	3	(R4) 11 to 15
			(R5) < 5
			(R6) 6 to 10
		Total: 6	

As the sample for the pilot study was comparatively small, the responses of the six principals were not considered representative of the views of all principals in primary or secondary government or government-aided schools. However, the diversity of experience and background gives some reasonable indication of the relative importance of the law as it relates to education and to principals' jobs in Singapore. The responses could also be considered a tentative answer to the question of whether there was a need for principals to be more conversant with their legal obligations as school leaders. In the following pages, the principals (respondents) are referred to as R1 to R6.

6.3 The Research

6.3.1 Methods

Two methods were used to collect the data. The first was the use of a questionnaire to seek certain factual information about the respondents, such as years of experience as teacher and principal, types of school they were heading, age, knowledge of areas of law, involvement with legal action or threatened legal action, and familiarity with the Principals' Handbook.

The second method used was the personal interview. Single person interview (instead of a focus group discussion) was chosen, because it was difficult to arrange a suitable time where all the participants could meet together. It was also hoped that, by conducting a face to face interview, the principals would be more open and candid about their views on the subject.

6.3.2 Conduct of Research

Appointments were made with the principals to administer the questionnaires in person and to carry out the interviews immediately thereafter. The meetings took place in the following places: one in the researcher's home, one in the respondent's home, two in the respondents' offices and the remaining two in a meeting room at the respondents' respective condominiums. Apart from the meetings in the respondents' offices, the rest were conducted outside office hours.

As the questionnaire was administered face to face, the respondents were quite prepared to give unsolicited comments concerning the research topic, as well as to clarify certain answers they had given in the questionnaire. A copy of the questionnaire is attached as Appendix 2A.

Permission was sought to tape record the interviews and four principals consented to it. One of the two interviews that occurred in the respondent's office was occasionally interrupted because of urgent matters that the respondent had to attend to but the interview was successfully completed. There was a total of 11 interview questions. The interview questions are shown in Appendix 2B.

6.4 Analysis of the Questionnaire

6.4.1 *Knowledge of areas of law that affect school administration*

The analysis of items 1 to 7 of the questionnaire in paragraph 2 above described the background of the principals. Question 8 of the questionnaire asked the principals to indicate the extent to which they had knowledge of the areas of law that affected their conduct as principals. The respondents were asked to mark one of the following three categories: “no knowledge”, “some knowledge” or “a lot of knowledge”.

No respondent marked the “no knowledge” category. R4, on the other hand, indicated that he had a lot of knowledge about areas of the law affecting principalship. R4 was formerly a principal and superintendent, but was now seconded to another part of the education service. All the other respondents marked the “some knowledge” category. R2 was also a former superintendent, but she indicated that she only had some knowledge of areas of law affecting her as a principal. She was now heading a primary school. Further discussion was carried out with R2 and R4 to clarify their answers to this question (Question 8). It was found that the difference in the answers lay in the experiences that each had in respect of legal issues arising in their schools. R2 said that her knowledge of school law was obtained from experiences in dealing with duty of care issues and handling of parental complaints concerning those issues. R4, on the other hand, said that apart from duty of care issues and parental complaints, he also had to handle matters concerning the financial propriety of principals, and police/MOE investigations of teachers’ misconduct.

It is interesting to note that although R1 had the least number of years of experience as a principal, her response was similar to the other principals who had comparatively more experience. This suggests that years of experience as a principal is not necessarily predictive of a principal's knowledge of legal issues affecting school administration. In fact, R1's response may indicate the possibility that principals have to deal with law related issues in the school the moment they become principals. This could also be indicative of an increase in litigious matters in the last five years.

Admittedly, the principals' responses to this question may be interpreted in a number of ways. Having "some knowledge" of areas of law that affect principalship might mean having encountered certain legal issues (such as duty of care) in schools. For a principal to claim to have "a lot of knowledge", it might mean that he or she encountered more legal issues than other schools did. Applying this standard, the respondents may arguably have had no knowledge of law affecting schools at all!

Bearing in mind the limitations of this question, all the respondents claimed that they had, to a certain extent, knowledge of the law affecting schools. A discussion of Questions 9 and 12 of the questionnaire may indicate the actual knowledge of legal issues held by the respondents.

6.4.2 Familiarity with the Principal's Handbook

Question 9 asked the respondents how familiar they were with the Principal's Handbook. The Principal's Handbook deals with a wide array of issues, such as the education system in Singapore, the administration of the school, school

curriculum, accounts, and personnel. Under administration of school, the role and position of the principal and his or her duties and responsibilities within the school are set out. Although the Principal's Handbook does not expressly state that these duties and responsibilities are mandatory, breach of some of these guidelines may have legal implications for the principals. An example is B298 of the Principal's Handbook, which states that no corporal punishment can be administered to a girl. What is not stated, however, is that the breach of this paragraph in the Principal's Handbook is also an offence under Section 88 of the *Education (Schools) Regulations*, which is subsidiary legislation of the *Education Act (Cap. 87, [1957])*. The Principal's Handbook is both a rule book and a guide book, in that some of the sections in it are stated as "Rules" while others are referred to as "Guidelines". The Principal's Handbook applies equally to government and government-aided schools, although there are slight variations in some of the guidelines and rules for government-aided schools. A major difference is that of sanctions for offences committed by aided school employees. Because aided school employees are not government officers, they cannot be subjected to disciplinary action under the Education Service Commission and the Public Service Commission⁸⁵.

The only principal that indicated that she was not familiar with the Principal's Handbook (because she did not refer to it) was R1, who was heading a government-aided school. R1 had the least number of years of experience as a principal. The others indicated that they were moderately familiar with the Principal's Handbook. For R1, it was apparent that her knowledge of school law

⁸⁵ However, under the *Education (Grant in Aid) Regulations*, the Permanent Secretary of Education has the power to direct the School Management Committee of a government-aided school to take disciplinary action against its employee.

was not obtained from the Principal's Handbook but probably originated from her having to deal with incidents that had legal implications.

6.4.3 Involvement in areas of law

Question 12 looked at the principals' actual knowledge of areas of law affecting schools by asking them to indicate the legal issues in which their teachers, their schools or they themselves had been involved. They were also asked to give a brief description of those areas of law. Table 6.2 sets out the number of respondents having some experience with legal action or threatened legal action concerning areas of law.

Table 6.2

Involvement with legal action or threatened legal action

<u>Areas of Law</u>	<u>Number of Respondents</u>
Corporal punishment	3
Negligence involving physical welfare of students	1
Criminal Offences	6
Family Law	3
Contracts	3
Other areas of law	3

6.4.3.1 Corporal Punishment

Cases involving corporal punishment were instances where teachers used inappropriate methods of inflicting corporal punishment on their students. Examples given were pulling of the ears till they bled, slapping, imposition of

strenuous exercises, and in one case, verbal abuse. In most of these cases, the parents threatened to take legal action against the teacher or school for causing hurt to their children. According to the Principal's Handbook and the *Education (Schools) Regulations, Education Act (Cap. 87, [1957])*, corporal punishment can only be administered by the principal in accordance with the procedures set out therein. In addition to the possibility of legal actions being taken by parents against a teacher for assault, the respondents who handled such cases were aware that disciplinary proceedings could be conducted against the teacher for misconduct under the *Public Service (Disciplinary Proceedings) Regulations, Constitution of the Republic of Singapore (1965)*. However, what was not ascertained in the questionnaire or interview was whether the respondents knew that the Director-General of Education had the discretion to make a complaint against a teacher in order for that teacher to be charged with an offence (which is punishable by a fine) under the *Education Act (Cap.87, 1957)*⁸⁶.

6.4.3.2 Negligence

R2 mentioned a negligence case that concerned the blinding of a child's eye by a classroom door handle. At the time of the interview, the case was still under investigation. Although the other respondents did not refer to any specific negligence cases in the questionnaire, all of them voiced their concerns about this area of law during the interviews. Among the concerns mentioned were teachers' failure to see the importance of supervising school grounds during breaks, the need for regular inspection of the school compound for dangerous objects⁸⁷, accidents occurring during excursions and accidents caused by defective furniture

⁸⁶ Sections 61, 62(2) and 64 of the Act.

⁸⁷ R2 related an incident where a child cut herself with an iron rod that she found lying along the school fence.

or structures in school. These concerns were compounded by the fact that parents were increasingly more prepared to seek justice and compensation for any injury suffered by their child.

6.4.3.3 Criminal Offences

All the respondents were familiar with instances of staff or students, either in their own school or in their colleague's school, who were in breach of the criminal law. They included molestation cases by teachers on students, child abuse cases within families and juvenile offences. For child abuse cases and juvenile offences, the schools were often involved in assisting the authorities with investigations. As assisting the authorities in investigations of criminal offences did not give a clear indication as to whether the principals had sufficient legal literacy in this area, a larger scale study may be needed to find out the criminal offences that schools are involved with. For example, how would a principal deal with sexual misconduct of staff, or possession of an illegal substance by a student?

6.4.3.4 Family Law

In the area of family law, custody issues were commonly cited. Related to custody issues was the question of releasing confidential information concerning a child to a non-custodial parent or his solicitor. The respondents cited the importance of legal literacy in this area, as they were often uncertain as to when they were allowed or not allowed to release such information.

6.4.3.5 Contracts

The respondents expressed concern about their inexperience in vetting contracts and their lack of understanding of the principles of contract. In one case, a Head

of Department entered into a contract without the principal's authorisation. In another, the school was threatened with legal action for breach of contract.

6.4.3.6 Other Areas of Law

Three other areas of law were also mentioned. One was an administrative law issue involving a principal accepting a dinner invitation by a service provider after the end of a contract. The principal was called up for questioning by the CPIB. The other two areas of law concerned copyright issues and sexual abuse incidents. Some respondents had to face the difficult task of reporting a student's family members to the authorities for sexual abuse. Although the schools were not directly involved in any legal action where these abuse cases were concerned, the respondents found that they needed to be knowledgeable about the law in this area so that they might know how to handle such incidents.

6.4.3.7 Sources of Legal Literacy

Questions 10 and 11 of the questionnaire asked the respondents whether they were aware of the establishment and functions of the legal department in the Ministry of Education ("MOE"). Two out of the six respondents were not aware of the existence of this department. It appears that the setting up of the legal department in the MOE had not been widely publicised.

Question 13 asked whether the respondents were members of the STU or any other teaching unions. All the respondents answered in the affirmative.

Question 14 asked the respondents if they were aware of Singapore's position in relation to the *United Nations Convention on the Rights of the Child (1989)*. Only

R3 (the retired principal) was aware. Under the Convention, a child's rights are clearly provided for and principals should arguably be cognisant of these rights and know where their responsibilities lie in relation to them.

6.5 Analysis of the Interviews

The purpose of this pilot study was to find out the knowledge of areas of law held and needed by school principals. The analysis of the interviews is thus divided into three categories: the knowledge of school law *held* by school principals; the knowledge of school law *held and needed* by school principals; and the knowledge of school law *needed* by school principals.

6.5.1 Knowledge of areas of law held by school principals (Case Study)

Case Study (Interview Question 8): A primary one student and parent accuse a teacher of inflicting corporal punishment and throwing the student's book in the air. The principal investigated but did not give the teacher a copy of the report. The teacher is adamant that such an incident did not occur and sent a lawyer's letter to the parent asking for an apology. As a principal, how would you deal with this situation, and what are the legal issues involved here?

The legal issues involved in this case are:

- a. Possible defamation of the teacher by the parent.
- b. Breach of paragraph 80 of the Instruction Manual 2 ("IM2") for civil servants which states: "An officer must first get the written approval of his Permanent Secretary in person before he can start legal proceedings in his own personal interest for matters arising out of his official duties."
- c. Disciplinary proceedings can be taken against an officer for breach of paragraph 80 of the IM2.

Only R1 identified the first issue. No respondent identified issues 2 and 3, although R4 mentioned that the principal should have advised the teacher to seek legal advice from the MOE. R6 even said the principal could not stop the teacher from sending the lawyer's letter. The general response was that the principal in the case study should interview the parties separately and find out the truth first. The responses here indicate that the respondents were not very familiar with all the regulations that govern their job. In this case, principals' ignorance compounds teachers' ignorance!

6.5.2 Knowledge of areas of law held and needed by school principals

Interview Question 4: One of the general principles of the United Nations Convention on the Rights of the Child (1989) is that children who are capable of forming their own views shall be given the right to express their opinions on all matters concerning themselves. How does this principle affect your role as school principal in the management of students?

Three of the respondents (R1, R3, R5) indicated that their personal style of leadership conformed to this principle, in that they actively encouraged their students to express their views and make decisions on issues that affected them. The other three respondents (R2, R4, R6) agreed that the right way to go would be to progress towards greater respect for this UN principle, but they felt that at the primary school, students would still require a high level of intervention by way of rules and guidelines. Although only R3 was familiar with the Convention, all the respondents agreed that this UN principle would change their style of management of students from one of control to consultation, with more and more space being created for students to express themselves. However, two

respondents (R4, R5) observed that some teachers might not be ready for this. R5 gave the example that in his school, some secondary students canvassed for ankle socks to be allowed in the school but were told by their teachers that regular socks were more proper. This respondent felt that the teachers should allow these students to express themselves and convince the school why they should be allowed to wear ankle socks instead of refusing them at the outset. The responses here demonstrate the important role that principals play in promoting the Convention's principles.

Interview Question 7: To what extent has the recent Kent Ridge Secondary School "porn" case⁸⁸ made you more or less anxious about reacting to or handling student infringement incidents?

Four out of the six respondents (R1, R2, R4 and R5) said that the Kent Ridge incident had made them more cautious about handling cases that had legal implications. They felt that it had made them realise that there is a need to be more consultative, either with their teachers, superintendent or MOE. It also highlighted to them the importance of having good communication skills when dealing with parents. Two other respondents (R3, R6), on the other hand, said that this case did not have any effect on them, because they would not have reported the incident to the police but, instead, would have handled the situation at school level.

⁸⁸ In this case, the school discovered a pornographic VCD in the possession of one of its students. Further questioning revealed that 16 others were involved. The 17 students were kept outside the general office for several hours without food and drink while the police were called. One of the students had Hirschsprung's disease, a condition where the walls of his intestines may fuse together if he were deprived of food and drink, and the school was informed about this condition. The issues raised were whether the police should have been called, whether the discipline master or school counsellor should have dealt with the matter instead, and whether the punishment (detention without food and drink) was too harsh. Also, what was the role of the parents in all this?

The responses of R3 and R6 showed a lack of understanding of the law in this regard. Under the *Criminal Procedure Code (Cap. 68, 1955)*, every person who is aware of certain criminal offences being committed must inform the police. Although in this particular case, mandatory reporting was not required⁸⁹, it would have been prudent for principals to get advice from the superintendent or MOE before taking matters into their own hands so as not to break the law unknowingly. By knowing where they stood in law, principals would be able to weigh up the legal requirements against the educational requirements of educating and moulding students when making any decisions that would have a significant impact on the students.

6.5.3 Knowledge of areas of law perceived to be needed by school principals

Interview Question 1: As a principal, what do you perceive are the areas of law that affect school administration?

Four of the principals (R1, R4, R5, R6) were of the view that contract law and financial management of school funds play an important role in school administration. One of the reasons cited was the greater autonomy given to school principals. With increased autonomy, these respondents found themselves having to make financial decisions that were previously dealt with by the MOE. They realised that principals not only need to be aware of the basic law of contract, such as procurement and enforceability, but they also need to be knowledgeable of the law and regulations regarding the spending of public funds.

⁸⁹ It is an offence under the *Films Act (Cap. 10, 1981)* to possess an obscene film, but it is not an offence stipulated under the *Criminal Procedure Code (Cap. 68, 1955)*, which a member of the public, who has knowledge of the same, is legally required to report.

One principal (R1) saw the importance of copyright law in school administration. She felt in particular the importance of knowing about intellectual property rights, i.e., ownership of invention produced by teachers or students.

Two of the principals (R1, R2) felt that as parents and other stakeholders become more aware of their rights, schools would be involved in litigation at some stage. As parents express their rights more vocally and aggressively, the principals found themselves experiencing more harassment from parents. These principals wanted to know their rights and boundaries as far as the law is concerned.

Two of the principals (R3, R5) felt that as schools are part of the larger community, schools would have to deal increasingly with issues relating to children and their families. By this, they meant custody disputes which take place in schools and which principals must deal with in an appropriate manner. Related to this is the issue of confidentiality. R3 noted that teachers sometimes unwittingly release confidential information of their students to non-custodial parents, guardians or even to private agencies. In a more serious situation, a student might even be allowed to leave the school with a non-custodial parent or guardian. The respondents felt that as schools grapple with family issues that inevitably make their way into the schools, they have to be familiar with the law relating to family and children.

All the respondents recognised the need to be knowledgeable about safety issues and this included monitoring the use of corporal punishment and avoiding accidents caused by the negligence of teachers.

One principal (R5) made an interesting observation that parents are now more likely to complain of teacher incompetence, i.e., educational negligence⁹⁰.

Although it is unlikely for the Singapore courts to accept claims of educational negligence due to the difficulty in establishing a causal link between the breach of duty of care and the harm suffered, this principal's observation was still relevant in the present climate. This is because, by having awareness that negligence can possibly extend to non-physical injury, principals could encourage teachers to aspire for the high professional standard that parents have come to expect of them.

Interview Question 2: In your view, do you think there is a need for principals to have knowledge of areas of law that affect their principalship? Why?

All the respondents agreed that there was a need for principals to have knowledge of areas of law that affected their principalship, with five respondents indicating that some broad knowledge of legal issues would be beneficial. The other respondent (R2) felt that an awareness of legal issues that might arise in schools would suffice.

The respondents gave varying reasons for principals to have knowledge of areas of law affecting their principalship. They were as follows:

- a. Principals are given more autonomy, thus they can no longer rely on MOE to deal with all contractual and financial matters (R5).
- b. Principals need to be proactive to protect teachers and themselves from liability (R1, R4).

⁹⁰ In earlier chapters, we made reference to the recent English case of *Phelps v. London Borough of Hillingdon, Anderton (2000) (Phelps)* which saw the courts recognising liability for teachers or educational psychologists who are entrusted with diagnosing, assessing and treating students with special needs.

- c. Principals need to know their rights and obligations, especially in a culture where parents are more inclined to threaten legal suits (R2, R6).
- d. Knowledge of school law can help principals to pre-empt issues and know the correct courses of action when incidents do occur (R2, R4, R6).
- e. Some legal issues faced by the schools are common sense issues but unfortunately, not everyone has common sense. As such, principals must be educated on these issues (R3).

Interview Question 3: In your view, are there any major areas of concern relating to school law that you think are likely to emerge in Singapore? If so, what are they?

All the respondents were of the view that there are major areas of concern relating to school law that would likely emerge in Singapore.

The perceived areas of concern were:

Relationship with parents. Three of the respondents (R2, R5, R6) said that more and more parents expect a high standard of professionalism among educators.

They would not hesitate to challenge decisions made by the principal or to use the law to push their case. This was especially so when parents thought that their child had been unfairly treated (for example, a decision to expel or suspend a student), or had been hurt by a teacher or by another child.

Relationship with external vendors. One respondent (R5) said that this would be an emerging area of law because of the government's call for innovation and entrepreneurship. Schools would have to negotiate deals with the private sector and vice versa without infringing on civil service norms and rules.

Intellectual property rights. Two of the respondents (R4, R5) saw intellectual property rights emerging as teachers and students got involved in inventions such as board games, movie videos and music CDs. It would not just be copyright issues but would extend to trade marks and patents.

Safety of children. Three of the respondents (R1, R2, R6) regarded the safety of children as an emerging issue. They said that parents would challenge inappropriate corporal punishment and question the school if their children were hurt for whatever reasons. Teachers could also be accused of verbally abusing their students by shouting at them.

Related to safety is the issue of “Boy-girl-relationship” (“BGR”). One respondent (R3) was of the view that since teachers act *in loco parentis*, the school has a duty to advise and counsel students who are involved in BGR if the school is aware of such incidents. This is because parents would blame the school for not taking appropriate actions should anything untoward happen to their children because of BGR.

Internet usage and the issue of pornography. One respondent (R3) felt that with the advance of the internet, students now had easy access to pornography or undesirable websites. He was of the view that schools have a duty to monitor internet usage on school computers⁹¹.

⁹¹ None of the respondents expressed any concern over possible misconduct by teachers in this area. Presumably, the number of teachers who indulge in such activities will be small but nevertheless, principals should remind teachers of the exemplary behaviour expected of them and the consequences of misconduct under the Principal's Handbook.

Misdiagnosis. Interestingly, one respondent (R1) mentioned the misdiagnosis of learning difficulties as a possible area that might meet with legal challenge. As mentioned earlier, there is a significant English case (see *Phelps* in Chapter Five on page 141) that recognises the misdiagnosis of learning disability as a valid claim.

Interview Question 5: In your view, are parents and students more knowledgeable about their legal rights and more vocal in expressing them now? If so, how does it impact on your leadership in the school?

All the respondents said that parents and students are more knowledgeable and vocal in expressing their legal rights. However, one respondent (R3) said that this trend is not so evident in students. Three respondents (R1, R2, R5) felt that principals no longer commanded the authority they used to. R4 commented, *“Parents are more likely to challenge the school...principals need accountability and legality”*. All the respondents said that to a certain extent, this trend had impacted their leadership in the school.

To R1 and R5, principals were now seen as servant leaders and partners with parents. One might ask how this fits in with the need for principals to have legal literacy. As mentioned in Chapter One, education can now be seen to be more of a form of service, and schools will need to be more conscious of and responsive to the clients' needs and expectations (in this instance, the parents' and students' needs). This may lead to a demand for a higher level of professionalism, and professionalism will demand that principals have knowledge of specialised areas (including the area of law) that school administration may encounter.

R4 and R6 agreed that principals had to be mindful of accountability and legality. This is because schools are seen as “individuals” rather than as part of the government machinery. Therefore, as correctly pointed out by R3, principals have to be ahead of parents in terms of legal knowledge and be more cautious in handling matters. One way to deal with accountability, in the views of R1, R2, R4, and R5, is for principals to explain and rationalise decisions to parents and students to make them understand why certain things are done. R2 gave an example of a case where a principal refused to grant permission for a student to travel overseas during term time to participate in a competition. The student’s parents appealed to the principal to reconsider but he refused. They then appealed to MOE, but MOE decided not to interfere with the principal’s decision. Next, they appealed to their Member of Parliament, who did not reply, and as a last resort, they appealed to the Minister of Education. The Minister advised the principal to agree to the parents’ request. This example supports the view that parents are distinctly unwilling to take No for an answer and to pursue whatever means they see fit to get their way. In the words of R1, “*there must be a change in my style of leadership and taking (sic) parents as our partners*”.

Interview Question 6: In what ways do you find the establishment of the legal department in the Ministry of Education useful to you in the performance of your job as a principal?

All the respondents found it extremely useful to have a legal department in the MOE, as they could now have easier and quicker access to legal advice whenever they faced legal difficulties. R3 (retired principal) recalled the red tape he used to go through in the past in order to obtain advice from the

Attorney General's chambers. With the setting up of a legal department in the MOE, R3 said he would expect the procedures to be simpler.

Two questions remain: first, the frequency of contact the principals have with the legal department since its inception, and, second, the familiarity of the principals with the procedures and protocols when seeking legal advice. This may provide the basis of a separate study.

Interview Question 9: What is your view on "shared responsibilities", i.e. is it necessary for teachers and HODs to have knowledge of school law? Why?

All the respondents agreed that teachers and HODs should have knowledge of areas of law affecting school administration. R6 qualified his response by saying that teachers should be given only a little knowledge of school law, because the more they know, the more they will be frightened into doing less for their students for fear of legal suits. R4 (one of the ex-superintendents) on the other hand felt that teachers should be taught school law at pre-service stage, because if an accident were to happen due to ignorance, it would not be a defence in law to say "we do not want to frighten them into doing nothing".

The respondents gave various reasons for their answers and they can be summarised as follows:

- a. The organisation is such that when the principal is away, the Vice-Principals and the HODs have to run the school (R2).

- b. HODs are the first point of contact when incidents and disputes occur. They need to know what stance to take and what the parents' rights are (R5).
- c. Knowledge of certain areas of law will help teachers and administrators know what is or is not acceptable behaviour. This will protect them from investigation should anything untoward happen (R4).
- d. Principals and teachers should be proactive rather than reactive where issues that have legal implications are concerned (R4, R5).
- e. The whole staff should have knowledge of certain areas of law, as they deal with students on a daily basis. The more they know, the more they will care for their students. They also need to know the legal implications of a lack of a system or structure to ensure that the school is a safe and secure place for the children. An understanding of these implications will help staff to understand why supervision duties are in place and to help them to deal with difficult situations (R1, R6).
- f. Although accountability ultimately lies with the principal, teachers act in loco parentis and thus must know the law in this regard (R3, R6).

Interview Question 10: Many teachers and principals are of the view that schools should be given some form of help in avoiding "legal trouble". In your view, what forms of help should be given?

All the respondents mentioned "education". Education here can take the form of workshops, seminars, talks, pre-service and in-service training and issuing circulars. One respondent (R3) said that such workshops and seminars should be conducted periodically, as educators need to be constantly reminded of the important areas of law impacting schools. Three of the respondents (R1, R4, R5)

suggested the use of case studies (i.e. real cases) on various areas of law to aid understanding.

R1, R2, R6 suggested setting up a “legal helpdesk”. R1 and R6 were the respondents who were not aware of the establishment of the legal department in MOE. R2 was suggesting a system where principals can ring up the legal department directly rather than having to go through their superintendents, which was the current protocol.

5.3.8 Interview Question 11: If you were to attend a workshop on school law, what are the topics you would like to see covered?

The topics the respondents would like to see covered in a workshop were:

- a. Contract law
- b. Family law
- c. Law relating to children - juvenile law, rights of the child
- d. Offences and practices that can be seen or interpreted as criminal offences
- e. Strategies that would prevent the school, principal or teachers from being sued
- f. Safety issues (e.g. corporal punishment, negligence)
- g. Copyright law
- h. Two of the respondents (R4, R6) said, “All the issues mentioned in the interview.”

This list of topics covers most of the issues that the principals mentioned in the questionnaire and interviews. While all the topics are relevant to school administration, the most important arguably is item (e), which will lead to

preventive legal risk management practices. By implementing school policies that prevent and manage legal risks, principals would invariably examine all the other topics, although different aspects of the law would receive different degree of emphasis.

Two topics that were not mentioned were confidentiality and legislation governing the education service. As schools are the main keepers of student records, many interested groups and agencies will look to them for information relating to students. Principals should therefore be aware of when they can or cannot release such information so that they do not breach the common law of confidentiality. As for legislation, principals should be reminded of the rules and regulations that govern the running schools, most of which are set out in the Principal's Handbook. Principals should also be familiar with the legal implications and disciplinary proceedings resulting from the breach such rules.

Conclusion

The findings from the pilot study suggest that the development of legal issues affecting schools in Singapore is a growing concern for the administration and management of Singapore schools, although more research may need to be conducted to confirm this. Principals in this study not only found themselves dealing with more and more specialist concerns, such as financial, contractual and family matters, but they also found that a higher level of accountability was being demanded of them. This could be due partly to society's changing expectations and partly to the MOE's move towards granting greater autonomy (decision-making powers) and responsibility to the principals. From this pilot study, it is observed that regardless of years of experience as a principal, all the respondents had

brushes with areas of law that affect school administration. Whether it was R1 (the youngest principal) or R3 (the retired principal), the general consensus was that the introduction of “Schools and the Law” to school administrators was a very welcome and important move. The following comment from R4 sums up this view:

Decisions are coming closer to the ground. Schools are to be more proactive in decision-making. The school principal may go beyond boundaries. More risk taking will mean that principals may fall foul of the law. The Instruction Manual may not handle every issue that may arise in school.

Indeed, although all public officers are expected to refer to the government’s Instruction Manual whenever they need guidance, the Manual may not have the solution to every issue that arises in schools. For employees of aided schools, the need for legal literacy is even greater, as they are not government officers and the Instruction Manuals have no bearing on them⁹². The principals in this study (especially R1, who was heading an aided school) were therefore eager to gain professional knowledge of areas of law that affected them, so that they could better carry out “legal management” in the school. In fact, all the principals felt that “legal management” was a shared responsibility, in that all the staff should have knowledge of school law. However, given the different levels of responsibility in a school, the degree of knowledge of law acquired by the staff would necessarily differ, with teachers having at least a basic knowledge of legal concepts, such as the *in loco parentis* principle, and principals having sufficient knowledge of areas of law that affect their professional responsibilities.

⁹² For this reason, government-aided and independent schools do not have access to MOE’s legal department. They have to rely on their own pool of private lawyers for advice.

Opponents of the argument that principals and teachers do need to have legal literacy will claim that the law does not play an active role in Singapore's education system, as there is no significant growth in legislation affecting education, nor have there been many school-related cases that have reached the Singapore courts. However, a lack of legislation and court cases does not mean that schools do not or will not face law suits. In fact, in B381 of the Principal's Handbook, it is stated, "*Accidents in school science laboratories, technical workshops, computer and home economics rooms have at times involved the Government in legal proceedings besides resulting in serious injuries to pupils*". Informal discussions with key personnel in the Attorney General's chambers, MOE's legal department and the Singapore Teachers' Union reveal that cases involving schools do exist. Many of these cases are either heard in chambers, which are not reported, or settled out of court by the Attorney General's Chambers or MOE. It is clear that Singapore should not wait for a marked increase in court cases and legislation affecting education before it looks seriously at schools and the law.

Literature in the field of "Schools and the Law" or "Education and the Law" in other countries (discussed in Chapter Five) tells us that issues are creeping onto the agenda that are very much issues in Singapore education. The common theme of "Safety in Schools" emerged in several countries, and this theme covers issues such as negligence in schools, sexual assaults by teachers and bullying by students. These are similar issues that have surfaced in Singapore, and principals need to know how to deal with them and respond to public reaction.

There may be a view that legal issues in Singapore schools will never grow to the same extent as those other countries, because Singaporeans are apathetic and will not fight their case. Judging from the forum pages of the local newspapers, this can no longer be true. Singaporeans are now more prepared to express their concerns openly and critically, and schooling issues certainly feature prominently in these open forums. Rather than hide under the belief that legal issues affecting Singapore schools will never have the same status as they have in other countries, one should learn from these countries' experiences and see how knowledge of the law can converge with school administration to make schools safer and more secure learning environments for our children. Prevention is better than cure.

This pilot study was conducted with a small group of administrators and thus has not necessarily captured a representative view of principals in government and government-aided schools. Nor was it intended to do so. The intention at this stage of the study was to gain some indication of what the prevailing discourse regarding legal issues might be, and then to use that as a basis for thinking about the development of the study. Similarly, there were just a few case studies included to gauge the principals' knowledge of common law decisions and legislative provisions. The findings showed that all members of the small group shared a perception that the law was assuming an increasingly significant role in schools. Let's suppose their views are shared by many other administrators: if legal issues are expanding in schools, then, are Singapore principals sufficiently prepared to cope with such issues? What are the best strategies for coping with legal issues and responsibilities?

The evidence in this study has identified several legal issues that principals are concerned and involved with in schools, and further research might be carried out to determine the actual extent of involvement of principals with the law, and their degree of preparedness to deal with them. With the findings, recommendations can then be made for principals and policy makers to improve the administration and management of legal matters in schools. By improving strategies to cope with legal issues and responsibilities, legal risks can be minimised, and there is also the possibility that Singapore, with a proactive approach to risk management, may be able to keep the courts relatively free of school-related cases.

The use of interviews in the pilot study enabled the researcher to see the benefit of drawing on the lived experiences of the respondents, and, while the use of questionnaire may have provided some considerable economy of scale, the interview approach yielded rich data that enabled the researcher to gain in-depth insights into the interviewees' points of view. However, the experiences of conducting the interviews reinforced the belief that the right conditions must be established, and that the interviewer has to exercise great patience, giving the interviewee time to co-establish rapport and to set his or her comments in context.

The use of a questionnaire to obtain background information about the respondents was appropriate since it was an efficient way of getting to know the respondents, and it freed up more time for the interviews. The same technique was thus utilised prior to the in-depth interviews.

In the following chapter, data from the in-depth interviews with ten school principals is presented and analysed.

CHAPTER SEVEN

IN-DEPTH INTERVIEWS WITH SCHOOL LEADERS AND THE RESULTS

7.1 Introduction⁹³

This chapter deals with the third Phase of the research, which was the in-depth interviewing of ten principals, to discuss the emerging legal issues internationally and the implications for them as school leaders in Singapore. Before going into the details of the interviews, it is useful to summarise the key items of legislation that form the historical basis of education in Singapore.

Singapore is a small island in a strategic location, but it has no natural resources. In order to survive, Singapore needs foreign capital, technology and markets, and “brainpower” to work within the economic system, and it needs the capacity to access the most lucrative global markets. Education is a crucial concern for Singapore’s leaders in the running of the country because, alongside innovation, education is 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. What are the laws, then, that govern the smooth running of education in Singapore?

The *Education Act (Cap. 51)* was first enacted in 1957. At that time, the ruling party, the People’s Action Party, had just come to power in a united front with the communists to fight British colonialism. Thus, a review of the *Education Act (Cap. 87, 1957)* shows very strict licensing regulations, presumably with the intention of controlling the use of classrooms for communist propaganda. The *Education Act (Cap. 87, 1957)* governs the registers of schools, managers and

⁹³ Some of the material used in this section is part of a chapter submitted for publication in an edited book entitled: “Teacher Rights: International Perspectives”.

teachers, and sets out conditions for teacher registration. Regulations, in the form of subsidiary legislation, are made under the *Education Act (Cap. 87, 1957)* and they regulate issues such as school management, school staff, qualification of teachers, school premises and equipment, playgrounds, lavatories, school health, workshops, laboratories, discipline, money, and school accounts and syllabi. School regulations also prohibit political propaganda in schools and the control of textbooks by any particular group beyond the Ministry of Education. These regulations were enacted in 1958 for political reasons and, therefore, many lawyers are of the view that they no longer represent the present political and education climate, and should be significantly amended.

The most relevant piece of legislation is the *Education (Grant-In-Aid) Regulations, Education Act (Cap. 87, [1957])* which is subsidiary legislation of the Education Act. As mentioned above, this piece of legislation enables the government to render financial aid to non-government registered schools that apply for aid where the conditions stated in the regulations are satisfied. The conditions regulate, *inter alia*, admission policies, curriculum, examinations, school buildings and facilities, and school terms and holidays. To ensure consistency and a good standard of teaching across the nation, the Ministry of Education feels the need to exercise control over teachers. Hence, before these aided schools employ prospective teachers, they are required to obtain the Ministry of Education's approval. This obviously gives considerable control of education to the government, and there is little latitude, even for schools with strong historical ties to particular religious affiliations.

The other significant pieces of subsidiary legislation that have an impact on teachers in Singapore are the *Public Service (Disciplinary Proceedings) Regulations* and the *Public Service Commission (Delegation of Disciplinary Functions) Directions*, under the Articles 110 and 116 of the *Constitution of the Republic of Singapore (1965)*, and the *Education Service Incentive Payment (Connect Plan) Regulations*, under the *Education Service Incentive Payment Act (Cap. 87B, 2002)*. As the titles of the legislation suggest, these regulate the conduct of teachers and provide the legal mechanism for monetary reward to motivate teachers to perform well.

Apart from having a basic knowledge of legislation referred to above, do principals have any legal literacy or understanding of areas of law that impact their job, such as the law of negligence, special needs and educational malpractice that were discussed in Chapter Five? To answer this question and to obtain an indication of school leaders' perspective and understanding of the role of legal issues in education, semi-structured interviews were used.

7.2 The Participants and Conduct of Research

The pilot study in the preceding chapter enabled the researcher to gain a preliminary insight into school leaders' perspective on the research problem. With minor amendments to the interview questions, in-depth interviews were conducted with ten principals to elicit lived experiences and gain a richer picture of the issues in question. In chapter two, it was explained that this research is exploratory, because it addresses issues and problems that are relatively unknown in Singapore. The method of selecting participants was, therefore, not guided by the need for validity, reliability and generalisability of the data received. Rather,

an opportunistic approach was taken, in that principals who took part in the law workshops conducted by the researcher were asked to participate in the interview. Eight principals agreed to participate while another two principals consented to the interview after an email request sent by the researcher. The advantage of this opportunistic approach was that it enabled the researcher to “know *her* audience” (Berg, 2007, p. 131)(italics mine) right from the start of the interview and facilitated the building of rapport between the researcher and the participants. As noted by Janesick (1994) this is an important component of the research, as once trust and rapport was gained at the beginning of the study, the researcher was better able to capture the participants’ genuinely held point of view. The following Table 7.1 provides the profile of the participating school leaders.

**TABLE 7.1 Profile of Participating School Leaders
(Questions 1 to 7 of the Questionnaire)**

Participant	Sex	Length of time in education profession	Classroom Experience	Administration Experience (HOD or senior teacher)	Administration Experience (Vice Principal)	Administration Experience (Principal)	MOE Experience	Type of School as principal	Attended in service workshop on legal issues
1	Female	Over 16 yrs	11 to 15 yrs	Over 6 yrs	Up to 2 yrs	3 to 5 yrs	Nil	Govt (primary)	Yes, 1 day
2	Male	Over 16 yrs	11 to 15 yrs	Over 6 yrs	Nil	3 to 5 yrs	6 to 10 yrs	Govt-aided (secondary)	Yes, 1 day
3	Female	11 to 15 years	6 to 10 yrs	Up to 2 yrs	Up to 2 yrs	Up to 2 yrs	Up to 2 yrs	Govt (primary)	Yes, 1 day
4	Male	Over 16 yrs	11 to 15 yrs	3 to 5 yrs	3 to 5 yrs	Over 11 yrs	Nil	Govt/govt-aided (secondary)	Yes, ½ day
5	Male	Over 16 yrs	6 to 10 yrs	3 to 5 yrs	3 to 5 yrs	3 to 5 yrs	Up to 2 yrs	Govt (secondary)	Yes, ½ day
6	Female	Over 16 yrs	6 to 10 yrs	3 to 5 yrs	Up to 2 yrs	6 to 10 yrs	3 to 5 yrs	Govt (secondary)	Yes, 1 day
7	Male	Over 16 yrs	3 to 5 yrs	Up to 2 yrs	Up to 2 yrs	Over 11 yrs	Nil	Govt-aided (primary/secondary)	Yes, ½ day
8	Male	Over 16 yrs	11 to 15 yrs	Over 6 yrs	Up to 2 yrs	Up to 2 yrs	Up to 2 yrs	Govt (primary)	No
9	Female	Over 16 yrs	Over 16 yrs	3 to 5 yrs	Up to 2 yrs	3 to 5 yrs	Nil	Govt (primary)	Yes, 2 days
10	Male	Over 16 yrs	6 to 10 yrs	Up to 2 yrs	Up to 2 yrs	6 to 10 yrs	Up to 2 yrs	Govt-aided (secondary/Junior College)	Yes, ½ day

The interviews were between 60 to 90 minutes in length and were tape-recorded. The meetings were scheduled with each participant in their respective schools, except for Participant 5, who was seconded to the Ministry of Education at the time of the research. The interview with Participant 5 took place in the canteen of the Ministry of Education. At the meetings, a short questionnaire was administered prior to the interviews to obtain the profile of the participants and some preliminary views of education and the law. All interviews were completed over a two-month period.

7.3 The Questionnaire and Interview Questions

The categories of questions utilised at this stage are aptly described by Berg, 2007, as essential questions, extra questions, throw-away questions, and probing questions. “Essential questions”, as the term suggests, are questions that are central to the focus of the study. “Extra questions” are included to test the reliability of responses to the “essential questions”. “Throw-away questions” are those that are included in the questionnaire to develop rapport between the researcher and the participants, and if necessary, to use to draw out complete stories from the respondents. Finally, “probing questions” are used throughout the interview to elicit additional information and more complete stories from the participants (Berg, 2007, pp. 75-76).

“Essential questions” were formulated by re-phrasing the interview questions in the pilot study to capture the essence of the research, that is, how the emerging legal issues internationally can have an impact on, or implications for, school leaders. Questions 7 and 8 of the pilot study (see appendix 2B) were therefore removed, as the purpose of the study was not to ascertain the legal knowledge held by principals. “Extra questions”, for example, “Education law is of emerging relevance to schools in Singapore - Agree/Disagree” were placed in the questionnaire to test the reliability of the “essential questions” of the interview. “Throw-away questions”

were placed in the questionnaire to gather personal data of the participants and to elicit little anecdotes that may have been invaluable in analysing the data. The interview questions were worded to motivate the participants to “communicate clearly (his) attitudes and opinions” (Denzin, 1970, p.129, parentheses mine). Probing questions were also used throughout the interview to draw responses that fitted the broad contents of the investigation. For example, phrases like, “In your view...”, “Do you think...”, “How has..., if so, in what way...” were used to elicit complete and honest stories from the participants. Overall, the questions were designed to make the participants feel at ease in discussing the emerging trend of “education and the law”, and that they were in fact working with the researcher to explore this whole area.

A semi-structured interview format was applied. Although predetermined questions were asked, the advice of Berg (2007, p.95) was noted to allow the researcher “freedom to digress” and to “probe far beyond the answers to their prepared standardized questions”. It can be seen in the profile of the participants that the minimum period of experience in the education profession is 15 years. The use of semi-structured questions thus allowed the researcher to adjust the language during the interview process in order to draw out the experiences of participants and enrich the delivery of their perspectives.

7.4 Interview Transcripts and the Analytical Procedures

The analysis of the interview data was both interesting and difficult. It was interesting because of stories or anecdotes told. It was difficult because it involved the transcribing and organising of a large amount of complex data. Although qualitative software packages such as Computer-Assisted Qualitative Data Analysis Software (CAQDAS) and Non-numerical Unstructured Data Indexing Searching and

Theorizing (NUD*IST), among others, were available, the researcher preferred “hand analysis” (Creswell, 2005, p. 234) and was successfully able to manage the data extent and complexity in this way.

Morse (1994) commented that the process of data analysis has been fairly poorly described, but Dey (1993) notes that qualitative analysis “requires the analyst to create or adapt concepts relevant to the data rather than to apply a set of pre-established rules” (p. 58). Berg (2007) argues that the process of data analysis “is also the most creative” (p. 133), and thus impossible to describe a general or universal set procedure. In fact, Creswell (2005, p. 232) describes this process as an “eclectic” one and the final outcome “unique for each inquirer” (Patton, 2002, p. 432).

So, to begin the analysis, the researcher transcribed all the interviews personally into written text. In doing so, the researcher was able to get an initial sense of the issues arising from the data. It also provided, as Patton (2002) correctly pointed out, “the opportunity to get immersed in the data” which generated “emergent insights” (p. 441). Then, to ensure that the qualitative data analysis in the research was rigorous, a close reading of the data was carried out over several days.

7.5 Close Reading of the Data

As stated by Merriam (1998, p.7), the data of qualitative research is “mediated” through a “human instrument”, since the researcher is the primary instrument for data collection and analysis. This being the case, Schmidt (2000) rightly commented that it is unavoidable to conduct “an exact and repeated reading of individual interview transcripts” (p. 254) to prevent the researcher from impulsively relating

text passages to the researcher's questions and, in the process, overlooking passages that may have connection to the research questions.

However, a close reading of the whole data in a relatively "unmediated" way, draws the researcher's attention to the participants' answers to questions 9, 13, 14 and 15 of the Questionnaire (see Appendix 3A), which gives an overall view of the participants' perspective on the emerging relevance of legal issues in the education sector. These questions are also "extra questions" which may be used later to check the reliability of responses of the interview questions. Table 7.2 below summarises the participants' response to the said questions. From the table, there is consensus that the participants have seen an increase in the influence of law in school policies and that dealing with legal matters caused stress, and, in this respect, more so than in previous years.

TABLE 7.2
Response to Questions 9, 13, 14 and 15 of the Questionnaire

Participant	Saw increase in influence of law in school policies	Legal matters caused more stress	Legal matters more stressful than previous years	Legal matters caused stress more than other administration matters	Education law of emerging relevance	Awareness of Singapore's position regarding the CRC
1	Yes	Yes	Yes	No	Agree	Yes
2	Yes	Yes	Yes	Yes	Agree	Yes
3	Yes	Yes	Yes	No	Agree	No
4	Yes	Yes	Yes	No	Agree	Vaguely
5	Yes	Yes	Yes	Yes	Agree	No
6	Yes	Yes	Yes	Yes	Agree	Yes
7	Yes	Yes	Yes	No	Agree	Yes
8	Yes	Yes	Yes	Yes	Agree	No
9	Yes	Yes	Yes	Yes	Agree	No
10	Yes	Yes	Yes	No	Agree	No

During the close reading of the data, notes were made of topics that occurred and related broadly to the context of the research questions. In the following pages, the

participants' responses to the interview questions in Appendix 3B are presented and analysed. The challenge to the researcher is in identifying patterns and relationships in the data and then weaving the information into a coherent narrative, that is, presenting the analysis in a cogent manner, which shows an overall pattern for each of the research questions. To do this, the research adopts the style of using "rich thick descriptions" (Merriam, 2002, p. 15; Patton, 2002) and examining themes that emerge during the data analysis (Creswell, 2005).

7.6 Research Question 1:

What roles do globalisation and the *United Nations Convention on the Rights of the Child (1989)* ("CRC") play in the area of rights and education in Singapore?

This question deals with two aspects. First, whether globalisation has any impact on school leaders in the administration of their schools; and, second, what educators know about the CRC. The aspect on globalisation will be looked at first.

In Chapter Three, the effect of globalisation on rights and education in Singapore generally was discussed. While no specific question was asked about globalisation during the interview, the researcher was able to draw out the theme "Changing World" from the responses to some of the interview questions.

7.6.1 *Globalisation - Theme: Changing World*

Four points of view about globalisation emerged from the data. First, it was observed that parents and students are more knowledgeable and vocal in expressing their concerns and rights, and globalisation is attributed as an important factor. Second, because parents and students are more knowledgeable and vocal, there needs to be a change in the style of leadership. Third, as society opens up, there will be an

increase in cases involving sexual misconduct between students and students, or between teachers and students. Finally, globalisation will affect the policy making process both at the Ministry of Education level and the school level.

A table (Table 7.3) is used to present statements made by the participants pertaining to the four points of view above. Where identical statements are made, they have not been included. The “P” in the table refers to “Participants”. All the statements reproduced in this chapter are verbatim and the use of “Singlish” such as “lah” and “aiyah” was retained in order to maintain the texture and authenticity of the responses.

TABLE 7.3
Globalisation - Theme: Changing World

The Four Points of View	P	Examples of Statements About the “Changing World”
Parents and students are more knowledgeable and vocal	1	They seem to make a reference to what’s in the media...The world is changing. You know we’ve always been told how it’s going to be different, you have to equip your child with this, with that, you have to be providing your child with the best opportunity. So parents are reacting, or parents are concerned lah, naturally, and therefore they voice it more often. So, in the past if we hear of our child not really learning very much because the teacher was so called lousy, we probably, aiyah, you know and then we try to support our child in different ways. We are not so quick to go to the principal to say this, but now it’s so easy, you get a phone call, you get a letter.
	2	Things have changed and they are changing quite rapidly. Parents are a lot more knowledgeable about their rights and they are also a lot more protective of their children.
	7	The other aspect is mass media - influence of the mass media. And also a lot of examples from oversea (<i>sic</i>). Parents travel a lot. They get to know all about this. Singaporeans travel tremendously a lot these days. Knowledge, knowing about the legal dimension.

	10	These are people who have got really permeable communication flows from themselves as young as they can remember, not just to their friends but to authorities, to people in other countries. You know a young person in RJC can write to a Minister in Singapore, can write to Kofi Annan, I mean, that kind of permeability that was not available one generation, not even one generation, 10 years ago, so this is the group of people who have grown up with this kind of a background, environment, and therefore they feel necessary to communicate things, to find channels and platforms to surface things that are a concern to them.
Leadership	2	I think we must reflect and review our practices and see whether some of these are outdated. They may have been fine. I always hear people say and I...I say this sometimes myself. "In the old days, when I was a kid this was done", but things are different, you know, the environment is not the same, the context has changed, laws have changed. So how can we keep citing the past and how it used to be and therefore use that to justify our actions? I think that is not right.
	4	People have become more knowledgeable through so many, so many media - TV, newspapers, radio, computers, internet, then also the network and email among each other, it's so convenient now. In the past, it was a bit of a hassle. Apart from the telephone, you don't really get the opportunity to be able to communicate very fast, now you can...Students are not stupid anymore. You cannot treat them as ignorant and anonymous and handle them like they are.
	5	You cannot run the school, you know, without getting feedback from them, without even sensing what they want and what they don't want, then you will have a lot of problems.
Sexual Misconduct	2	With the internet, with growing pornography, you know, sexual values, norms may change or shift and er...I have dealt with some cases. I think increasingly, we must be more careful.
	5	Cases involving sexual assault, molestation and all this...some of these things, it may happen because now we

		have globalisation, our IT is so advanced, you know. So, I will think that nowadays the students are more open, and they may get into trouble like this, i.e. students and students, and also possibility of teacher and students.
Policy making	4	I think people are more knowledgeable now. There are a lot of policies that come down from the Ministry. In the past, policies were less disseminated among the school, among the staff, now it's more, so it becomes a duty for us to make sure that we keep in touch.
	6	Trying to grow Singapore's profile internationally... On paper, it looked like we have problem. I actually read the entire Act, but we realise we had problems like that there was no compulsory education, so there were possible loopholes that other nations can use to "poke" at Singapore.

7.6.2 Globalisation - Summary of Findings

The participants seem to be in consensus that Singapore society is changing in that there is an increase in awareness, if not knowledge, about issues - including legal issues - that affect children's education. This awareness translates into a need for school leaders to have more knowledge about the legal dimension of running a school. There is even a suggestion that parents will come to expect professionalism in terms of delivery of curriculum. The very notion of "educational negligence" or "educational malpractice" as discussed in Chapter Five⁹⁴ is brought to the fore.

P1: In the past if we hear of our child not really learning very much because the teacher was so called lousy, we probably, aiyah, you know and then we try to support our child in different ways.

One participant categorically said,

P4: At least teachers are viewed as professionals now...In the past, it was not so, teacher is what? - You are ONLY a teacher.

And another participant commented,

⁹⁴ See Chapter Five, page 124

P8: Increasingly we have parents that are better educated and I think my guess is that they will understand and know their legal rights better, especially where it comes to how we teach the child...it may come to that where the parents get agitated about not looking into special needs and poor teaching.

As a consequence of societal change, school leaders are forced to rethink the way they run the school. Parents and students are increasingly treated as “consumers”, where previous practices have to be revealed and feedback from the stakeholders is considered necessary and valuable. The unanimous view of the participants in this regard is summed up in the words of P5:

P5: You cannot run the school, you know, without getting feedback from them, without even sensing what they want and what they don't want, then you will have a lot of problems...sometimes good ideas can come from them, you know...and I think the climate and the culture of the school and the class will be good.

Being educated in the old system, and some having been school leaders for several years, the participants noticed a fundamental shift in the area of “free speech” in schools. There was a recognition that school leadership must shift from an authoritarian to a consultative style. Gone are the days where students listen passively in class and simply follow step-by-step instructions. P4 commented that those who do not accept this fundamental shift will likely see freedom of speech as a threat to their position and authority:

P4: There is a potential loss of authority. There is a potential loss of control.

The next point of view concerning globalisation that emerged from the interviews was that the permeability of communications, by various means, will lead to an increase of incidents involving sexual misconduct by students and teachers. It will

not be surprising that the experience of P7, when he worked in Australia several years ago, is actually happening in Singapore:

P7: In fact when I was in Australia, this is in Lismore. Lismore is upnorth of Sydney, still in NSW. This an “A” level student, teacher fall in love with him. He’s only 17-18 only. Finally they got married. Acceptable? And then the teacher teaching in school, the boy is a student in the school, but not teaching the same class lah. I don’t know how they manage the situation. I find it really weird. I find it really weird.

Finally, globalisation affects policy decisions. Having worked in the policy wing of the Ministry of Education, P6 gave some insight into the influence of international policies on education policies in Singapore. At the school level, P8 recounted to the researcher a policy that the school adopted which was scrutinised by parents with a fine-tooth comb. It concerned a dismissal policy on a wet day and certain ambiguity was pointed out by the parents. P8 concluded from the incident that parents are indeed more knowledgeable and vocal, unlike in the past, and even simple acts like drafting a letter, let alone policy-making, must be carefully executed:

P8: So they read, they read things given out to them, and letters that we give out to parents, I read with extra care because sometimes you don’t know how and when it comes back to you.

7.6.3 CRC

The participants were asked specifically what they knew about the CRC. Table 7.2 above showed that of the ten participants, only four had knowledge of it, while one knew only vaguely. The other five participants had no knowledge of the CRC at all. The CRC has 54 articles but 4 general principles can be drawn from them. They are:

1. No discrimination of children based on, *inter alia*, race, colour, sex, language, religion, and disability.

2. To give children a right to survival and development in all aspects of their lives, including physical, emotional, psychological, cognitive, social and cultural dimension.
3. The best interests of the child must be a primary consideration in all decisions and actions affecting the child.
4. Children should be allowed to express their opinions, especially in matters concerning themselves.

Unlike the issue of globalisation, the first general principle of the CRC on discrimination was not mentioned throughout the interviews. This can be attributed to the fact that there is no anti-discrimination legislation in Singapore. Although the question of discrimination *per se* was not referred to, the issue of special needs was discussed during the interviews. It was mentioned in Chapter Three that Singapore adopts an inclusive policy when it comes to special needs. One participant, P9, strongly felt that more needed to be done for special needs children in terms of placement and testing. However, there was no inference of society discriminating against them. This is what P9 said:

P9: I would like them, if they are assessed for them to be transferred to a special school as soon as possible, but from my experience, all these years in a primary school, it takes a long time, a very long time. I have children who have been assessed and five years' down the road, they are still with me.

The other participants, on the other hand, were satisfied with the progress the government is making in building more special needs schools and improving training.

For example:

P3: I think there is very positive direction, not only the Ministry but the nation at large, is going forward... I think as a nation at large, we probably have got to prioritise...overnight we just can't have everyone ready and skilled you see, but it's definitely a very encouraging sign because support is already rolling out.

Plans have already been done for recruitment and um...training and all that stuff.

P7: But now the government is building more special needs schools. If in the law, then they are supposed to go to these schools. If not, they cannot demand.

When asked why he thought parents in Singapore will not take any issue against schools or the government for not providing sufficient special needs facilities, P4 went so far as to say this:

P4: I think it is our Asian culture. We accept authority, we accept that the government will take care of it, especially our government which is viewed to be very caring and people centred. So if they have not been able to provide, that's because they have not been able to yet. So, we wait lah.

As regards the second general principle of the CRC, although only half of the participants knew about the CRC, all them were in agreement that the safety of the children in their schools is paramount. While physical safety is foremost in their minds, three participants (P1, P3 and P7) alluded to the overall development of the children. For example, P3 said:

P3: Care and safety. Care in all sense of the word holistically lah, physically, psychologically, emotionally, socially and all that stuff.

Interestingly, P3 was one of the participants who had no knowledge of the CRC.

The third general principle referred to making decisions affecting children by giving primary consideration to the children's best interests. The participants who referred to this aspect in their administration of the school had this to say:

P5: One of the guiding principles which we have crafted is - "students come first", you see. That is the first of the guiding principle.

P7: The best interest of the child is the most important, whatever we do, no one can fault you on that.

P9: My student must come first, alright, and then my teachers, my staff. We must ensure things like safety, their safety (secure), their rights are looked into.

P10: A principal is to take the best interest of the students in line with your core purpose. Don't need the CRC to know that.

Apart from P7, the other three participants, P5, P9 and P10 indicated that they had no knowledge of the CRC.

The final general principle stipulates that children should be allowed to express their opinions. All ten participants were of the view that freedom of expression in schools is necessary, as it is one of the explicit "desired outcomes of education." They felt that the ability to express oneself is a life skill that should be developed and taught from young. But while there was consensus amongst the participants on the need to allow children to freely express themselves, five of the participants qualified that view with an expectation of respect for authority and the community. These are examples of what the participants said:

P7: Freedom must come with responsibility - children must be aware that what they say affects others...what you say must be constructive, not so much that it's anarchy or lead to destruction of society or community...freedom with self-respect and respect for others. That's important.

P9: Basically, we will like our children to express themselves because actually it is one of the outcomes of primary education, that children should think and express themselves. BUT we will say that they must make sure that they do it in a respectful way. That is important to us.

7.6.4 CRC - Summary of Findings

Participants who were aware of the CRC mentioned a brochure that was prepared and highlighted to principals during meetings with the Ministry of Education. But, as pointed out by P6, most principals would have given a mere cursory glance at the document and,

P6: It was like in passing, so people without background, I think will not understand.

P7, another participant who was aware of the CRC said:

P7: There are booklets on the CRC but not enough. I think as part of training - teachers in training should be taught this, they should know the rights of every child, legally speaking as such.

Whether or not the participants had knowledge of, or were aware of, the CRC, the general principles in the Charter appear to have a role to play in at least complementing or enhancing the school leaders' philosophy in educating a child, but arguably more should be done to bring it to the attention of educators.

7.7 Research Question 2:

What are the legal issues in other countries (particularly commonwealth countries) such as England, Canada, Australia, New Zealand and the USA, arising mainly from tort liability litigation, which have the potential to impact upon the responsibilities of Singaporean educators?

In Chapter Five, an overview of the areas of law in education from England, Canada, Australia, New Zealand, the USA and South Africa was set out. The areas include student records, students with disabilities, bullying, compulsory education, student injuries, corporal punishment, suspension and expulsion, child abuse, educational malpractice and sexual misconduct. Most of these topics were explored during the interviews, but this section will begin with the topics that were only briefly mentioned.

It was noted in Chapter Three that Singapore does not have any general laws on privacy⁹⁵. As such, issues like “students records” are strictly regulated by government policies. These policies are not accessible to the researcher, so when formulating the interview questions, this topic was omitted, as it was felt that there was little scope for discussion. Compulsory education and child abuse were referred to when considering the participants’ knowledge about the CRC. It was noted at the beginning of this chapter and in Chapter Three that Singapore society demands a strong need for education and “in practice virtually all children in the country attend primary school”⁹⁶. Thus, apart from an acknowledgement from the participants there is now compulsory education, it was felt that there was no need to explore this area further.

The topic on child abuse is an important one and most of the participants recognised that the CRC would encompass some principles on that. However, in Singapore, there is no legal requirement for teachers to report suspected cases of child abuse. School leaders and teachers are simply given general guidelines on reporting suspected child abuse⁹⁷. Nevertheless, two participants expressed their concern about this issue and recognise the need for them to be proactive in protecting their students from abuse:

P4: I think we have a legal duty to protect a child against abuses.

P8: I think at the school level, I have to check that my pupils are... not all homes are fine. So in school, I have to look out for children who are abused, and inform the due authorities like MCYS.

Because of its importance, this topic is one that warrants separate, independent study. The topic was not discussed in detail when exploring this particular research question.

⁹⁵ Chapter Three, page 52

⁹⁶ Chapter Three, page 45

⁹⁷ see Chapter Three, page 48

The interview question for Research Question 2 sought the participants' views on the trends in "education law" in other countries, other than student records, compulsory education and child abuse, as to whether similar issues had arisen in Singapore and the implications they had for the participants. Tables are used to present the statements made by the participants, followed by a summary of the findings. The "P" in each table refers to "Participants".

7.7.1 Students with Disabilities

TABLE 7.4
Research Question 2: Students with Disabilities

P	Statements about Students with Disabilities
1	There is a louder voice on things like special needs.
2	I think increasingly, we are seeing that in Singapore as well.
3	I think there is very positive direction, not only the Ministry by the nation at large, is going forward, that's why a lot of funding,...training and attention is given to two particular areas of needs at the moment, because there are so many unique kinds of needs, I think as a nation at large, we probably have got to prioritise lah, based on...the population who need those kind of support. I think at the moment, we are going towards er...as a priority first - dyslexic support, as well as autistic spectrum...overnight, we just can't have everyone ready and skilled.
4	Suing? Not in Singapore. Perhaps in the States and in the UK. I think it is our Asian culture. We accept authority, we accept that the government will take care of it, especially our government which is viewed to be very caring and people centred. So if they have not been able to provide, that's because they have not been able to yet. So, we wait lah!
5	Now at the moment, most of the pupils with special needs, when we talk about physical special needs, we have special schools and they are specially trained. There are only a few of them in the mainstream school, some may have one, some may have two, some even three. And because of the small number in the mainstream school, the school can still handle it. In fact, they become almost like the spot light, every student go and help them. So I don't think it's a problem you see.
6	Special needs - no legal action threatened. We have special needs but in terms of they ask us and we are always willing to help. A girl with diabetes, type 1 who needs to inject herself, so the mother came and asked whether the school could provide a

	place for her to inject herself.
7	They cannot sue in the sense that for a start, there is special school to go to. Why don't they? First of all, there is no law on inclusion here you know...they cannot demand.
8	I think no one gets sued for not looking into a special needs child, I've not heard anyone, though I think there is an increasing number of parents who feel that a child with special needs should be in a mainstream school. That I've come across. But none have said that they will sue the school for not providing the special needs education.
9	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 (<i>laughter</i>). As a principal, we have special needs children in our mainstream, and these children are actually very difficult to handle because number 1, teachers, and including myself, they are not actually trained to handle them, alright, how to teach them also, they are not trained, you see, to teach them too. And er..., some of these children actually come with a lot of emotional needs. I would like them, if they are assessed for them to be transferred to a special school as soon as possible, but from my experience, all these years in a primary school, it takes a long time, a very long time. I have children who have been assessed and five years' down the road, they are still with me.
10	I think most Singapore schools take care of special needs very well, whether it's the upper end or physical needs or the lower end. I think especially now in this season in education where we are doing a lot more customising. I think we are taking care of it much better than in the past. I was in Whitney Young High School in the US, and I was surprised, I did know that there was a lot of immersion of special needs students in the mainstream, but I didn't realise that there was legislation to actually determine the numbers you take in even and it does have an impact on your manpower and your area of focus.

7.7.2 Students with Disabilities - Summary of Findings

Chapter Five showed legislation being enacted in several jurisdictions ensuring 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 being the main providers of education

for children with disabilities. The results of the interviews on this issue show a general acceptance and satisfaction with the current position. Only P9 explicitly expressed her dissatisfaction with the current position. However, interestingly, her dissatisfaction translated into plain resignation. Her statement,

P9: 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.

actually ended with laughter. It conveys to the researcher an acceptance of the status quo regarding students with disabilities and indirectly confirms the view of P4:

P4: So if they have not been able to provide, that's because they have not been able to yet. So, we wait lah!

Although P4 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. This is the reason he gave:

P4: 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. I mean in Kuo Chuan also there were 2 cases, used to create havoc, because one guy 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 whispers 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.

The overall sense the researcher got from the interviews was that students with disabilities were not a major concern for school leaders in terms of legal liability, but they 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:

P8: I think there is an increasing number of parents who feel that a child with special needs should be in a mainstream school.

The results also show a limited understanding of the term “students with disabilities”. The expression encompasses various special needs and is not limited to providing medication, administering injections or to physical handicap (see statements of P5 and P6 in Table 7.4). There is also a misconception that there are sufficient and affordable facilities provided for students with disabilities, as can be seen in the statements of P5 and P7:

P5: We have special schools and they are specially trained.

P7: They cannot sue in the sense that for a start, there is special school to go to.

Why don't they?

In the introduction to this study (Chapter One), the story of an autistic child was told, who, having waited for many years for a place in the special education school, had to travel 40km just to study for two hours, for a fee of \$200 a month⁹⁸. If such misconceptions exist within the professional education community, one wonders how little the community as a whole knows about students with disabilities.

7.7.3 Bullying

TABLE 7.5
Research Question 2: Bullying

P	Statements about Bullying
1	<i>No statement made on bullying specifically.</i>
2	<i>No statement made on bullying specifically.</i>
3	Um...not in my primary school experience because I was also in a secondary school system when I first started teaching and I had a nice range of schools, from aided school, all boys school, government school of er you know, very...so-called weak profile where the children come from very weak support and therefore the related social problems and all that. I don't see it so loud. Of course, that was some years

⁹⁸ Story taken from *The Straits Times*, 23 October 2006

	back but recent years, even proxy through friends, I don't hear it so loudly, it will be just the minority.
4	<p>There are cases of bullies but we address that very much earlier. Potential bullies would have been hauled up to my office very much earlier or the discipline committee would have had a word with them or even meet up with their parents earlier. Again, proactive intervention. Prevent is better than cure.</p> <p>If you send a child to the school, you would expect at least the school to have some minimum steps to take, er...take some responsibility for my child's welfare and safety. If it comes to a point where the school has not done anything about it, and in the end, my child sustains serious injured, I myself will be up in arms, if I were parent myself.</p>
5	As far as my school is concerned, I don't see much. I don't see a trend. Internet bullying possibly but open bullying, I don't think so.
6	<p>Bullying? No case, no case. Minor fights, skirmishes, I call them. I handle by just calling their parents about this. No, they will never threaten legal cases, they are so embarrassed.</p> <p>Emotional bullying. There are cases on the internet. There are (<i>sic</i>) a lot of sliming each other on the line. So they will say, "I saw you going out with this boy..." It's usually along that kind of lines, it's nothing really about work, nothing about teachers. It's really personal. You know like, "You're a slut, you're a bitch", you know, that kind of stuff, you know. So the girl gets upset, and they get their friends, then it becomes many against one.</p>
7	Take issue against who? I don't see parents taking issue against the school because we have system in place. Normally we take it seriously. They cannot against (<i>sic</i>) the school, maybe against the other parent, lah.
8	Making an issue out of it, yes. For example, I had a case, I think it was last year, where a parent claimed that his son was bullied by five other boys and he wanted me to cane the other five boys for the bullying. Of course the other five boys were no angels, lah. They have had history of so-called bad behaviour, but they have not bullied this boy before. First report, the father insisted that I cane these five boys. Other than that, there was another case where a mother insisted that I cane a child because the boy pushed her son on the basketball court. But they don't threaten to sue.
9	There are very few bullies in the school, and usually bullies, we identify them, we give them counselling and we call in the parents, so more or less, we manage the bullying. Most of the injury is really out of play, you know, especially in a primary school. This just happened yesterday. We had children playing, pushing each other, you know. They start with play, and from play, it goes on to...it escalates into bigger acts, that's where the injury comes in, you know. For example, I play with you, I

10	<p>unintentionally too hard (<i>sic</i>), it hurts you, you get angry, and you push me back harder still. And then they will end up like that.</p> <p>I think very rarely do bullies cause physical injury. I think more subtle, and more insidious and psychological. That's a lot more dangerous and hard to actually deal with. But I think most of the time, they come to the school for us to provide support. Bullying, unlikely to cause a problem unless the principal is so...umm...negligent to the point that he says, "No, it's nothing, it's just a prank or whatever", but I think most principals take this very seriously.</p>
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7.7.4 Bullying - Summary of Findings

The literature review in Chapter Five shows that litigation for bullying mainly arises if a school, having knowledge about the bullying, fails to do anything about it, and as a result, the complainant suffers injury. The interviews indicated a similar perception, in that, litigation should not arise for bullying in schools if the schools are managing the bullying well. The overall attitude of the participants can be summed up in the words of P10:

P10: Bullying, unlikely to cause a problem unless the principal is so...umm...negligent to the point that he says, "No, it's nothing, it's just a prank or whatever", but I think most principals take this very seriously.

The participants seemed to suggest that physical bullying did not pose a problem in Singapore, since it is perceived as a behaviour management problem that should and could be handled by the school. P3 was of the view that the occurrence of bullying depends on the economic and social profile of students in the school; but even so, bullying was not a concern for her. However, two interesting points emerged from the interviews. One is the potential problem of internet bullying; and the second is the difficulty in managing the more subtle and insidious kind of emotional bullying.

Concerning internet bullying, two authors coined the term “cyberbullying” - the “newest breed of bully”⁹⁹. 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 (Conn & Brady, 2007). This sentiment is reflected in the statement of P6:

P6: 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, lah. 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?

But in a culture where freedom of expression must be coupled with respect for authority and the community, the decision in the American case of *Tinker v. Des Moines Independent Community School District* (1969) (“*Tinker*”) may well provide some guidance in dealing with cyberbullies. In *Tinker*, a group of families decided to protest against the recruiting of youths to fight in the Vietnam War by wearing black armbands. School officials then passed a regulation to ban the wearing of these armbands in schools. Three students disregarded the regulation and were suspended. The Supreme Court of the United States held that the school's regulation was invalid and stated that schools should only prohibit freedom of expression where such expression substantially interferes with the operation of the school, infringes the rights of others or interferes with the student's learning. It is the last criterion “interferes with the student's learning” that may provide the basis for school intervention in cyber bullying cases.

⁹⁹ 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. (2007) “MySpace and Its Relatives: The Cyberbullying Dilemma” at the 5th Commonwealth Education Law Conference, 19-21 April, Williamsburg Va, USA.

As for the second point on “emotional bullying”, the literature reveals that it can come in many forms; cyberbullying, verbal abuse, such as repeated taunting and insults; and exclusion by peers. The concern of P6 and P10 is in the difficulty in managing it. This is an issue that will be addressed in the final chapter.

7.7.5 Student Injuries

TABLE 7.6
Research Question 2: Student Injuries

P	Statements about Student Injuries
1	Injury to students...can be sued...it’s a result of a whole change that society is going through, you know, like an awareness, you may say increase in knowledge...and I also think the mindset that now more than ever, their children are very precious...
2	I think when we talk about injury and even er..er..fatal injuries, death and so on, there are implications, and if nothing happens, nobody makes a big serious issue about it. But when a serious injury or even a death occurs, given the trauma that the parents may be going through at the time, they...I think it’s only natural as a first reaction to want to look for retribution of some sort, yah. I think schools should be fully aware of the implications and take the necessary precautions.
3	I think it may possibly be...something that may be on the rise because now the supervision parameter has been shifted somewhat a little more vague because with this parent organisation, with parent volunteer group taking charge of student activity, um...unless, unless we put in place something as quickly as we allow other form of supervision, for the non teaching staff, we might see more possibility of injury, because they may not know exactly what are the things and how stringent to go about it, not as if the trained teachers are any better but I mean by and large, they are “gan cheong” (<i>i.e. more anxious</i>) lah, yah, than the volunteer groups or whatever, you see, who may not know the extent lah, the seriousness. So for that kind of widening scope of supervision circle, we might see a higher chance.
4	Talking about my school now - what I’m saying is that we are doing everything we can for the welfare of the child. I’m not even considering litigation or parent suing you know, I’m not even thinking about that at all. I’m not that arrogant to say that they won’t. But what we are more concerned with is the basic, the fundamental of our very profession - the welfare of the child. So, my guess is that if we get the fundamentals right, litigation, complaints and all that, should not arise...but I think our parents more often than not, not taking legal action, more often than not, they threaten to complain to the Ministry or go to the papers. More of that than anything else.

5	<p>Injury of course parents will sound a huge cry, alarm, if especially the school never take precaution, where the school is negligent. If we are parents, you may even do the same thing also.</p>
6	<p>Student injury...they'll be very unhappy and they will always threaten, you know, "Have you investigated negligence? There's this threat. And if they find that the school has not done its job, "How can this happen?" is usually the question. If the school has not done its job, it will threaten to rear its ugly head, lah. But if it's not, I think they are usually alright, especially if you take all the proper remedial action, only of course when the child is not seriously hurt. When she's seriously hurt, it's very different.</p>
7	<p>Student injuries? Depends how you, how you manage the situation. Parents are more understanding if you can handle properly. It's all EQ, how you manage parents. For me huh, basically, whatever you do, it's the welfare that save the children, starting point. Whatever you do is for the good of the kid. No one can fault anything on you you on that, if your starting point is right. Rather than talking about whose fault. You know what I'm saying or not. The best interest of the child is the most important, whatever we do, no one can fault you on that.</p>
8	<p>I think in many of the cases, the parents are very understanding in fact (<i>laughter</i>). I had a case of, unfortunately, a child who fainted in the class because the teacher asked her to stand at the back of the class. It was just a brief moment, but, I think she probably didn't have breakfast or something and she fell and she became a bit unconscious for a while. The father called me, and he didn't assert his legal rights. He just said, ok, he understands what happened and he just want us to be more careful.</p>
9	<p>Not so much negligence by my teachers, because we make sure we put in the structures. You have to actually anticipate and foresee a lot of things, you know, like what is likely to happen, so that you won't be asked by the parents, "Why this thing happened to my child?"</p>
10	<p>That one I think there's always scope, especially if there's a question of negligence. I think from the school's level, it's how accountable are we for different things, I mean, I mentioned earlier, that a parent has full right to feel that we are accountable for that child when the parent leave that child in our school, but at the same time, we don't have the ability in the school to be able to focus on that individual child all the same and to ensure that every aspect of safety, in a situation of flux, that there are no safety issues. So we can take care of safety issues to the best of our ability, but, I mean accidents happen, even with our best intentions to protect the child. Sometimes there are, there are lots of grey areas. For example, we have a big campus, we can't police the whole campus, so what happens if a child does something out of the sight of the teacher or the school?</p>

7.7.6 Student Injuries - Summary of Findings

Cases of student injuries that end up in court in the Commonwealth countries invariably involve allegations of negligence. From the interviews, one can surmise that the area of student injuries and negligence has also, to a varying degree, exerted an impact on the responsibilities of Singaporean educators. When asked if the trend of litigation for injury to students (in the Commonwealth countries) had any implications for the participants, the theme of “negligence” emerges:

P2: I don't think schools or any school deliberately causes this, but I think it does not reflect well if you attribute it to oversight or negligence.

P4: Negligence means we are careless, we don't plan beforehand.

P5: If especially the school never take precaution, where the school is negligent.

P6: “Have you investigated negligence?” There's this threat.

P7: You know excursion - the - the legal responsibility of student excursion overseas and camps and all that. We have to be extra careful, lah. We have to do a proper..er..er.. RAM (*Risk Assessment Management*), the emergency..er..procedures and all that, we have to be careful of all that.

P9: Teachers on duty or even parent volunteers...just to ensure that sort of out of play, they don't cause injury to each other. This is what I mean by in a school, the school takes action to ensure that the students are safe, secure and so on.

P10: That one I think there's always scope, especially if there's a question of negligence.

In the view of the participants, the presence or absence of negligence seemed to be the determining factor as to whether litigation might arise for injury to students in school. The statements suggest that if supervision were provided and standard operating procedures were in place to ensure safety, then it would be more difficult to establish negligence. P6 summed up this view:

P6: Parents now demand to know the circumstances leading to the injury. They have a right to know. I mean, “How did my child get injured?” So you have to show how lah, and show that there is no negligence. I think once the parents are assured that there is no negligence, they are not happy, but at least they know the school has tried and also the follow up action as I said. If you look after the child after the incident, they are less likely to be unhappy.

There is a contrasting view to this. Participants 4, 7 and 8 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. However, when asked whether this is the position they take for the society as a whole, the answers were very different. For example:

P4: I guess increasingly more so, there seem to be a trend towards more litigation. I suppose among staff, they talk about their friends and all that, people who are threatened with legal action.

P7: More awareness of the legal dimension that the administration may possibly get involved in if we do not put a system in place.

P8: I think the few understanding ones may more be the exception than the rule. Um...increasingly we have parents that are better educated and I think my guess is that they will understand and know their legal rights better.

The answers take us back to the earlier point that there is a need to provide a system or structure of supervision that can operate as a defence against an action for negligence. P7 elaborates his point:

P7: I emphasise a lot to the teachers, for example that, the class time, you're supposed to be in class at a particular time, make sure you are punctual, you are there, it's a duty, a time frame to look after. If your duty is just look after the crossing road, make sure you are there. If not, anything happen and you are not there, then you are subject to legal responsibility.

It was asserted that the seriousness of any given injury may determine the type of action taken by the parents for their child's injuries.

P2: ...if nothing happens, nobody makes a big serious issue about it. But when a serious injury or even a death occurs, given the trauma that the parents may be going through at the time, they...I think it's only natural as a first reaction to want to look for retribution of some sort.

P6: I think they are usually alright, especially if you take all the proper remedial action, only of course when the child is not seriously hurt. When she's seriously hurt, it's very different.

When the injury is not serious, parents are easier to pacify; or if they are not satisfied with the school's explanation of how the injury occurred, the common recourse is to make a complaint to the Ministry of Education or write to the press. But where injury has a longer term or permanent impact on the child, the parents' response may be different and include legal action.

Two other points emerged from the data: first, implications for the role of parent volunteers in the supervision of students; and, second, the extent to which the school should provide supervision. P3 was concerned that parents may not be the right people to supervise students, but, interestingly, in the same breadth, she said, "not as if the trained teachers are any better". Then P9 and P10 had this to say:

P9: But what is adequate supervision, how much? Then the other thing is - what is the personal responsibility? What do you deem as the child's personal responsibility and what is the school's responsibility? The ability to foresee or to anticipate what might happen, because some teachers can see, some teachers cannot see. It really depends on the individual. So, actually to what degree we can take the risk?

P10: We have a big campus, we can't police the whole campus, so what happens if a child does something out of the sight of the teacher or the school?

This topic seemed to raise more questions than answers, but it identified the need for school leaders to have some knowledge of the law with respect to the area of negligence in schools. This, again, will be addressed in the final chapter.

7.7.7 Behaviour Management - Corporal Punishment

TABLE 7.7
Research Question 2: Corporal Punishment

P	Statements about Corporal Punishment
1	I am responsible. I cannot say that my teacher did it. I am responsible. At the end of it, the principal is accountable. So my message to the teachers is that no amount of contract signing by the teacher that they will not slap the boy, and the constant reminder at contact time, actually at the end of the day, this will not help me much if something really bad happens.
2	I think we must reflect and review our practices and see whether some of these are outdated.
3	As long as you don't lay hands, beyond that, I think it's a very relative thing. But if, if that kind of demand from public and other stakeholders is about averaging out, then it should go down because school management are now looking very much into processes and alignment of some of these things that are...are going on, so, corporal punishment, I'm quite certain, with the recent very loud message, corporal punishment should not ever occur out of ignorance anymore. I think over the last few years, it has been er...my own sensing lah, even the denial stage from teachers like "Hey, what's all this? I mean, why can't I punish?" and all that, has actually gone down. Probably they are accepting the fact that, hey, no point losing, hit over this because I might lose my job, because the message is very loud from the system at large that you don't do it. Because earlier on, there was still some struggle to the equilibrium. Although they know, they say, "Heck, I just - can't stand it anymore."
4	It's definitely a rule that we live by in school - no one can pan handle a child, if it is a girl, you are not allowed to touch her, let alone wallop her, that's what happened to that principal, right? That's very clear cut. So, under no circumstances can we contravene that. So even for a...a boy, if you're going to cane him or punish him, corporal punishment, mete out corporal punishment, there must be very clear guidelines, that every step has been looked into, with proper recording, that the punishment is meted out for correction, not to inflict pain alone.
5	As for caning, caning itself, there are rules guided, alright, especially for boys, and

	<p>how you do it. So if a case warrants a caning, definitely I don't think the parents have a case, lah, you know. If they want to fight it out, I don't think they will have a case if you can proof everything, you see. But if you are asking whether parents will sue for such things, I think they may, they will. As I said, they are more knowledgeable, number one. Number two, our service, we still have very senior teachers, teachers who may not have seen students huh, um...so extrovert before, you know, this group of teachers, may, in a way, sometimes huh, for whatever reasons, huh, may accidentally hit them or whatever. But normally such things that happens, most of the time, the school will be able to handle.</p>
6	<p>There was a Chinese teacher who slapped a boy and er...happened in the class. Slapped until so hard that the glasses flew off across the room and the whole class witnessed it. So, the parent came of course, and actually the teacher came to tell me about it. Luckily, during those times, which was in the late 1990s, they were less er...into taking legal action but certainly threats were issued, lah. And I felt that that was definitely a real case, lah. I haven't come across it now because I warn my teachers severely.</p>
7	<p>I think, I think corporal punishment is something we have to watch carefully. Corporal punishment can mean a lot of things huh, even in verbal. It can be, in the future, can be an area of concern. Examples of corporal punishment - you hit the kids in many ways, slap kids, cane the kid with marks around the hands and the legs, pulling their hair. Sometimes they up to - very in a way, "mun zhang" (<i>very agitated</i>) or so, really up to the point where they are overwhelmed. Some teachers couldn't control themselves. Like throwing books - students' books away. This is not right you know.</p>
8	<p>I'm not so sure how, how parents are going to perceive themselves as better managers of behaviour, but I think they probably will still expect the school teachers to manage behaviour in an appropriate manner rather than through corporal punishment or through other methods that demean the integrity or the worth of the child. I think that is something that parents will increasingly expect. Well, I mean as a parent myself, I really would not want my own child's teachers to manage my child's behaviour in an inappropriate manner.</p>
9	<p>Corporal punishment is one of them. Very likely litigation can arise if you hurt their children, especially nowadays parents are very protective of their child. Very likely I would say corporal punishment, and also how punishment is given out. Maybe it may not be corporal punishment. It could be verbal abuse by teachers. It...it...shouldn't go beyond..umm...umm..., it should be within this...how do I say it...it shouldn't actually damage self esteem. If that comes in, parents will get very angry.</p>
10	<p>These are all discipline systems. Umm...whether it will be a legal problem, I suppose there's always the potential that it can escalate to become one. I give you an example, many years ago, when students had long hair, if you got caught, you went to some room and someone cut your hair, when I was in school, they actually did that also, and this is like when dinosaurs roamed the earth. And, and my school had a nice</p>

way of doing it. They just put 2 holes here and then, and then say, “You do the rest.” I don’t think you can do it now. I wonder if there is a legal position for the schools in cutting the student’s hair anymore.

I give you another example. There are some places where you are late you run round the field. Ok, a child not having breakfast and all that, collapses, what happens? There are so many of these kinds of potential blast points, and I still see some of it happening. I do worry sometimes. So far we don’t see it in the papers, so I assume that there are not that many cases of parents suing. Some of the things that we do in good faith for our students and all that, just doesn’t (sic) work anymore. We need to review and some of these things, we need to stop actually. It just takes ONE case to go awry, and you have all these legal issues to deal with.

7.7.8 Corporal Punishment - Summary of Findings

Although the common law permits the use of corporal punishment as a means of behavioural correction, the literature suggests that most jurisdictions, for various reasons, including adherence to the principles of the CRC, have chosen to disallow physical discipline on students. When Singapore acceded to the CRC, Singapore expressly declared that a child’s rights, as defined in the Convention, shall be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child, and that article 19 does not prohibit the judicious application of corporal punishment in the best interest of the child (United Nations Treaty Collection, 2001). Nevertheless, schools are given strict guidelines by the Ministry of Education on how and when to administer corporal punishment.

When asked if there is a trend, as seen overseas, where parents take issue with the school regarding corporal punishment, the participants had divergent views.

However, a common theme became evident: unlike the past, where teachers did not need to exercise any constraint in meting out corporal punishment, this position is no longer feasible.

P2: We must reflect and review our practices and see whether some of these are outdated.

P10: Some of the things that we do in good faith for our students and all that, just doesn't (*sic*) work anymore. We need to review and some of these things, we need to stop actually. It just takes ONE case to go awry, and you have all these legal issues to deal with.

The fear of litigation is very real for most of the participants. P10 went on to say:

P10: Right now, I think our society is still...not quite, I hope we don't ever get there, like the Americans will sue at the toss of a coin, or at least that's sometimes the image we get. But I...I really believe if we don't reduce some of the things we do, it's just a question of time before more of this will surface, first it's complaints, and then people will take legal action.

Two main reasons are given for this change from the past. The first is that the profiles of parents have changed:

P6: During earlier times, we try to mitigate, lah. I think they won't threaten action then. If it happens now, like if one of my teachers slapped, they will definitely threaten action. That...that...that parent then, at that time, they are less educated parents. The mother was a hawker, it has never crossed her mind to sue a teacher, they are the kind who think like, "Oh, you know better, right". Now it's a different type of parents, "You have no right to hit my child", which is absolutely true, I have to agree, we have no right to hit the child.

P7: I think corporal punishment is a very big area. It's a key worry for me down the road. To what extent are our teachers well trained to handle students is very important, especially in primary schools. Do they have the patience or not? Sometimes, the way teachers react, it can be a worry. That's why we have to keep an eye. Something we have to be careful, lah, in a sense lah, cos' today, parents are different from yester-years. They are better educated, they demand their right.

The second reason that children are becoming more and more precious to parents because of the declining birth rate. As a result, parents are very protective over their children and there is a high level of mollycoddling at home:

P7: For a start, children don't subject (*sic*) to being hit at all at home. It's the other way, it's the kids whack the parents. I see primary kids kick at their parents' leg and the parents let the kid do that. They are cuddled and all by maids and they abuse the maid. Children abusing the maids! You know that! You know how children talk to the maids, scolded all the maids like...like...like zombie around at home. They come to school they thought they can do that to teachers. First thing I told the children coming to this school, "There is no maid in this school, sorry. Teachers deserve your respect. They are not your maid."

P9: Very likely litigation can arise if you hurt their children, especially nowadays parents are very protective of their child.

This notion of overprotecting children at home was also perceived by P8, who said:

P8: I'm not so sure how, how parents are going to perceive themselves as better managers of behaviour...In 1983 I taught in a village school for 5 ½ years, and parents really encouraged the teachers to cane their child, and some teachers did...the parents didn't care much you know and there was a lot of respect for the teachers and the parents never interfered in anything, everything was basically left to the teachers, no questions asked, you know, about how you teach and how you manage the pupils' behaviour you know, yah. Nowadays, it's not like that, you know. Like I said earlier, even if you scolded the child inappropriately, parents calling me, emailing me, you know.

P8 identified another unacceptable aspect of disciplining students - that of using punishment that "demeans the integrity or the worth of the child". He gave the example of inappropriate scolding, but it would probably involve other punishment, such as making the student wear a dunce cap or a placard, or making a student run around a field excessively. P9 agreed that it is not acceptable to scold a child in the wrong manner:

P9: It could be verbal abuse by teachers...it shouldn't actually damage self esteem. If that comes in, parents will get very angry.

Even though the general view was that disciplining students had become more challenging for educators, there was a presumption that if policy and guidelines were followed, litigation should not arise. This presumption is reflected in the statements of P3, P4 and P5:

P3: It should go down (*i.e. complaints or threats of legal action*) because school management are now looking very much into processes and alignment of some of these things that are...are going on, so, corporal punishment, I'm quite certain, with the recent very loud message, corporal punishment should not ever occur out of ignorance anymore.

P4: I'm saying if we are able to manage it well, then litigation MIGHT NOT have to arise. There is a trend coming to Singapore, that cases regarding behaviour management may reach our courts, so it's becoming a challenge for principals.

P5: ...there are rules guided, alright, especially for boys, and how you do it. So if a case warrants a caning, definitely I don't think the parents have a case, lah, you know. If they want to fight it out, I don't think they will have a case if you can proof everything, you see.

But are teachers always able to go "by the book"? It is interesting how the comment from P3 about teachers' ability to discipline students contrasts with the views of P7 and P9. According to P3:

P3: ...with the recent very loud message, corporal punishment should not **ever** (emphasis mine) occur out of ignorance anymore.

However, P7 and P9 saw it differently:

P7: Sometimes they up to - very in a way, "mun zhang" (*very agitated in Cantonese*) or so, really up to the point where they are overwhelmed. Some teachers couldn't control themselves. Like throwing books - students' books away. This is not right you know.

P9: Because corporal punishment some times, is meted out in a fit of anger. That's the dangerous part of it. You never know how this child will provoke the

teacher and the teacher just react. Usually corporal punishment is usually a reaction. I notice that, after so many years that it's usually a reaction. The child is naughty and the teacher just take (*sic*) the water bottle and hit him on his head. It's just a reaction. I just got this case this morning.

P7 and P9 portrayed a realistic picture of the human nature, in that policies and guidelines cannot stop a teacher from reacting to provocation. Thus corporal punishment will always be an important issue in the education service. However, there should not be a need to take the extreme view that a principal is responsible for a teacher's action in administering corporal punishment, as suggested by P1:

P1: I am responsible. I cannot say that my teacher did it. I am responsible. At the end of it, the principal is accountable. So my message to the teachers is that no amount of contract signing by the teacher that they will not slap the boy, and the constant reminder at contact time, actually at the end of the day, this will not help me much if something really bad happens.

7.7.9 Behaviour Management - Suspension and Expulsion

TABLE 7.8
Research Question 2: Suspension and Expulsion

P	Statements about Suspension and Expulsion
1	<i>No comments were made by P1 on this issue.</i>
2	Personally I have dealt with several issues. I think some times in dealing with recalcitrant students. I have expelled students, yah, and parents have taken or threatened to take legal action against me. They can, they can, but I think these things can be resolved if we bring all parties together, sit down and talk about these issues. Sometimes I think a potential situation arises because of miscommunication or a lack of communication.
3	I think suspension and expulsion should not be so much of a problem because our system had actually catered for many varieties of our children and the hard core cases for suspension, I think far and few in numbers, so I don't see it escalating. There will still be some misplaced people in the system, but that should form the small, very, very small core, yah.

4	<p>Behaviour management - it really stamps from my role as a principal. What do I see? Do I anticipate? Do I assume that the children's behaviour will always be ok? Do I just allow things to carry on on its own, and assuming that the teachers will always be able to manage? Classes that are bad...we work very closely with the Pastoral Care department where we actually anticipate, and we have a proactive programme to involve and engage those kids. So there's a lot of dialogue, a lot conversation, a lot of discussion and talk, to surface issues of this nature. So when things do er...have a potential of occurring, then the kids are already aware of it.</p>
5	<p>Um...expulsion is always used as a very, very last resort. I don't think there are many over the years. Um...most of the method the principals use is to ask the student to go and look for your own school, to advise them to look for your own school because as principals, we do not really want to use expulsion. It's really the last...In fact, I recall my 5 years in school, I have not used it. Normally, the few very naughty cases, we ask them to try to look for another school, and most of the time, the parents will oblige and try. So, if you think of whether parents will sue the school for expulsion, I think this is very minimal.</p>
6	<p>I think it depends on how you handle, the suspension, expulsion, if you just ask the child to leave, there will be threats, but because I make sure I never do that, I always call the parents, letter lah, you know the whole works lah. Make sure you do all the "pre's", so they got nothing to complain about, lor. I have never given them a case to complain about. I have actually suspended and expelled children before but it's after a l..o..n..g drawn process. You know like, don't come, warning, call the parents, your child is being sent home, so that they are never left on the streets. To me, the concern is not that the child is asked to leave school, but if an accident happens to the child on the way home, definitely we are liable, because it's school hours.</p>
7	<p>Suspension and expulsion? No, not that. I don't think so. First of all, in the handbook, our student handbook, very clearly spelt out. Our handbook, rules and all that very clear and you choose to come, you choose to come to this school, you have to agree what is said in the handbook. If not, please, choose another school. Our handbook is very clear what is expected. Rules are short and simple, children can understand. Not too many details. In my whole life here, I had never expelled one boy. 20 years. I don't believe in expel boy.</p>
8	<p><i>No comments were made by P8 on this issue.</i></p>
9	<p>There must be very good reasons for it, not so much in a primary school but I think in the secondary school, we used to actually suspend students before and that must be within the school rules. In other words, it must be laid down and communicated, you know, to the whole school population, alright and they must be aware of it. You don't just suspend and say that I'm giving you suspension like that. That's why umm...in our schools, the consequences of their actions must be defined very clearly, either in black and white copies, or it must be somewhere in the school, alright, and made</p>

10	<p>known to all the students. This is important. No excuse to say that they are not aware that this action will be taken against them, even in a primary school.</p> <p>It is very important for the school to inform the parents that this is the action we are going to take, because your child, the offence is so grave that we have to take this action and then after much consideration, you can give the case history and so on. Most likely, they will not kick up a fuss because usually school will only carry out such action after they have a record.</p> <p><i>No comments were made by P10 on this issue.</i></p>
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7.7.10 Suspension and Expulsion - Summary of Findings

Suspension and expulsion is another means - albeit an extreme strategy - of school discipline or behaviour management. Although the interview question specifically asked the participants whether suspension and expulsion could possibly raise any legal issues for them, three participants did not offer any comments. The researcher interprets their lack of comment as an indication that this topic was of little or no relevance to them. Of those who put forward their views, their assessment can be summed up as follows:

1. Cases of suspension and expulsion are few and far between, because Singapore provides for the many types of children in the education system:

P3: There will still be some misplaced people in the system, but that should form the small, very, very small core.

P5: Normally, the few very naughty cases, we ask them to try to look for another school, and most of the time, the parents will oblige and try.

2. There are other ways of handling behaviour problems, and expulsion does not need to be used:

P3: We actually anticipate, and we have a proactive programme to involve and engage those kids.

P7: Normally I do in-house suspension, do your personal work and then suspension at home with parent's agreement.

3. If children have breached school rules and proper procedures are followed, when students are suspended or expelled, parents have no reason to fault the school:

P6: Make sure you do all the “pre’s”, so they got nothing to complain about, lor.

I have never given them a case to complain about. I have actually suspended and expelled children before but it’s after a l..o..n..g drawn process.

P7: Our handbook, rules and all that very clear and you choose to come, you choose to come to this school, you have to agree what is said in the handbook. If not, please, choose another school.

P9: That’s why umm...in our schools, the consequences of their actions must be defined very clearly, either in black and white copies, or it must be somewhere in the school, alright, and made known to all the students. This is important. No excuse to say that they are not aware that this action will be taken against them, even in a primary school.

It is interesting that none of the participants 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. Only P4 indirectly referred to the need to give the student the opportunity to make representations about the suspension or expulsion:

P4: So there’s a lot of dialogue, a lot conversation, a lot of discussion and talk, to surface issues of this nature. So when things do er...have a potential of occurring, then the kids are already aware of it.

Even where there is threat of litigation over a student’s suspension or expulsion, it was felt that the potential conflict can be resolved simply by communication with the parents:

P2: ...I think these things can be resolved if we bring all parties together, sit down and talk about these issues. Sometimes I think a potential situation arises because of miscommunication or a lack of communication.

P3: In my short experience in the education service, I don't...I haven't come across something that cannot be resolved at a school level. And most parents just need to be listened to and er... they generally do give us that respect lah, and then move on from there, yah.

7.7.11 Educational Malpractice

TABLE 7.9
Research Question 2: Educational Malpractice

P	Statements about Educational Malpractice
1	...in the past if we hear of our child not really learning very much because the teacher was so called lousy, we probably, aiyah, you know and then we try to support our child in different ways. We are not so quick to go to the principal to say this, but now it's so easy, you get a phone call, you get a letter.
2	<i>No comments made by P2 on this issue.</i>
3	I've never heard of anybody being sued for this. Usually it is complaints and the few that I know are all settled within school, and usually, like I said, it's a relative expectation and...and after some talking to...to the parents, and advising them and both sides giving leeway lah. Sometimes it's really our inadequacies. It's not all the time wrong. I mean some are very interesting and er... interesting perceptions of how effective teaching should be, like you know, using red ink to circle thing or using a yellow pen to circle thing, or using a certain kind of mechanical pencil are also demanded by the parents, you know, to be more effective than what the teachers suggest. So within the school, we give the teachers autonomy, but the parents wouldn't let go you know, (<i>laughter</i>) some of these, you know, suggested approaches.
4	So far there has been no case like that at all, or even threats of legal action or litigation. If there is a complaint, then it might actually end up in litigation.
5	Poor teaching - I don't think so that parents will take up a case against a teacher. As I said, parents may express their concern, call up the school, talk to the principal and see what can be done, you see. That one I think is the least to worry about.
6	MOE complaints - plenty, plenty. Relief teachers too many. How come you change my daughter's teacher so many times? How can you send in relief teachers who can't teach. Your teachers don't teach good English. My daughter don't (<i>sic</i>) understand your teacher. So it's a complaint. Can you do something about it, or I'll write to the MOE. Very common. Poor teaching - usually relief teacher or NIE teacher.

7	Again, what do you define poor teaching? You are a layman, you are not a professional. What do you term poor teaching? Teachers are trained, they are professional for a start, or else they won't be certified to teach in school. You can't say poor teaching. Poor teaching, not to your expectation. Whose expectation, isn't it?
8	I think huh, let's take out the ones that really don't pertain. I think nobody gets sued for bad teaching here.
9	From my secondary school experience, I don't have a lot of complaints about poor teaching from parents, maybe lazy teachers, but not so much from parents. Maybe they don't know the contents of the secondary school syllabus. But primary school, you tend to get parents who will write in to tell you, why is your teacher teaching this way or that way or something like that. But these are very few.
10	Poor teaching, at the moment I believe it's not a problem partly because our systems are pretty rigorous and all that but again, with the higher expectations from parents, I think it's a question of time where parents will just walk in and say my child is not getting these grades because of your "poor" teacher. I think we need to be prepared for that.

7.7.12 Educational Malpractice - Summary of Findings

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. P1's response provided an excellent backdrop to the answers of the other participants:

P1: ...in the past if we hear of our child not really learning very much because the teacher was so called lousy, we probably, aiyah, you know and then we try to support our child in different ways. We are not so quick to go to the principal to say this...

Most of the participants agreed that they were increasingly seeing parents' concerns over their children's academic achievements. However, they felt that where poor teaching was alleged, parents would at most make a complaint but not threaten any legal action. In fact, P5 said:

P5: I think this area is the least to worry about.

Similarly, P3, P6, P8 and P9 had this to say:

P3: I've never heard of anybody being sued for this. Usually it is complaints and the few that I know are all settled within school.

P6: Poor teaching? Complaints lah, they are usually complaints, not legal.

P8: I think nobody gets sued for bad teaching here.

P9: There were cases where I have complaints about teachers' teaching, you know - not professional enough, inadequate teaching, and so on lah. So that's mainly that. In the years to come, you may have more complaints. But to the extent of legal action, I don't think so. Not so much about poor teaching.

Although P4 had no experience of complaints about poor teaching, he made the comment that if there were indeed complaints, then it is possible in the future for complaints to lead to litigation.

P4: If there is a complaint, then it might actually end up in litigation.

This view is shared with P10, who said:

P10: My sense is that in ten years' time, with a more demanding public, with people with higher expectations of schools, I think we need to be ready for that very thing about poor teaching. I send my child to your school, your school claims that you are going to develop this, that and the other and my child hasn't attained that. Most parents would nowadays just say, well, my child doesn't have the ability and all that.

But the difficulty in establishing poor teaching is apparent to P3 and P7. To them, poor teaching is a subjective issue and all a matter of parental expectations.

P3: Like I said, it's a relative expectation...I mean some are very interesting and er... interesting perceptions of how effective teaching should be, like you know, using red ink to circle thing or using a yellow pen to circle thing, or using a certain kind of mechanical pencil... P7: You can't say poor teaching. Poor teaching, not to your expectation. Whose expectation, isn't it?

P7 went so far as to say that, since education is free, parents will have to be contented with the professional service provided by the school. If they feel that the teaching is not up to their expectations, then they should find another school:

P7: If you think teaching not to your expectation, the right thing you get out. You don't stay in this school. First of all, education is free. You pay nothing you know. We don't demand anything you know. When you pay a hefty sum in a private school, yes, you might do that. You choose to come in, you have free education, what else you want?

Thus, there is a suggestion by P7 that a higher standard of teaching can reasonably be expected by parents who send their children to private schools:

P7: Private education, they pay, they might may face an issue. Because I pay as a customer, I expect some sort of standard from you.

P9 highlighted an interesting aspect of this question of "poor teaching". She was of the view that, with the Ministry of Education's method of evaluating teachers' performance¹⁰⁰, complaints of poor teaching should decrease, since the so called "poor" teachers should be removed from the system.

P9: ... 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 lah.

¹⁰⁰ 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.

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. Thus, defining standards can actually backfire, especially if the data becomes available to those outside the domain of evaluator and evaluated.

Several themes emerged from the above and these are discussed in the final chapter.

7.7.13 Sexual Misconduct

TABLE 7.10
Research Question 2: Sexual Misconduct

P	Statements about Sexual Misconduct
1	Sexual abuse cases, I don't see that yet. It's more the physical side, like should you have the drain there or whether children should be allowed to run during recess.
2	I think, er...sexual conduct, yah. I notice...er, I don't whether it is because we are more open about this. Increasingly it's not just the traditional school going age we are talking about. These days young children, with more and more working parents, they put young children with caregivers, yah, and er...I think they are more um...(pause for a few seconds) susceptible to some kind of abuse, and we should be mindful of that. I think increasingly, we must be more careful.
3	Oh, this is what I hear from friends of molestation and all that, of children - sexual misconduct by teachers. As for personally, I can't tell, I can't tell. Hopefully the recruitment process will be better so that we don't get strange people coming in. I feel that these are people who are actually having other kinds of stress symptoms that may not have been manifested in the teacher at recruitment point.
4	I don't know if there's a trend because I'm very careful. I speak to everyone. Every teacher has one session with me, apart from their work review that they do with their superior officers. You're bound to be able to pick up something. If there's any hint, any whisper, any breadth of possibility, it will be dealt with.
5	This is one area I think it's good for schools should know a little bit more about it. Because now we have globalisation, our IT is so advanced, you know. Nowadays the students are more open, and they may get into trouble like this. Open in the sense

	<p>that they want to try everything and they try to copy whatever people do and they get themselves into trouble, i.e. students and students, and also possibility of teacher and students.</p>
6	<p>I had one I had to investigate when this school quite new. The teacher has left...but he's in another school where there was an alleged molest case, ...so they checked the record, and it seems in the latest things, the girls from the new school commented/wrote that he has a "thing" with one of our girls then. So I had to investigate, ...the student refused to say anything, ... but admitted that she had seen the teacher outside school even after he's left. Even admitted that they held hands but no, nothing physical, I mean, some touching, touching kind, lah, no kissing. Apparently just touch hands little bit, touch shoulders maybe a little bit. But nothing beyond that, she claimed.</p>
7	<p>We have only one case under investigation...a very er..difficult case in the sense that children already graduated four years ago...Boy student complaining against another male teacher...But the parents don't want to press charges. So how do you do that, whose word against whose? Teacher is still with me and he is the best we have. Very caring and all that, and he has been with us for more than 10 years, so caring and helping the students from his personal pocket, so many poor students. If anything happened, parents will complain and come to my office. Not a word from parents.</p>
8	<p>There was a school attendant alleged to have molested a pupil. So umm...when this incident happened, I reminded my male staff and I called in my cleaning contractor and tell her please advise your male staff to exercise more care. Sometimes it's not intentional, you know, it could be accidental. But I mean if you put yourself in the position where you could disadvantage yourself sometimes. So I just told them.</p>
9	<p>I mean sometimes it's a fatherly type, this man (<i>the school attendant</i>) he said "fatherly touch" but this one is not fatherly one, lah (laughter). Some may be really genuine, you know, but then after that, you get accused of molest. Just keep your hands clear of female students lah. That's what I tell my male teachers.</p>
10	<p>I had a case of breach of conduct. Sexual misconduct but not with students, with another adult outside. Because of the nature of the act, there is the fear that once this is known, then you'll find that parents will object. That's why he was terminated, I guess. I think there is certain conduct that is unacceptable.</p> <p><i>No comments made by P10 on this issue.</i></p>

7.7.14 Sexual Misconduct - Summary of Findings

Earlier in this chapter, it was noted that 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:

P2: ...and with the internet, with growing pornography, you know, sexual values, norms may change or shift....

P5: ...now we have globalisation, our IT is so advanced, you know. Nowadays the students are more open, and they may get into trouble like this. Open in the sense that they want to try everything and they try to copy whatever people do and they get themselves into trouble, i.e. students and students, and also possibility of teacher and students.

In addition to this, as Singapore is targeting a pupil-to-teacher ratio of below 20 for primary schools by 2010 (Lui, 2007), large numbers of teachers are being recruited yearly. While this may be a commendable move by the government, one participant expressed concerns:

P7: But we are taking in a lot of teachers in big hoards. Hoard after hoards coming in. (*Sigh*) Very worried you know. I tell you what, are they cut out for teaching or not, morally, other things, you know, how do you judge, you know? For example huh, this teacher teaching for 3 years, start to have sexual relationship with children. Remember, was...was jailed? Third year only you know. That's what I mean, hor. Quite frightening, you know. In my time, never heard of this. Only recently. There are 2 cases already like this you know. Yes, teacher sexual misconduct. Quite worrisome.

P3 recognised that P7's concern could be addressed during the recruitment process, but, even then, there is no guarantee that a potential child molester will not slip through the net:

P3: Hopefully the recruitment process will be better so that we don't get strange people coming in. I feel that these are people who are actually having other kinds of stress symptoms that may not have been manifested in the teacher at recruitment point.

Apart from P1 and P10, who did not express any unease over this issue, the other participants either had experiences of dealing with sexual misconduct incidents, or were very cautious about issuing instructions to teachers when it came to interaction with students.

Incidents:

P3: I have dealt with some cases. This can be quite shocking for me initially....

P6: So I had to investigate, ... admitted that they held hands but no, nothing physical, I mean, some touching, touching kind, lah, no kissing. Apparently just touch hands little bit, touch shoulders maybe a little bit. But nothing beyond that, she claimed. I think this is a growing problem, the student-teacher relationship part, the physical, sexual types.

P7: ...one case under investigation...a very er..difficult case in the sense that children already graduated four years ago...Boy student complaining against another male teacher...But the parents don't want to press charges. So how do you do that, whose word against whose?

P8: There was a school attendant alleged to have molested a pupil... I mean sometimes it's a fatherly type, this man (*the school attendant*) he said "fatherly touch" but this one is not fatherly one, lah (laughter).

P9: I had a case of breach of conduct. Sexual misconduct but not with students, with another adult outside.

Two cases stood out from the rest. The first was the one mentioned by P8. P8's case did not involve a teacher, but rather a school attendant. If the school had engaged an ostensibly competent person to work in the school, it would be difficult to hold

the school liable for the school attendant's action if he acted outside the scope of his employment. The second case was the one mentioned by P9. That case raises an entirely different issue of whether a teacher's conduct outside school hours should be regulated by policy, and if so, what constitutes acceptable and unacceptable conduct. This issue is outside the scope of the study, but it provides an interesting topic for further discussion and research.

Regardless of whether the participants had experience of dealing with sexual misconduct cases, most of them indicated that they were very cautious about teacher and student interaction:

P2: I think increasingly, we must be more careful.

P3: But I think primary school, by and large, we will not want to take the chance to leave the children with having none of our staff there, not even one. I personally will not do that, yah. No matter how trusting, I wouldn't know the person, molestation, could be things that we are afraid of, not only falling or that kind of thing you see. It's the quiet kind of injury that I am more worried about.

P4: ... I'm very careful. I speak to everyone. Every teacher has one session with me, ...You're bound to be able to pick up something. If there's any hint, any whisper, any breadth of possibility, it will be dealt with.

P6: I warn the male teachers against their physical behaviour with the female students. I warn them because some students can be very vicious and can turn around and accuse - what happened to the ACS principal¹⁰¹...so I warn the male teachers never to be alone with a female student in closed doors...Never, never and always two, and not in isolated corners of the school...it's part of their orientation and induction, and I reinforce it during staff meetings, ...It's to protect them,...and I warn my CCA teachers. They also watch out for their

¹⁰¹ A 16 year old student's mother alleged that the principal had held her son's hand, hugged him and given him a peck on the neck while counselling her son. An inquiry was conducted by the School Board and the principal was cleared unanimously of all allegations of improper behaviour while counselling the teenage boy.

coaches. ...technically, MOE says we can leave them with adult and coaches unsupervised by teachers. But what happens if they are male? If anything happens, it will surely come back to me. I know it's a very weird problem. It seems negligent when you didn't put a female teacher when you know there's a male coach in charge.

P7: ...every time the teachers in my staff meeting, the two things that are very taboo. One is on moral issue, the other is on corruption... I make it very clear. Every year, I remind my staff. ...Certain things like for example, camping, cannot stay overnight. When with a student, must always with...group work, or in the presence of other adult teachers...And no private meetings outside school with children.

P8: I have reminded staff to be more careful about how they communicate with girls, female students...If I have to talk to a female student, I make sure there are a few other students in the room and this is something that I practised from the moment I started teaching. ...you put yourself in the position where you could disadvantage yourself sometimes...Just keep your hands clear of female students lah. That's what I tell my male teachers.

An interesting point emerged from the above: the question of whether the school would be liable should students be sexually abused by external parties engaged by the school. It is not uncommon for schools to engage coaches for various extra-curricular activities. To what extent does a school have a duty of care to protect students from non-staff? This is an issue that concerned P3 and P7 and raises the question of non-delegable duty of care or the imposition of strict liability on the school to assume responsibility for any harm suffered by students. In the Australian case of *Lepore*¹⁰², the High Court was reluctant to impose a non-delegable duty of care for an intentional act of an employee. Similarly, it is unlikely that the Singapore courts will impose such strict liability on the schools. Nevertheless, it is encouraging

¹⁰² see Chapter Five, page 130

to see school leaders recognising this important issue and taking the necessary precautions to prevent sexual abuse of students by staff or non-staff.

7.8 Research Question 3:

What are the potential major areas of concern (e.g. behaviour management and discipline, supervision and injury to students) relating to schools and the law that are likely to emerge in Singapore?

From the results of the interview so far, one observes that school leaders in Singapore, to a large or small extent, probably face the same legal issues that are experienced by educators in the countries mentioned in the literature. 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 Singapore.

The major area of concern identified by the all the participants was that of “safety and negligence”. Below are brief extracts of the comments that were made:

P1: I think safety, physical safety will emerge. That one **WILL** (*emphasis by P1*).

P2: I think safety. Because these days schools do take students overseas and so on...it does not reflect well if you attribute it to oversight or negligence.

P3: There is such a thing called negligence...it's something that the parents will come back to the school...I really hope that more of us can be clearer about some of the implications, especially going out for excursion and all those stuff and all that.

P4: I think negligence, safety of children. That's the fundamental.

P5: Emerging area - injury and safety.

P6: Threatened legal action due to student injury, quite a lot similar, something happened to the child, nothing to do with the school...and they will always threaten, you know, have you investigated negligence...

P7: I can see the trend, of let's say area of personal injury involving sports and all that. The school is taking a lot of risk - risk taking activities - scuba diving, canoeing in the sea, taekwondo, rock climbing - this is all into high risk.

P8: Safety of the child, injury to the child.

P9: The care in terms of safety, security, that's one, ok. Umm...whether there is adequate supervision, alright, anticipating injuries, alright, risk management, that's another area because we are going out all the time...duty not to be negligent.

P10: I think the first one will be accountability issues...when I talk about accountability, I'm talking about safety and well-being.

As educators acting *in loco parentis*, it is perceivable that school leaders place the safety of students as a major area of concern. Using the words of P4 and P10, "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, P2, P3, P7 and P9 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 P7 and he summed it up with resignation:

P7: 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. P6'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 handphone¹⁰³. 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. As P3 correctly pointed out:

P3: ...so, the negligence part, yes, I really hope that more of us can be clearer about some of the implications...

After safety and negligence, sexual misconduct of teachers and behaviour management were of second importance, and the majority of the participants felt these two issues would be, if they were not already, areas of concern for school leaders and teachers. The views of the participants on these two topics have been discussed in some detail above, so they will not be repeated here. However, with regard to behaviour management, P3 succinctly explained why there is a shift in parental attitude:

P3: ...because the bulk of them are having fewer children, so very precious lah, very high strung over, you know, the slightest cut...I mean, when we were younger, (*laughter*) you all know lah, cane already, better still lah, cane some more. "I give you the authority".

The other topics - educational malpractice or poor teaching, bullying and special needs - were not identified by the participants as areas of concern for the future, except for a few comments by several participants. About poor teaching, P10 had this to say:

¹⁰³ 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?"

P10: My sense is that in ten years' time, with a more demanding public, with people with higher expectations of schools, I think we need to be ready for that very thing about poor teaching...Most parents would nowadays just say, my child doesn't have the ability and all that. Every school, if you look at their core purpose and mission statements, are making a promise of certain expectations, it's a question of time before parents are going to say. "What happened with my kid?"

For bullying, the concern of P5 and P6 was the emotional or psychological bullying that takes place over the internet, rather than the physical type of bullying:

P5: Internet bullying possibly but open bullying I don't think so.

P6: ...emotional bullying...there are cases on the internet...more and more internet cases...really, really, it's coming up.

Only P4 felt that special needs may be an emerging area of concern and, interestingly, P4 linked this area to bullying:

P4: We were just talking about special needs cases. That should be emerging pretty soon because 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.

This is an astute observation by P4, because, coincidentally, at the time of writing, there was a case in Queensland, where a group of teenagers (two girls and two boys) were found guilty of gang bashing a 15-year-old muscular dystrophy sufferer, who was accused of staring at one of the girls. One of the older boys even made the victim eat faeces. The group of teenagers were subsequently caught and punished according to the *Juvenile Justice Act (1992)* (Gregory, 2007).

There seemed to be consensus that the major areas of concern for then and the near future were the safety of students (this involves supervision and the law of negligence), behaviour management and the sexual misconduct of teachers. This takes us to the next research question: that of determining what the current status of legal responsibility is for school leaders.

7.9 Research Question 4:

What is the current status of legal responsibility in Singapore schools and to what extent is the position changing - in the perception of experts, senior educators and administrators?

The participants were asked what they understood about “legal responsibility” and what their “legal duty” was towards their stakeholders. Not surprisingly, all the participants were of the view that, first and foremost, they had a legal duty to ensure the safety of their students.

However, the definition of safety differed among the participants. To some, it was the physical safety, meaning having a safe environment:

P1: First and foremost, I think it is my duty to ensure that I have put structures and systems in place. To ensure the best I can - kids' safety because safety is life you know, it is more important than PSLE (*Primary School Leaving Examination*).

P2: Providing him with a safe environment.

P5: It's a conscious effort, the safety of students come first...when I walk around, I definitely make sure there is a teacher in the class...looking at the physical features, see whether it's potential hazards or not...

P9: It's very simple. My students come first...we must ensure things like their safety.

P10: There's a basic accountability for several things like safety, the well-being of the student.

To others, safety also meant “the well-being of the student” and the well-being of students might include emotional and psychological safety, in addition to physical safety:

P3: The thing that came out very loudly for students' legal responsibility, I think is the duty of care and safety. Care in all sense of the word holistically lah, physically, psychologically, emotionally, socially and all that stuff.

P6: I think I know my legal responsibility as the principal, which is the guardian of the students while they are in school, physically. I mean I'm responsible for looking after their safety issues, and I mean safety issues, and of course it also means safety from like you know, emotion things like molest, and all that, lah, from my teachers, things that are within my control, lah, that occurs within school.

P7: Legal responsibility in the sense that as long as they are in school, we'll ensure that the child is given a safe environment - environment where they can be free from physical danger, moral danger, emotional danger also lah...Emotional danger if not careful can lead to suicide.

To P3, P6 and P7, there was a legal duty to ensure safety holistically. P6 even alluded to a duty to protect students from sexual abuse. A few other participants extended this duty to identifying child or sexual abuse, whether by caregivers at home or by teachers:

P2: Ensuring he's not abused, yah, or taken advantage of...these days young children, with more and more working parents, they put young children with caregivers, yah, er...I think they are more um...susceptible to some kind of abuse, and we should be mindful of that.

P4: No one can handle a child...the legal duty to protect the child against abuses.

P8: In school, I have to look out for children who are abused, and inform the due authorities.

It is interesting that these three participants made reference to reporting child abuse as if there was a legal duty to do so. Under section 87 of the *Children and Young Persons Act (Cap. 38, 1993)*, a person who knows or has reason to suspect that a child is in need of care or protection *MAY* report the facts or suspicious circumstances to the proper authorities. There is no mandatory reporting requirement imposed on educators in Singapore, but abused children in Singapore would obviously be in a much better position if all educators were taken to the same view as these participants.

Four participants felt that the notion of legal duty to ensure that children are safe should extend to teachers as well. They believed that there is a legal duty to look after the welfare of teachers:

P3: And also for teachers, is also a duty of, um...towards the teacher, I think, I think safety of course I think with any human being, but duty of care in the sense that um...you know, um...making sure that they, they get the best working environment.

P7: It's all our responsibility, as CEO of school, to make sure that place is safe...even for teachers.

P8: Um...for me as a school leader, one of the things is to also protect the rights of my teachers lah. For e.g. if the teacher is going to be subject to any abuse by the parent because of perceived er..., you know, injustices that have been committed by the teacher against the child. That is a concern, lah... We have our rights too. Doesn't mean we are customer friendly and we have to bend

backwards all the time. If parents were to hurl expletives at you, then you have to tell us.

P9: For me it's very simple. My student must come first, alright, and then my teachers, my staff...whatever thing that happens in the school, we must ensure things like safety, their safety.

In an environment where attention is given mainly to the rights and safety of children, it was interesting to note some principals placing a legal responsibility on themselves to look after the welfare of teachers. In a changing society, where parents are becoming more knowledgeable and vocal about their children's rights, P8's comment highlights the need to protect teachers against unreasonable demands.

The final area of legal responsibility was that of providing the right environment and support for educating the child. This is presumably the starting point for any school. But how has the notion of "legal responsibility" changed over the years in the perception of the participants? The statement of P6 succinctly sums it up overall:

P6: Day 1, teachers no such thing as legal issue. Never know about it. In the 80's, what legal issues? Just "do" lah, and nobody sues.

This statement suggests that, in the past, the concept of "legal responsibility" did not exist, or even if it did, it was thought that the Ministry of Education ("MOE") would handle the legal issues that arose:

P8: In the past, this notion of legal responsibility never crossed our minds.

P9: I think the climate has changed, lah. It's no longer, everything you refer to MOE.

There are two reasons for this change. All agreed that the profile of contemporary parents has changed:

P1: Parents seem to be more vocal, and they seem to make reference to what's in the media...

P2: Parents are certainly a lot more educated than they used to be, and therefore somehow a lot more demanding and their expectations are a lot more higher...many of them have one or two, one child or two children...

P3: Parents' profile...either they are in the legal profession or they are very much more highly qualified to...to...to know such legal matters, that's why they are more forthcoming. Even where the profile is slightly different, er...I still get er...some responses along that line...you know, "legal" seems to be the immediate threat, lah, "I'll sue you" that kind of thing,...that seems to be the favourite tag-line for somebody to...to...to want to make their point.

P4: The parents being more, more knowledgeable...they know they can always go up to the Ministry, they can go up to the newspaper, they can go up to whatever, so if we are unreasonable, NO WAY (*emphasis by P4*) can we stand tall.

P5: One obvious change is that, I will say that now, more parents are educated in terms of their level of education. In the past, you may have parents who are P sixes, but now you will have parents probably getting a diploma, or even JCs, you know, and some even universities. So, if parents are...are more and more literate, they will read into issues concerning education.

P6: I can see the profile of my school change in the 5 years I've been here. So as a result, I think they are more, better educated, and they are aware of their rights, and they know what they can do...I think the expectations of society has (*sic*) changed. Society includes parents, public, people who write letters, neighbours, and even some students influenced by that.

P7: People are better educated, know their rights. Don't forget, the whole population of Singapore, the level of education has gone up...knowledge, knowing about the legal dimension.

P8: ...increasingly we have parents that are better educated and I think my guess is that they will understand and know their legal rights better.

P9: Even parents who are not well educated, they know certain rights, like for example if a child is hurt by another child, they can come here and say that I demand to know why.

P10: I think Singapore, with the population becoming more educated, more affluent, I think it's a natural thing that parents know more and therefore expect more and WILL (*emphasis by P10*) take legal positions if they view that their concerns are not addressed.

The second reason for the change is the move by the Ministry of Education to give school leaders more autonomy in decision-making. As a result, school leaders have a higher level of accountability and have to deal with an increasing range of issues, including legal issues. For example:

P1: In the past, MOE handles legal issues but nowadays, we have to do more, we have to be more engaged in the whole procedure.

P2: I think a school principal cannot operate by all the time taking refuge under the MOE HQ and saying you know, "Can you deal with it?"...I think we should be accountable for our actions.

P3: I think definitely it has changed to somewhat more needful for us to be aware of legal issues. Um...I think usually, the awareness comes in as a form of explosion, when we are hit in the face, then we have no choice but to go and deal with it...sometimes, there's no clear support outright, straight away, from the MOE...

P4: Principals must take on the responsibility...there are a lot of policies that come down from the Ministry...so it becomes a duty for us to make sure that we keep in touch, we're informed...

P7: We have to be kept undated, very often...because events change, context change. We should learn from case studies - how to respond to it if something happens...

P9: I think MOE has given us a certain degree of autonomy...You actually have to make good judgment and decisions at your level, what you need to do, because some things you have to react very fast.

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 EQ and 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 it is provided for in legislation, 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. This issue is explored in more detail below.

7.10 Research Question 5:

What areas of law are principals involved with in the schools in Singapore, and to what extent are principals knowledgeable about their legal responsibilities in relation to those areas of law?

The areas of law the principals were involved with were established from the short questionnaire administered prior to the interviews, and "probing questions" were used to elicit additional information and more complete stories from the participants during the interviews.

The participants, collectively, experienced a wide range of legal issues. The areas of law discussed in Chapter Five are first looked at. The most common area of law encountered by the participants was that of supervision and student injuries, or the allegation of negligence by the school, thereby causing injury. The usual incidents involved injury or fights during recess or in class, falling on wet ground, and injury during sports or PE lessons. Below are some examples of the comments:

P1: Teacher was accused of not alerting children to be careful with glasses before every activity.

P4: Two girls within the same class involved in a scuffle. Girl A, Girl B. A and B go into a scuffle, then what happened is that A got very offended and demanded an apology from B. B refused and then A's parent's came into the picture. They also demanded it, and B refused. Her parents also came into the picture. B's parents were saying that "We are not going to apologise because my daughter didn't start it, so if the father want to make the matter big, we are prepared to make the matter big. I'm prepared to put down \$500,000 for the legal case."

P6: ...she slipped and fell...so the allegation was "anyone pushed her?"

P7: A pupil was injured during PE lesson. He hurt his head and his parents threatened to sue the teacher.

It is interesting to note that amongst the incidents of injury, schools were beginning to experience cases of special needs children causing physical injury to their classmates. Three participants shared their experiences when a child was hurt by a special needs child:

P6: Why did you put my child against that stupid child when you know he's like that, like that, like that?

P8: There is a case of a child with special needs, who...who...who hit another child. And that other girl, I don't know why, this boy was not a strong boy or anything and she had a concussion and was hospitalised for 2 or three days, yah.

And the parents of this child, one parent was a teacher as well, and they did not really kick up a fuss or threaten any legal action.

P9: We have special needs children who can be very aggressive, and they hurt others too. They hurt, they hurt a lot. They not only hurt students, they hurt even teachers, alright. They bite, they pinch. That's what I heard from some people but I have cases in my school where my teacher even get boxed by these children.

Another interesting deviation from the usual negligence claim was the story told by P6 where the school was accused of indirectly causing a student's suicide:

P6: There was a case where a girl committed suicide last year. They claim that we were involved because we did not call the parents. Last year, a sec 3 girl left school early, although she was supposed to stay late, and she jumped. In fact, they had to contact the school because they couldn't verify her identity. We were very shocked when we found out... Basically, we were investigating a few handphone theft cases. The kids came to report that the handphone was stolen, lah. So we have to like investigate, right, because it was stolen in school...the person who lost it, ... came to us with the words "I found my handphone" in another girl's bag, in the now deceased child's bag. Lah... because the girl found out and reported to us, the deceased was very frightened. The next day when she came, she confessed to my OM, the discipline mistress, that she took, but she pleaded with us not to tell her parents. This is quite normal behaviour. I think I have not come across a child who says, you tell lor. I don't care. I mean, not in my experience here...It was a lapse on our part, lah. We didn't think it was unusual. She didn't cry or anything. She didn't like break down...Basically the mother has threatened time and time again, that if she was ever caught stealing again, she will send her to a girls' home. That is like etched in the girl's mind. Because we have heard that many times before, "If you do anything naughty, we will send you to a girls' home, or we don't want you", in some way or other, lah. So my OM didn't think much of it because we heard it before...she wanted to

know whether her parents needed to know. And we said, “Yes” lor. Eventually, but it doesn’t have to be now. We were quite clear, in fact we never called the parents. That was the point of issue, quite ironic. I mean in our books it’s quite common, I mean, slowly lah, we will get to it by and by. There’s no need to raise hell and fire over something like that. We will settle it in good time. So we told her, “Don’t worry, but eventually we will have to tell your parents.” And we actually used this phrase, which may be a problem, “that eventually we will tell”. I mean if you wish, you may tell your parents first. It’s not that it’s a secret. We will get to it by and by. If you don’t tell, we will eventually inform your parents lor. Anyway, the girl was quiet but did tell the OM, “Please don’t tell my parents”. That happened in the morning, mid morning, and we let her go back to class. That was our error, lah. We didn’t know, there was no melodramatic, screamed, cried, so we were lulled into complacency. Cool, cool, nothing happened. She was supposed to report to the OM before she left school but she never did.

Firstly, the parents thought that we were accusing their daughter wrongly because their daughter cannot possibly steal a handphone because she’s got a handphone at home, blah, blah, blah. That’s why she had to go and jump. That was the first conclusion the parents drew, especially the mother. The second one was that, if you had known, you should have called me. “How can you hide this thing from me? Because I would have come and stopped her from doing anything stupid, you see?” So why didn’t we call her? Negligence, lor! Her main thing is, “why did you wait? Because “if you had found out at 12 o’clock, you should have called me instantly, I would have instantly rushed down”.

Teachers, of course, are not psychologists and thus cannot be expected to be able to identify students with suicidal tendencies. However, there are still useful lessons to learn from P6’s story and from similar cases heard in the US. In *Wyke v. Polk County School Board* (1997), a 13 year old male student attempted suicide twice at school

before successfully hanging himself at home. Two administrators in the school were aware of the incidents, even spoke to the student about the incidents, yet failed to secure any kind of help for him or to notify the parents of the two attempts. The court held that “when a child attempts suicide at school and the school knows of the attempt, the school can be found negligent in failing to notify the child’s parents or guardians (p. 569)”.

In other instances, where a teacher is informed of a suicidal statement and fails to act on it, the teacher may have arguably breached his or her duty of care by not warning the principal, guidance officer or parents. It is very possible that one of these groups of people could have intervened if they had been aware of the suicidal thoughts.

The next area of law experienced by the participants was that of corporal punishment resulting in either physical injury or emotional injury. Some incidents of such punishment were described earlier in this chapter, so only a few examples will be revisited:

P1: Parents complained that the teacher knocked the student’s head.

P3: Complaints from parents...for example, why is the child slapped? Why is the child hit? Sometimes, very strange form of punishment where the teacher actually use rubber band to snap the child’s wrist as a form of discipline.

P5: Slapping students.

P9: The child is naughty and the teacher just take the water bottle and hit him on his head. I just got this case this morning. Anything that cause (*sic*) grievous hurt to a child is corporal punishment, so if the parent comes and say that my child’s head is painful and that it’s hurt...

Corporal punishment that may potentially cause emotional injury is an area that educators should also be careful about:

P8: And increasingly now, teachers are also aware that they cannot even verbally abuse the child because parents know their rights, and parents will come back to the principal when their child has been verbally abused. Last year alone, I have about two to three complaints where teachers allegedly calling their pupils “monkey”, or some names, so parents are aware and so I think eh, I mean for my school, one of the core values is “respect” and really this translates all the way from principals to staff to school attendants to students.

P8 went on to say that teachers must recognise that students should be treated with respect:

P8: Teachers are strange people you know, they somehow have this angst in them, you know like when you have a maid, you have this feeling of authority. So I told them - take that out. Go to class and treat the child with respect.

Another area of involvement was that of educational malpractice or professional negligence. As seen earlier in this chapter, complaints about poor teaching usually relate to a poor standard of English, inadequate preparation for assessments and examinations, and the use of relief teachers or trainee teachers. Parents also complain when a teacher is often absent or when a class changes teachers frequently. Although it was generally felt that there is no need to be unduly worried about this area of law, P1 and P10 raised an interesting question: contrary to poor teaching, will teachers’ enthusiasm in helping students achieve high grades cause students to become depressed or suffer from emotional stress?

P1: Children’s stress, that we are unreasonable in our expectations of the kinds of things that our children can do and should do...you will hear my primary 6 parents, you know, not many, but some, will say that this teacher has been doing remedial everyday, has been calling back my child on a Saturday morning to prepare for the PSLE (*Primary School Leaving Examination*), so for every

parent who sounds like that, there will be 39 other parents who will like what the teacher is doing, but you see, you will never hear this 5 years ago, you know, but now you will hear this, parent who will say that, “Oh, it’s ok, I don’t want my child to be in EM1¹⁰⁴, you know, I don’t want to stress him out. Just let him be.”

So my point to my teachers would be, we must be conscious about tiring them physically, so, the nature of activity, stress, concentration level, all those. Professionally, we know the child cannot concentrate for more than 10 minutes or so. So we apply it and therefore not get ourselves into trouble.

P10: I think we’ve got to be very careful that we don’t over market what we can do...It’s one thing to aim high and to aspire for good things and all that for our students but I think we also got to be grounded in some reality as to the kind of profile that we are attracting to our schools...if many of your students are coming with very er...er...low PSLE scores, I mean for them to go to JCs (*Junior Colleges*) and then university, you put added pressure on such students, which may be unnecessary.

I think it’s always good to hope for the best for the students, aim high and expect them to achieve a certain level, and beyond if they are capable, but I think we’ve got to tamper with some reality also.

Education is seen as a significant economy driver in Singapore due to the lack of natural resources. As a consequence, students are put through considerable pressure to excel in schools. This explains the “teacher induced stress” that P1 and P10

¹⁰⁴ Students sit for a common test when they are in primary 4 and from the results, they are streamed into EM1, EM2 and EM3, EM1 being the elite group of students. Due to the stigma attached to EM3 students, this system was highly criticised and in 2004, the distinction between EM1 and EM2 streams was removed, and EM3 students were integrated with other students in their non-academic subjects. From 2008, streaming in primary schools will be scrapped and replaced by subject-based banding. Under this system, weaker students can take a combination of foundation and standard courses, depending on what they are good at (“Primary School”, 2006).

referred to and perhaps highlights an aspect of educational malpractice that is possibly unique to Singapore.

Some other areas of law that the participants are involved with are sexual misconduct of teachers or staff, suspension, expulsion and bullying. Examples of the participants' involvement have been discussed earlier in this chapter and there is nothing significantly different to add here.

There are several other areas of law that the participants had to deal with that were not discussed in Chapter Five. The most cited one was the law of contract, followed by intellectual property. Other legal issues experienced by the participants were the law of defamation, family law (custody issues), assaults on teachers and teachers suing principals for victimisation or unfair evaluations. Most schools have a range of legal issues that school leaders have to deal with on a daily basis and it is not the intention of this study to attempt to cover them all. The question here is: having identified the legal issues, to what extent are school leaders knowledgeable about their legal responsibilities in relation to those areas of law?

Of the ten participants, only P6 claimed to be knowledgeable about legal issues and legal responsibilities. The reasons for this were her experience overseas and her experience with many incidents of actual or threatened law suits:

P6: ...my knowledge I think is quite high as a principal because of my own brushes with the law. I learnt the hard way...My experience overseas helped me gain a lot of knowledge...I did my NIE in London... I saw a few cases myself. But I did my Masters in Harvard, and I'm aware of that. This was beginning to surface already, the legal issues. I asked a principal. It was not a course I attended, but when I went to shadow a principal in Harvard...

P6 cited several examples of her brushes with the law. Amongst them were threatened legal actions for breach of contract, negligence and defamation. P6 was also personally sued by a teacher for unfair treatment. The conversation with P6 revealed that the respondent had a good understanding of legal issues and responsibilities, and expressed her concern about teachers' lack of understanding of where their legal duties lie:

P6: Teachers themselves have grey idea about where our responsibilities end - "are you sure it's not our problem when a child gets into trouble outside?" I mean cases like when they get involved in fights outside - "whose problem is it?" It's clearly not mine you know, but it is a student of mine so I am emotionally involved, as in you know, the non physical aspects, we will have to help, but we don't, unless it's a school sanctioned excursion lah, as I said. I cannot be responsible for the child. I'm very clear about that and my teachers sometimes find me a bit cold. It doesn't happen in school, so how does it concern us?

Apart from P6, who appeared to be confident of her knowledge, the other participants indicated comparatively little confidence. In many cases, the knowledge they gained came from real life experiences:

P3: I had one legal case where they expect me to settle a custody issue... They want the school to not to allow the father to access the child and all that stuff because they are going through custody issue and all that... with this incident, I also learnt a lot more about legal terms. The mother is only given full custody through um...de...cree..nee..si, so only after which I...I...I seek advice from the superintendent as well as the Head of legal service MOE, that we should not get involved because as long as we don't have a Court Order officially from the court, we cannot take sides lah, although they are in the proceeding to settle all the auxillary (sic). I didn't know all these things.

P8: For example, if the teachers didn't perform well and has got a grade that is below expectations. Now there is performance bonus where if they have a "C"

grade which is better, or a “D” grade which is meeting requirements. So some teachers may resort to some legal recourse, you know, ...frankly, I had such a case last year...I was wondering what legal recourse the teacher had because technically, she had a “D” grade, she was meeting expectations. So, she challenged the grade. She said that, “Oh, she did better than that” and she wanted, of course, she’s been told and all that, but she still challenged it. I was wondering does she have any legal recourse technically or not. Can she do something legally to probably put right the situation?...I’m not sure, until now I don’t know because she has asked for a transfer. She has gone to another school. I’m not so sure, I’m still waiting, lah, to see what hits me.

The participants were then asked if they thought school principals should have a knowledge of “education law”. The answer was a unanimous “yes”, but the reasons differed, as displayed in Table 7.11 below.

TABLE 7.11
Research Question 5

P	Statements about why principals need to have knowledge about legal issues
1	There is a need for principals to have knowledge of areas of law that affect principalship...So that they can make better, more informed decisions, and that they will not be necessarily stressed by ah...all this, and they can go back to the core business of developing children, morally, socially, whatever, whatever. So they will not be unnecessarily stressed.
2	If I expect students to learn to grow up to be responsible individuals who are accountable for their actions, then as school leaders, I think we also should be accountable for our actions, yah. You cannot do something and then say, let the Ministry of Education to deal with it.
3	I think I would like to know more, you know, um...so that I...I...I really will be better able to cope lah, with some of the things. And why? I think, um...whether there is going to be an increasing trend of threat or not, I think it makes the educationist more holistic...It helps me as a person too, it helps me as a citizen of the country too, it’s not just my job per se. I see it as a holistic development because whether I know it or not, I got to face all these challenges or threats and all that. I can’t say

	<p>because I don't know the law, therefore they've got to excuse me. I can't say that to the parents or to any potential, rising threat. But I see my...my role, you know, er...as a more purposeful or a more maturing one and therefore when I value add to the system at large, I don't want to know the law to serve a possible threat. I think I...I...I...I'm not worried about that, yah. So I think it's good lah, for us to be holistic.</p>
4	<p>Yes, like what you shared with us at the last seminar, that was extremely useful. We are able to see definitions of law which we never knew of before. This is because of what I said earlier, parents are becoming more knowledgeable, more vocal, media etc.</p>
5	<p>I think it is a need, although you may not be using it let's say, every week or every month, you know, but when you encounter cases, alright, then it will be good. That is number One. Number 2 to be more proactive, after you know all this thing, whatever policy you discuss with your teachers and you draw up, it will be helpful, because you have the first hand knowledge of some legal matters, and then you draft the policy, then your policy will take into consideration all this thing you see. So that itself, I think it's a proactive approach, it's a good approach.</p>
6	<p>Yes, so that they will not be so frightened, lor. I think, knowledge is powerful, because you will not be threatened, lah. I mean like baseless cases, your intellect, you know, will tell you it's rubbish but you better make sure, right, because I'm not sure about the law, the law need not be intellectual, some of it is like, not, not logical sounding, so you need to know.</p>
7	<p>Yes, definitely, definitely and they have to be kept updated, very often. Not only knowledge, they have to continue to update themselves. Because events change, context change... Because people are better educated, know their rights...We should learn from case studies. How to respond to it if something happens. For e.g. if someone kill himself, in what circumstances. For e.g. if a kid slips off school, during recess time in a neighbourhood, and system not in place where children not supposed to leave school during school hours. What happened if child goes some other block and jump... Knowledge, knowing about the legal dimension.</p>
8	<p>Definitely. For the reasons I mentioned earlier e.g. parents are more educated, they are reading things given out to them. And also, it is good for you to be aware because you can respond appropriately, when you have a conversation with a parent or whoever, you know. I mean, it could be legal issues with regard to teachers even.</p>
9	<p>If you do things just like that without knowing, having any background knowledge of the consequences, then you will end up in hot soup (<i>laughter</i>). So it is really essential that you know something, have some background knowledge of the law.</p>
10	<p>I don't believe we all need to be experts in the law. We need to know enough to make good decisions, to understand, to undergird the kind of decisions that we make...basic knowledge will be necessary.</p>

In Table 7.2, it was noted that all the participants saw an increased in the influence of law on school policies, and that legal matters caused more stress than they had in previous years. The question leading to the statements in Table 7.11 was thus an “extra question” that tested the reliability of the participants’ response in Table 7.2.

Indeed, one of the reasons for having a knowledge of legal matters, as seen from the statements in Table 7.11, is that such knowledge may help principals to make judicious decisions, and that in turn may prevent unnecessary stress amongst educators:

P3: Any legal issues, unique incidents, I will make sure I communicate to the staff very quickly, so that they don’t learn the hard way, and be stressed out on the ground. Even if they take time to come and ask the principal, I think they shouldn’t be put in a difficult position and be scolded by parents and all that. They don’t deserve that. I think at the teacher level, they shouldn’t, lah, be bombarded. So we tell each other some of the bottom lines, lah. Even though they can’t handle the case, they will not be emotionally stressed out. Sometimes the thing is, they take overnight to tell me some of the things because they may not have seen me and all that stuff. Not fair lah, to the teacher, to put them through, undue stress.

P3 was implying 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.

In addition, a knowledge of legal issues, in the view of P6, puts educators in a stronger position when confronted by problems that could have legal consequences:

P6: They should not be threatened with ignorance, lor. I mean ignorance is something, “Yah, yah, he can really sue me,” but it’s rubbish, he cannot sue you, he has no case!

A knowledge of legal issues can thus boost principals' confidence in handling incidents, but P5 and P10 highlighted that it is also useful for supporting decisions and drafting policies:

P5: Because sometimes if you don't know or don't have knowledge of this and you go and craft a policy which actually impact these legal things, you don't know. It's better to have a good knowledge of it before you draft your policies, right?

P10: I don't believe we all need to be experts in the law. We need to know enough to make good decisions, to understand, to undergird the kind of decisions that we make...basic knowledge will be necessary...but, law being so technical, you would need advice about certain positionings. If not advice, then some reassurance, so when I have a new issue, I will always refer to counsel.

Two other reasons for gaining a knowledge of "education law" emerged from the statements. 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:

P8: The parents will say, "If you don't deal with this matter, I will report to the MOE, I will go the media."...I guess I realise that I have to know the law a bit more. That's why I always fall back on this friend of mine who is a lawyer so if there is anything that I feel that there are any legal implications...Basically, I have to check with people who know the law to see whether I am on the right side of the law and what my rights are.

Second, there is an accountability issue. As suggested by P1, 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:

P1: See, it is very limiting you know, to not know things, and it's very dangerous to not know things and yet go with, aiyah, 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 put by P2 and P9:

P2: ...as school leaders, I think we also should be accountable for our actions.

P9: So it is really essential that you know something, have some background knowledge of the law.

7.11 Research Questions 6 and 7:

Question 6: How might schools develop risk management systems to cope with significant “care” issues?

Question 7: What forms of support need to be given to principals and those in managerial positions to prepare them for the legal requirements of their professional roles, to ensure that they are conversant with important legal issues, can apply principles in the workplace that are robust and resistant to challenge, and what shape should those support strategies take?

The answers to research question 6 are discussed in Chapter Eight. A methodological approach that has been rarely used in Singapore was employed to ascertain the answers to this question. Research question 7 is discussed in Chapter Nine when considering the implications for this study.

7.12 Conclusion

The answers to research questions 1 to 5 indeed show the effect of globalisation and the emerging importance of areas of law in the education sector. An “extra question” was thus posed to the participants to ascertain the impact of all this on school leadership. Not surprisingly, there is consensus that principals now need to be more informed or educated about legal issues and more skilful in managing parents. For example:

P3: I think the level of awareness or the kind of interaction on legal matters is definitely on the rise lah, yah. I think it is needful lah, especially for principals, even if we can't cascade it down to the general staff level yet, principals should be the first group of people that...that...should be inducted with more um...bite size kind of understanding, so that we will be making even more informed decisions, yah, for the setting as a whole.

P8: I guess I realise that I have to know the law a bit more.

P9: Knowledge about law, alright, and er...what are the pitfalls, alright, or consequences of certain actions that we didn't do properly, that will be very useful, I would say, to prevent incidents from happening. I'm all for the law, you know. I feel that knowledge about the law is necessary and I would take positive steps to make myself more knowledgeable.

P4: ...you need to have the skills to be able to engage with the stakeholders in a meaningful and effective way.

P7: I have been running schools for 20 years, I manage the...manage the...you see, legal issues will only come along only if you do not know how to talk to people, how to manage situations, huh. The Chinese saying huh, small matters can be a big issue if you manage the wrong way, you know.

One way to manage parents and students, it was felt, was to constantly obtain feedback:

P5: You have to get feedback from them. You cannot run the school, you know, without getting feedback from them, without even sensing what they want and what they don't want, then you will have a lot of problems... you see, sometimes good ideas can come from them, you know.

P10: I've got to spend a lot of time discussing things from management all the way to the students and the parents because people need to know why you need to do it this way or that way...so you've got to keep responding, explaining why you make some decisions, so that people at least understand that they are heard

and if there's a "no", they know why, at least from the management point of view. So there is a lot of engagement involved, very tiring process at times.

Unlike previous times, the participants now find themselves more alert to incidents that could lead to legal situations. Below are several examples of what they said:

P1: I probably will become...as a result of this, will become more alert at making notes of, you know, ah, legal implications. When we read in media, when we listen to other cases being talked about, we probably make a more conscious effort, you know, of learning the implication and learning what is the most appropriate thing to do.

P6: Now when I read the newspaper, I will pay attention to these issues, you know, I mean, it's like the red flag, lah. I read it and say, oh, legal issue, does it impact me, you know? I'm more alert and I try to pick up learning points to share with my teachers lor. Sometimes when I see my teachers doing something like that, I warn them, like - danger zone - don't ever do this. I'm more vigilant.

With the increase in incidences of legal issues in schools, school leadership is arguably becoming more challenging for and demanding on school leaders:

P3: If there is a new case, I don't see it as a stress, I welcome it as a challenge.

P2: Makes it (*principalship*) a lot more challenging and interesting for sure.

Cases being challenging and interesting will not provide skills needed to deal with them. There is a need for professional knowledge, involving sufficient understanding of the law so as to enable school leaders to practise preventive law management strategies.

In the next chapter, the findings of the Q methodology study are presented. The chapter addresses the question of how school leaders might deal effectively with legal issues and develop legal risk strategies to strengthen their professional roles.

CHAPTER EIGHT

Q METHODOLOGY: DETERMINING STRATEGIES TO AVOID LEGAL RISKS¹⁰⁵

8.1 Introduction

The interviews with school principals revealed a general level of agreement amongst them that the law is indeed relevant to their work. Yet, there appear to be different perspectives amongst educators regarding what should be done - if anything - to avoid unwanted encounters with legal issues and to ensure that schools can concentrate on their core activity of schooling without unfortunate distractions.

This chapter reports an exploratory study that used a research approach unfamiliar to some research audiences and previously little used in Singapore - Q Methodology - to make sense of these diverse perspectives by examining the nature and complexity of the opinions themselves (as opposed to the people who held them.) By gaining deeper insights into the points of view, the information may be used by policy makers to, first, understand where senior personnel in education are coming from in terms of their views about what schools, the Ministry and others should be doing to avert legal risk; and, second, formulate strategies that will enable these educators to gain a clearer understanding of how they might deal effectively with legal issues and develop legal risk strategies. The study provides a methodological advance in understanding the complexity of different perspectives, and may be useful to other systems and contexts when considering how to address the development of educators' ability to manage legal issues.

Singapore became independent in 1965, and since then, education has played a crucial role in the development of the "human resource" of the country. However, as

¹⁰⁵ The findings of this project were presented in the Australia and New Zealand Education Law Association 13th Annual Conference: Innovation and Internationalisation: pushing the boundaries of education law, (22-24 September 2004) and published in the conference proceedings.

seen in the earlier chapters, education was made compulsory in Singapore only in 2003, when the government enacted the *Compulsory Education Act (Cap. 51)*. The education system in Singapore now provides six years of compulsory primary education, and four or five years of non-compulsory secondary education for all children. After secondary education, pupils progress to pre-university colleges, polytechnics or vocational educational institutes, or straight into the workforce.

A few years ago, eyebrows would have been raised at the mention of law in the school context. The view has generally been that schools will never face litigation in the courts, because Singaporeans are apathetic and will not fight for their cause. But as can be seen from the discussion in earlier chapters, this is no longer true, as Singaporeans are now more prepared to express their concerns openly and critically, and schooling issues feature prominently¹⁰⁶.

Data in Chapters Six and Seven suggests that the proliferation of legal issues impacting schools is a growing concern for the administration and management of Singapore schools. Principals not only find themselves dealing with more and more specialist concerns, such as negligence in relation to the safety of children and financial, contractual and family matters, but they also find that increasingly higher levels of accountability are being demanded of them. This may be due partly to society's changing expectations and partly to the Ministry of Education's move towards granting greater autonomy (decision-making powers) and responsibility to the schools and, therefore, the principals.

If legal issues are expanding in schools, then, what are the best strategies for coping with them and what are the responsibilities involved? In understanding what are

¹⁰⁶ See Chapters One, Three and Seven

perceived to be the optimum strategies, we needed to go beyond the simplistic aggregation of responses to items, and into territory that would throw more focussed light on the strategies themselves and the complex ways in which they were assembled.

8.2 Methodological Approach

The methodological approach - Q methodology - is described in more detail in Chapter Two of this study but a brief review is included here to lead the reader to facilitate an understanding of the data and analysis.

8.2.1 *A priori or a posteriori?*

In most research studies, the researcher observes, describes, counts and charts, and then arrives at interpretations and conclusions in the light of prior understanding and knowledge. However, responses to questions and scales have meanings that may be different from those of the observer. As pointed out by Stainton Rogers (1991, p. 9), “when an individual marks an item on an attitude scale, they are not expressing “their” opinion (i.e. making explicit a single implicit and enduring “essence”), rather they are selecting *one* from a range of contradictory “attitudes”. They are choosing which one to express at a particular moment.” Q methodology thus employs investigative approaches that enable the subject to provide the explanation of the issue or phenomenon, and to engage his or her own measurements and observations. The approach relies on gathering information and then applying concepts to it, rather than trying to locate data in predetermined concepts and theories. The researcher did not start with any prior definitions or attempt to make any prior inferences. All the participants in the investigation counted and their responses formed the researcher’s understanding of the issue. From this perspective, the researcher had to expect the unexpected and accept new explanations of the relevance of law to

school leaders and their preferred strategies to avoid legal risk - ones which may never be considered.

The researcher started off by setting up the situation in such a way that subjects were able to say what they wanted to say, and then the researcher hoped to discover something about what they meant. As Q methodology is designed to investigate the individual's subjectivity, the researcher asked the individual to construct a model of his or her subjective preferences about the issue of law and legal risk in schools. The way in which individuals placed statements in relation to one another revealed the relative subjective importance attached to their perceptions. Meaning was then drawn from the way in which the Q-sort was completed.

8.2.2 Generalisability

The concern in Q methodology is to sample adequately the range of opinion, perception, view, preference and so forth about a particular issue. In this study, the statements were a sample of opinions about what should be done to help schools avoid issues that might give rise to legal concern or action. The researcher was not concerned about the relationship between a sample of people and the "population" of which they were a representative part. Rather, the concern was with the model of opinion (or perceptions) that typified people who related to it statistically. Such a model is expressed, through a process of factor analysis, as a factor, and the factor is best described by Brown (1980) as a generalised abstraction of a particular outlook or value orientation. Thus, people who load highly on, say, Factor A may be generalised as having similar models of opinion.

Factors, in this methodology, can be described as clusters of “persons” who rank the statements in approximately the same way. Thus, those who load highly on the same factor may be deemed to have a commonly shared perspective.

8.2.3 *The issue*

The researcher’s concern was with how educators in leadership positions - mainly in schools and the Ministry of Education (“MOE”) - understood the law having an impact on their work and the best strategies for averting legal risk.

8.2.3.1 *Preparing and Administering the Q-sort*

The gathering of statements - the “concourse” process - took several weeks, but prior to the concourse, several months had been invested in reading the available literature. In finalising a list of statements that could be used for the Q-sorts, the researcher had to ensure that the statements covered a broad range of opinion about the issue under investigation; and that the statements were clearly different one from the other.

After the list of statements had been generated and reduced to manageable and representative proportions, each statement was numbered randomly and put on a separate piece of card (a Q-sort). The Q-sorts were then administered to each participant. A total of 47 participants from primary and secondary government and government-aided schools, junior colleges and the Ministry of Education took part in the research.

8.2.3.2 *Factor analysis and Interview*

The scores from each participant’s grid were entered into the PQMethod software programme, which carried out an inverted factor analysis of the data. The factors

that emerged from the analysis were the *models of opinion* (or proposed solutions) about what should be done in or for schools to avoid legal challenge. Follow up interviews were then conducted with the help of “Accounts” or “storylines” to confirm or modify the understandings of the researcher, and clear up any anomalies that were apparent.

8.2.4 The Accounts

As mentioned in Chapter Two, the writing of the final accounts is best described as a “craft” rather than a science. Retaining the vitality of the original expression and writing an integrated and coherent account is not easy, but by identifying four distinctive factors from the factor analysis, the following “accounts” or “stories” emerged. Each story is characterised by certain key themes, which the researcher has used to suggest a title for the particular factor or point of view. Earlier it was suggested that the factors are proposed “solutions” to the question: what should be done to avoid legal difficulties in our schools?

8.2.4.1 Factor 1: The “Training” Solution

The best way of reducing exposure to legal risk in the school is to ensure people receive adequate training. All appointment holders - principal, vice-principal, heads of department, senior teachers, discipline master, administration manager and others - should be trained in how to avoid legal risk, and NIE should include legal instruction in both its leadership programmes and its pre-service programmes. However, it is of critical importance that leaders are well trained, and principals, therefore, should be the first to receive instruction. Teachers should also be trained to appreciate the correct course of action in any given situation, and training in mediation skills should be given, because increasing arguments amongst parents and teachers can lead to legal consequences. The training process can be supported by events such as conferences, a Principals’ Forum, staff meetings and student assemblies.

All these training strategies and events should be complemented by other effective strategies, like giving advice to young teachers early in their careers, making sure teachers and pupils are conversant with behaviour policies and disciplinary procedures, and the principal giving constant reinforcement about the things teachers do that have legal implications.

There is no point in wishing the good old days could return, because we are in a vastly different environment now. Nor is it possible to look to the government or MOE to protect us. Experience, however valuable, is no substitute for training, and we cannot rely on familiarity with the Principals' Handbook to sort out our legal issues. Rather, we should provide the right training, spell out the correct procedures, and give staff the skill to develop good relationships between students, parents and teachers.

8.2.4.2 Factor 2: The “Guidelines and Leadership” Solution

The optimal way of managing legal risk is by ensuring systems, processes and broad guidelines are in place. 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 (SOPs) will help in averting risk, and schools should identify hazards and assess the risk of accidents occurring. These assessments should then be carefully documented.

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. As well as having broad guidelines, there should be some training, particularly for the leaders in the school (with principals

being the first to receive training) and NIE can help us in this training by including law in its leadership programmes. The training should include mediation skills, because there is increasing incidence of disputes amongst and between teachers and parents. Nurturing good relationships, therefore, between students, teachers and parents will enable the school to work things out before situations get out of hand.

Even if we work on the principle of keeping the children's best interests at heart to guide our actions and decisions, that is not going to help a great deal. We should not expect protection from the government or the MOE. Similarly, the calibre of teachers and teaching applicants is of little influence: with good strong leadership, though, and some sensibly thought-out guidelines, schools should be able to both manage and possibly even avoid legal risks.

8.4.2.3 Factor 3: The "Relationships" Solution

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. Some training too in mediation skills will serve to enhance relationships.

Despite teachers making it clear to students what the expectations are, students sometimes do not meet those expectations, so they may need to be reminded of the consequences they face from time to time.

Some understanding of the law is useful and, indeed, principals should be the first to be given such knowledge, but there is no need for large scale training, such as NIE training for leaders and trainee teachers, and training for teachers and appointment holders (including cluster-led training): these are not the most effective strategies. Supervision measures, Standard Operating Procedures (SOPs) and rules are useful defence mechanisms, only when relationships fail, so they are not the best ways of avoiding legal risk. Strong leaders

can be suffocating if they simply issue directives, so they too are unlikely to be the best solution.

The government might do more to protect teachers and schools from the consequences of an increasingly litigious society, but in the end, the most effective strategies are those that are designed to nurture good, meaningful and sustainable relationships - characterised by common sense and sensitivity - amongst parents, students and professional educators.

8.2.4.4 Factor 4: The “Blend” or “Rojak” Solution

We have to implement a judicious blend of strategies to avert legal risk. Good relationships between students and teachers, and regular contact with parents, combined with a concern for the welfare of teachers, form a key platform for success in keeping things under control. Relationships can be enhanced if educators have training in mediation skills in order to cope well when things go wrong. An MOE conference or Principals’ Forum would support the training strategy, and the key appointment holders should be the main recipients of training in legal issues.

While schools can adopt a range of effective strategies, the government should play its part by introducing legislation to prevent schools, teachers and principals from being sued, as this would be a major source of support in reducing the fear generated by legal risks. The MOE too has a significant role, for it can give clear advice and publish it, so that schools have a ready source of reference. Better still, a Legal Helpdesk would be of great help.

Other strategies include identifying the major accident hazards, the problem areas, like PE facilities and workshop areas, and then monitoring them; and holding staff meetings and student assemblies to review rules. This information can be reinforced by reminding teachers of the major risk areas of school activity. One more strategy is to catch teachers early in their careers and give them good advice about legal matters.

There is no way we can make the school a “risk-free” zone, and there is no point in letting events reach the stage where we need to draw on the help of lawyer friends and alumni to get us out of difficulty. The Principals’ Handbook is not the answer to avoiding legal risk, and we cannot rely on our common sense, sensitivity and honesty, nor on our predilection for the best interests of children: worthy attributes though these are, the harsh realities of contemporary life in school calls for a realistic range of strategies to avoid legal incidents.

8.3 Discussion

The stories above are largely self-explanatory, and they reinforce the view that an opinion - about a complex issue such as this - is not a unidimensional construct but something that is made up of certain bits and pieces, assembled in a particular way. The first story - which is called The “Training” Solution - has a strong training theme. It is concerned largely with relevant people receiving the necessary instruction, and the point of view also specifies that both the National Institute of Education (“NIE”) and the Ministry of Education (“MOE”) have a crucial role to play in providing this training. The view also mentions good relationships, policies and procedures, and several other supporting strategies, but the essence is still training. The strategies rejected in this viewpoint include drawing on the Principals’ Handbook for guidance and making use of experience. One might assume the Principals’ Handbook was seen as the definitive guide to all actions for the principal, but this factor tells us otherwise. It does not mean the handbook is never used; rather, it means that principals who hold this point of view are unlikely to see only reading the handbook as a sustainable strategy for avoiding legal risk. The rejection of experience as a key aid to risk management was slightly surprising, because experience has always been held in high regard in Asian societies. It seems, however, that in a fast-changing

world experience may be “nice to have” but may not provide the know-how for dealing with novel and complex issues.

The second factor has an emphasis on procedures. This was evident from the statements about behaviour policies, risk assessments and standard operating procedures. However, the follow-up interview with an exemplar corrected the erroneous impression that the viewpoint was mainly about blindly following the rules. Rather, it is about ensuring there is a system of guidelines in place that can influence people’s actions. The story 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. Thus, it is the principal who should spell out policies and procedures, and who should provide constant reinforcement and reminders. These messages are very prominent in the viewpoint. There are other contributory elements to the account. For example, training is important, and so is the development of good relationships with parents. One statement referred to “keeping the best interests of the children at heart” in order to avoid legal risk, but this was rejected as a viable strategy. Pragmatically, this point of view accepts that it is easy to get into hot water if one naively assumes that catering to the children’s interests is the same as complying with the law.

The third factor was the most interesting solution. It is very much to do with relationships and developing the skill to enhance the quality of relationships. Unlike Factor 2, keeping the best interests of children at heart is seen as a key strategy, because, as one principal said when the researcher was gathering the statements for the concourse, “No judge is going to condemn you if you are doing things for the children’s sake.” The need for relationships is comprehensive. It includes relationships between teachers and pupils, between teachers and parents, and

between principal and teachers. The whole extended community of the school must be characterized by high quality interactions. Common sense is also seen as a valuable aid to dealing with potential legal issues. That was in stark contrast to the other three points of view, which were less enthusiastic about the value of common sense. In this particular story, one sees the role of government in supporting the work of principals: it advocates the government setting up legislative standards for problematic areas like staff-student ratios (for school trips) and hazardous activities. Perhaps the most surprising angle on this viewpoint, though, is that training is largely rejected: not entirely, but selectively. The viewpoint does not accept any need for large scale training. Actually, it is not too surprising when one looks at the story in its entirety, for if relationships are that powerful in preventing many of the difficult situations schools face, then there is no need for extensive training provision.

The fourth factor is what is called the “blend” or “rojak” solution. Rojak is an indigenous word meaning “a mixture of many kinds of things”. It can be used derogatively to indicate a lack of focus, but it is felt that the word is appropriate in this case to indicate a number of diverse strategies bundled together to make a coherent and acceptable whole. There are many strategies attached to this solution, but two are worth drawing particular attention to: first, it advocates the government providing better protection for teachers by giving them immunity from lawsuits; second, it suggests that the MOE could do more to give clear advice, and even suggests the setting up of a legal helpdesk.

In drawing out some of the key strategies from these points of view, there is a danger of isolating specific strategies and attaching unwarranted importance to them. For example, although attention is drawn to relationship development strategies in Factor 3, the point of view is much more complex than that. Indeed, the viewpoint is

incomplete without all the other strategies that give it its shape. Seen in this light, there is no sense in asking people to complete a checklist to indicate preferred singular strategies, because - as we have shown here - that precludes the existence of “whole” points of view. That is where this methodology provides a convincing basis for accessing the complexity of issues and seeing them in a holistic sense. Attention is now turned to a few of the interesting analyses of the factors. The analyses from PQMethod are shown in Appendix 4.

8.4 Analyses of the Statements and Factors

The Q methodology software produces a range of useful analyses. The Consensus versus Disagreement analysis sorts statements according to their relative degrees of agreement and disagreement. The scale, incidentally, is from +5 (strongly agree) to -5 (strongly disagree). It is the disagreement that provides the more interesting information. For example, the statement:

All appointment holders (P, VP, HODs, STs, DM, AM¹⁰⁷ etc) should receive instruction or training in legal matters affecting the school.

was ranked highly in three factors (+5, +4, +3) and lowly in the other factor (-4).

There was a wide disparity of view also on the statement:

Keep the best interests of the children at heart and you won't encounter problems. Even if you do, a judge would always understand your intention.

It was seen as very important as a strategy in one viewpoint and of little or no importance in the others. There were similar disparities in statements relating to the National Institute of Education (“NIE”) and its role in providing training. One of the more interesting points of disagreement, however, related to the government's role:

No worries! Singapore is not like other countries. The government can step in and stop any nonsense. Look what happened to the SIA pilots!

¹⁰⁷ Principals, Vice-Principals, Heads of Departments, Senior Teachers, Discipline Masters, Administrative Managers

Three of the factors had this ranked at the very bottom (-5) but Factor 3 placed it at +1. While that rating in itself may not raise any eyebrows, it is important to note it was not rejected. Its placement saw it as a viable strategy, certainly in one point of view. This is understandable. The government has often intervened in problematic situations, and this viewpoint clearly suggests that if things get out of hand - if parents start suing teachers and schools - the government will not stand idly by. The sentence “Look what happened to the SIA pilots!” is a fascinating annexe to the item statement, and it was given to the researcher by a principal during the concourse. Only weeks before the researcher commenced, Singapore Airlines pilots had been in dispute with the employer. The government intervened and, subsequently, the pilots’ union leader - a foreign national - had his permanent residence revoked and was thus unable to work for the company. The government can indeed make its presence felt in difficult situations, although three of the viewpoints did not accept that as an effective strategy in helping schools cope with the law.

The most important analysis is that which identifies the distinguishing statements for each factor. These are the items that give each factor its identity: its separation from other factors. For the first factor, what we call The Training Solution, these were some of the distinguishing statements:

- All appointment holders (P, VP, HODs, STs, DM, AM etc) should receive instruction or training in legal matters affecting the school.
- NIE should include law in its leadership programmes, like LEP and DDM¹⁰⁸.
- NIE should have legal instruction in its pre-service and perhaps in-service courses.
- We should give legal knowledge to teachers first. If they get things right, there is less need for principals to be involved.

¹⁰⁸ Leaders in Education Programme and the Diploma in Departmental Management, compulsory programmes designed for incoming principals and incumbent and incoming heads of departments.

These are statements that were rated differently in the other factors. Here, only the positive statements are indicated, that is, those that help to characterize what the view “is” rather than what it “is not”. The analysis, however, shows us statements that may be rejected in this point of view but which are not rejected (to the same extent, perhaps) in other points of view. For example, the statement

Often, it’s the students who start things off. We should remind them about things like fighting, bullying etc. and the consequences they face.

was rejected in this factor, while in the other factors it was either accepted (Factor 3) or seen neutrally. It is clear, though, from the positive, distinguishing statements alone that there is a strong element of training in the point of view, extended by identifying who should provide the training and who should receive it.

Factor 2, The Guidelines and Leadership Solution, has several distinguishing statements:

- We must have strong leaders in schools, leaders who will give clear instructions and ensure compliance.
- The principal should spell out behaviour policies and disciplinary procedures on a regular basis to teachers, pupils and others.
- There must be constant reinforcement. Principals should remind teachers of the things they do (or fail to do) that could have legal implications.
- Schools should adopt Standard Operating Procedures to cover all situations.

Each of these statements is scored highly for the factor. There is marked contrast in the scoring for the statement about standard operating procedures amongst the factors. In this factor, it is ranked +3, while in the other factors 1, 3 and 4, it is ranked 0, -2, and 0 respectively. Indeed, the statements that separate this factor from the others are essentially about policies, systems, processes, procedures and strong leadership. But even the leadership statement is about giving instructions and ensuring compliance, so it fits neatly into the procedural mould.

Factor 3 yielded the greatest number of distinguishing statements, but this included six negatively ranked statements, thus indicating what the point of view is definitely not about. Such statements included:

- NIE should have legal instruction in its pre-service and perhaps in-service courses.
- NIE should include law in its leadership programmes, like LEP and DDM.
- All appointment holders (P, VP, HODs, STs, DM, AM etc) should receive instruction or training in legal matters affecting the school.
- If the school knows where there are problem areas (e.g. PE, labs, bullying places) we should increase the monitoring.
- We must have strong leaders in schools, leaders who will give clear instructions and ensure compliance.
- Step up supervision measures in the school.

These negatively ranked distinguishing statements make it clear that the point of view rejects the efficacy of training at NIE, training for key personnel, and the escalation of monitoring and supervision. It also rejects the notion of strong leadership being a necessary condition for preventing legal risk. The statements that help explain what the viewpoint is about and that distinguish it from the other three viewpoints are:

- We should keep in regular contact with parents, keeping them informed, then they won't create difficulties.
- Keep the best interests of the children at heart and you won't encounter problems. Even if you do, a judge would always understand your intention.
- We should draw on the help of lawyer friends or alumni if legal matters arise.
- This is all a management issue. Use common sense, be sensitive and honest, and the risks will be minimised.
- No worries! Singapore is not like other countries. The government can step in and stop any nonsense. Look what happened to the SIA pilots!

While there is a strong theme of relationships, and particularly those with parents and students, it is a fascinating viewpoint that brings in several other strands of opinion. For example, the statement above about the government's intervention capabilities was completely rejected (-5, -5, -5) in all the other points of view. This viewpoint was also the only one that gave credence to the value of common sense. It could have been expected that sensitivity and honesty - combined with a healthy dose of common sense - would be seen as important qualities in bringing about a relatively risk-free environment, but that was not to be, except in this viewpoint. The statement about drawing on the help of lawyer friends also suggests that the viewpoint, while creating favourable relationship conditions, accepts that occasionally things may go wrong, but that there is no need to go overboard.

One other statement deserves special mention, partly because it was identified as a distinguishing statement for this factor, significant at the $p < .01$ level. It was the nostalgia statement:

Let's go back to the days when what the school said and did was indeed the law. Parents respected the school. Let's leave the law to lawyers.

The other viewpoints ranked it -5, -4 and -5 respectively, indicating firm rejection. In this point of view, it was ranked at 0. Thus, it is unlikely that it is rejected, but rather seen as an acceptable strategy - if that is the right word. There appears to be, in this viewpoint, a longing for the conditions in which relationships were predominantly strong and in which the school was seen as good and as having the final word.

For the final factor, there are several distinguishing statements that warrant attention. One, significant at the $p < .01$ level, is:

The government should introduce legislation to prevent schools, principals and teachers from being sued.

In writing the account, it was explained that this factor has several diverse strands that form a blend of strategies, most of which appear in the other factors. Thus, they are unlikely to appear as distinguishing statements. This statement, though, is one that uniquely sets the point of view apart. Amidst the range of other strategies, the government can play its part by creating an environment in which teachers are not unnecessarily fearful or apprehensive of the law.

There were two statements about the MOE. The first was:

MOE should give clear advice and publicise it so that schools can call up anytime. We need a legal 'Helpdesk'.

Like the government, therefore, the MOE should play a supportive part, and in an "instant" world, it is seen as unreasonable to have to wait for advice! The expectations of the MOE are indeed considerable. Whether the next statement, significant at the $p < .01$ level, is a case of wishful thinking or a genuinely held view is a matter for conjecture:

The MOE should prevent the press from getting hold of stories about schools.

Finally, this point of view rejects the need to draw on lawyer friends and alumni when things go wrong, and it also rejects that it is a viable strategy to make the school a risk-free zone. All in all, it is a viewpoint that is characterized by a comprehensive range of strategies, but with several unique tactics to enlist the help of government and MOE.

It is clear from the above that there are several very distinctive points of view amongst senior administrators, and in the following paragraphs, the implications of the Q methodology analysis will be discussed.

8.5 Implications of the Q methodology Study

From the analysis of the Q methodology study, one understands the educators' points of view better. Much of the research in the field says very little about the opinions and viewpoints, but provides plenty of information about the people who hold opinions. For example, instead of approaching the issue of risk limitation strategies in this way, suppose the researcher had formulated a long list of all the strategies mentioned in the research and then asked respondents to check those they thought were the most effective strategies. Then the researcher would have ended up with a rank order of the most widely supported strategies, like, 75% of principals think training for appointment holders is effective, 52% think standard operating procedures are effective, and so on. But such an analysis tells the researcher very little, because it does not help the researcher to understand people's opinions in all their complexity. Knowing that 75% of principals believe in training as a strategy does not shed any light on an individual's opinion. The researcher needs to know the individual's opinion in its entirety in order to understand his or her point of view. That brings one to the next implication.

In order to "connect" with an individual, one needs to understand the essence of a person's point of view. In a classic piece of research using Q methodology, Wendy Stainton Rogers explored people's views about health and illness. Her research suggested that there were eight dominant "accounts": one, for instance, was about the power of medicine to treat naturally occurring illness; another was a spiritual account about health being a product of "right" living; yet another was about the capacity of willpower to control health (Stainton Rogers, 1991, p.143). The point of all this is that if the government is putting policies in place to persuade people that a healthy lifestyle is a determinant of good health, it may be speaking to only a

fraction of the population that holds such a view. It is unlikely to communicate effectively with those who believe that health is something determined by God.

If one accepts this premise, then this research clearly has implications for policy makers. As there are concerns about how to help schools cope with legal issues, which seem to be part and parcel of the contemporary scene, if one strategic line is advanced, how persuasive will it be to those whose viewpoints are shaped in different ways? For example, if those who work in higher education are advocating the supremacy of training in averting legal risk, then it may be persuasive only with those whose views correspond to any degree with Factor 1: the Training Solution. The message needs to be tailored to the audience. Therefore, policy makers may be well-advised to account for the distinctive points of view and target different messages to different audiences.

Whether one accepts that position or not is immaterial. What is more important is that from this study, one can have a deeper understanding of the points of view that people dearly - even passionately - hold. If one can accept that viewpoints are an amalgam of different elements and are usually complex, one is on the way to understanding people themselves. Much of the research denies people of this depth and accords to them merely superficial and reduced viewpoints. Perhaps this research has shown that the thinking and formed opinion about facing up to legal issues in schools is as complex as the people who hold opinions. There may be many different reasons for principals failing to provide what we consider to be “adequate” training for their staff. Their views may be more consistent with the relationships solution, for example. If policy makers think that their “models of opinion” are the only ones and that there is a linear relationship between intent and action, then they may be disillusioned to find that the linkage is less than predictable.

Stainton Rogers (1991, p.232) beautifully illustrates the “insight...that action can be instantiated only (if at all) by access to the account within which it is predicated.”

She goes on to explain:

I have a neighbour who smiles wanly each year as she comes round to my house with a collecting tin and asks me to donate to cancer research, clearly unable to understand how anyone could refuse on moral grounds. Her incomprehension is, I believe, the consequence of her having no access to my ‘cultural critique’ account of medicine (however hard I try to explain it). If such a complete lack of comprehension can occur between two people who ostensibly share, in any demographic analysis, a single socio-economic class, gender and age group, how much more is it likely to occur between people whose social and cultural origins and roles differ more widely?

While this research may not have encountered amongst the population of school principals such demographic diversity, this study has shown that formulations by policy makers may not result in principals’ action, because it would be erroneous to think that principals and their colleagues will ‘make sense’ of strategy by reference only to the policy makers’ schemes.

Perhaps the next step - beyond this initial contribution to this area of study - is to take understanding forward to another level. Stainton Rogers (1991, p.233) leaves us with this thought: “Before we can even begin to predict what people will do, we need to gain a better understanding about why people do what they do, based upon *their* understandings of their actions.” Maybe - in terms of creating a better understanding of the issue of principals and how they manage legal issues in their schools - this research has taken a step - albeit a small one - in the right direction.

In the final chapter, some concluding thoughts are offered and further implications are addressed.

CHAPTER NINE

CONCLUSIONS AND IMPLICATIONS

9.1 Introduction

This chapter provides a review of the study and the findings, and examines the implications of the study for future research, school leaders and for the education authorities in Singapore.

9.2 Review of the Study

The study was prompted by the rapid changes that were taking place in the education system in Singapore, the effect of globalisation on the nation, and the noticeable change in parental expectations and concerns about schooling issues. The review of literature in Chapters Three and Five revealed that there is a whole range of legal issues affecting the education sector in other countries that may be the same issues that have or will surface in Singapore education. Furthermore, it will be recalled that, in Chapter One, the education system in Singapore is moving towards a more decentralised model, where principals are given greater authority and autonomy. Under these conditions, it arguably becomes important for school leaders to have the skills and knowledge needed to meet the demands for the increased accountability imposed. But does this accountability have any legal ramifications? This study thus set out: (1) to understand the developments of legal issues in education in other jurisdictions and how those developments might have a bearing on the legal responsibilities of school leaders in Singapore; (2) to identify the areas of law school leaders have encountered in school administration and their perceptions of their need for legal literacy; and (3) to provide suggestions or strategies to manage legal risks in schools.

This study has been an exploratory qualitative and quantitative study, and has, in the main, drawn its findings from the analysis of the interview transcripts and from the analysis of the data collected through Q methodology.

9.3 Review of the Findings

In the literature review in Chapter Five, the legal matters encountered by schools in various commonwealth countries were discussed. It is apparent from the analysis of data that school leaders in Singapore have the potential to be involved with similar legal issues in their administration of schools, although the extent of their involvement may not match their counterparts in other countries. It is therefore useful, at this point, to summarise the main findings that emerged from answers to the research questions:

- Singapore society is changing, in that there is an increase in awareness, if not knowledge, about issues, including legal issues, that affect children's education. This awareness translates into a need for school leaders to have more knowledge about the legal dimensions of running a school.
- The general principles in the *United Nations Convention on the Rights of the Child (1989)* appear to have a role to play in at least complementing or enhancing the school leader's philosophy of educating a child, and more should be done to bring the key thinking behind the Convention to the attention of educators.
- Schools have encountered, to various extents, incidents involving students with disabilities, bullying, student injuries (negligence and supervision), behaviour management (corporal punishment, suspension and expulsion), educational malpractice and sexual misconduct.
- The two main areas that were thought to be of emerging concern and that school leaders will increasingly have to deal with are negligence and safety (including

physical, emotional and psychological safety,) and the sexual misconduct of teachers.

- To principals, legal responsibility involves mainly ensuring the safety of students. In the past, the notion of “legal responsibility” had little bearing on school leadership. But because of the move to give school leaders more autonomy in decision-making, school leaders have a higher level of accountability and have to deal with an increasing range of issues, including legal issues.
- Principals appear to have a minimal knowledge of the law their schools are involved with, although they are of the view that there is an increase in the influence of law in school policies. In addition, managing legal matters caused more stress than previous years. As such, there is a need for principals to gain a knowledge of “education law” so that they are not in reactive mode all the time, responding to legal issues as they occur.
- Four points of view or proposed solutions emerged in answer to the question about what schools might do to cope with significant “care” issues and to avoid legal difficulties. They are: the “Training” Solution, the “Guidelines and Leadership” Solution, the “Relationship” Solution and the “Blend” or “Rojak” Solution.

It may be recalled that, in Chapter Six, a Pilot Study was conducted to gauge the legal knowledge held and needed by principals in Singapore schools. Comparing the results of Chapters Seven and Eight with the Pilot Study, it appears that the analyses of the data in each of these chapters complement one another to a large degree. All this information provides important insights into the advice that might be given, based on the findings, and how further research might be directed in order to generate an even deeper appreciation of the issues at play.

9.4 Conclusions

9.4.1 Interviews

When the research first began and during the information gathering stage of the research, not many educators in Singapore really knew what “education law” meant or what schools and the law had in common. But through interacting with educators during the course of the research and by conducting numerous workshops on “Schools and the Law”, the researcher observed an increased interest in this area. Although there are not many pieces of legislation and certainly no local case law (at the time of the research) that impact on schools in particular, the participants in this study nevertheless unanimously agreed that “education law” is of emerging relevance in Singapore. Interestingly, as this study drew to a close, the judgment for the first civil case brought by parents against the government for negligence and breach of the duty of care was pronounced by the Singapore courts on 11 September 2007¹⁰⁹. Until that date, all civil cases brought against schools had been settled out of court¹¹⁰. Whether this case has been brought to the attention of educators in Singapore is unknown, but it does set a new tone for managing legal risks in schools, since school leaders cannot now hide behind the ubiquitous disclaimer, “It may happen elsewhere, but it won’t happen in Singapore”. Singapore now has her own precedent in terms of the standard required of a school when exercising its duty of care; additionally, lessons can be learnt from cases heard in other countries if schools are serious about averting legal risks.

A major finding from the interviews was that principals were very concerned about the safety of students and how the law of negligence might affect the administration

¹⁰⁹ *UY v. Attorney General* (2007)

¹¹⁰ This information was provided to the researcher orally by legal officers in the Legal Department, Ministry of Education. Also, prior to 11 September 2007, legal research showed that there were no reported cases of lawsuits against schools for negligence.

of their schools. One principal (P9) raised these questions during the course of the interview:

“But what is adequate supervision, how much? Then the other thing is, ‘What is the personal responsibility? What do you deem as the child’s personal responsibility and what is the school’s responsibility?’ ...So, actually to what degree we can take the risk?”

While schools may be aware of the need to ensure safety for children, there is probably a need to educate school leaders on how to meet the minimum legal requirements when exercising their duty of care.

Another major finding from the interviews was the principals’ concerns about the possibility of potential for sexual misconduct on the part of teachers. The *United Nations Convention on the Rights of the Child (1989)* dictates that the school must act in the best interest of the child. As such, a school faced with any allegations of sexual misconduct will inevitably investigate the incident. However, the difficulty lies not so much in the blatant sexual misconduct of teachers, but, rather, in the innocent and 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 finding was the existence of “Cyberbullying” in Singapore schools. As Chapter Three has shown, globalisation has exerted considerable influence in society and information and technology now permeate every aspect of our lives. Regrettably for some, the downside of advancement in technology is that it provides an avenue for bullying to take place insidiously outside school and outside school hours. And there is also the issue of mobile bullying or “m-bullying”. 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 m-bullying (Brown, 2008). Some

school leaders in Singapore may well find themselves looking for ways in the not-too-distant future to respond to the transnational problem of cyberbullying and m-bullying.

With reference to educational malpractice, a few themes emerged from the findings. First, parents' expectations of teachers' performance are becoming higher, unlike the past, where parents did not criticise teachers at all but rather gave them considerable respect and held them in very high regard. Participant 7 gave the example of a parent who threatened to sue the school for a teacher's "incompetent" marking. School leaders now need to be able to deal with higher parental expectations so that incidents do not escalate into legal encounters.

Second, educational malpractice is not confined to poor teaching. On the contrary, it can imply the reverse: in some cases, teachers may be teaching too much and causing undue stress to students by imposing unreasonable demands on them. Although only a minority, there are parents who request teachers not to stress their children. As P1 said:

"Parent who will say that, 'Oh, it's ok, I don't want my child to be in EM1, you know, I don't want to stress him out. Just let him be.'"

Third, in a system where teachers are appraised by their supervisors and graded according to their performance, there is a belief (at least by one participant) that poor quality teachers should gradually be weeded out. However, this belief does not address the issue of what constitutes "weak" or "incompetent". Further, this 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 school leaders, the notion of “educational malpractice” should probably be treated more seriously than it currently is.

In response to the question regarding the current status of legal responsibility in schools, the participants mainly referred to the rights of the child. But, the interviews also recorded a brief mention by four principals (P3, P7, P8 and P9) about protecting the rights of teachers. However, the rights these principals referred to pertained mainly to the right to a safe working environment. They did not address any other aspects of teachers’ rights, such as employment rights and grievance procedures.

Although from the findings the participants did not attach equal importance to all the legal issues affecting schools, the study nevertheless revealed that school leaders are involved with a number of them. Issues such as those discussed above, as well as corporal punishment, suspension, expulsion, bullying, special needs, student suicides, custody issues, contract and intellectual property, arise from time to time, and school leaders have to deal with them head on. As P3 observed:

“I think usually, the awareness comes in as a form of an explosion, when we are hit in the face, then we have no choice but to go and deal with it.”

The participants in the interview offered several suggestions about the form of support that can be provided to assist them in managing legal issues. They included a platform for sharing cases, comprehensive guidelines in the form of a manual, attending talks, seminars or workshops, formal training, buying insurance and even legal audits. All the participants also felt that there was a need for the Ministry of Education to provide a “Legal Help Desk” that would be easily accessible to them. With the myriad of suggestions, it was felt that a more structured approach was

needed to address this issue in order to give it greater coherence and, eventually, utility.

9.4.2 Q Method

In the previous chapter, it was suggested that this study provides a methodological advance in understanding the complexity of different perspectives by using Q methodology. This approach allows the researcher to use a combination of quantitative and qualitative data to understand points of view rather than the people who hold those points of view. Thus, it provides the facility to interrogate the nature of opinion and viewpoint in depth.

Using Q methodology, the researcher gave 47 educators (mostly principals and senior MOE personnel) a range of statements about what should be done to avoid legal risk and asked them to rank order them in order to produce their own, individual points of view. A dedicated software package was used to analyse these separate opinions and to reduce them to several “summary” opinions. There were four in total and the researcher gave each one a name in order to indicate the key themes within it.

Some interesting themes emerged from these stories. The first viewpoint was largely about the need for training, while the second was about systems and procedures, combined with strong leadership. The third viewpoint emphasised the need for strong relationships, but also brought in the role of government in setting legislative standards; while the fourth one focussed on a range of strategies, and emphasised the need for government and MOE to play their part. This result certainly dispelled the researcher’s *a priori* assumptions that the best way for schools to manage legal risks was by sending principals for training.

So what is the methodological advance here? Too often, people's opinions are reduced to meaningless generalised abstractions, whereas this research threw light on the complex nature of divergent points of view. Second, by understanding holistically the points of view about a defined issue, one may communicate more effectively with people who align themselves with a particular point of view. Perhaps this research has shown, therefore, that the thinking and formed opinion about facing up to legal issues in schools is immensely complex and any study that ignores that complexity probably fails to get to the root of the issues involved. In looking at strategies to address legal risk in schools, it is possible that no study prior to this has addressed the complexity of divergent viewpoints and attempted to account for these viewpoints by adopting innovative methodological approaches. As van Exel and de Graf (2005) state, "Q Methodology...is a suitable and powerful methodology for exploring and explaining problems in subjectivities, generating new ideas and hypotheses, and identifying consensus and contrasts in views, opinions and preferences." By adopting the approach in this study, the researcher has been able to explore and explain new patterns of opinion about legal risk and its management, and to identify a range of consensus and disagreement in complex viewpoint, which has shed light on what is, for schools and the systems in Singapore, a difficult and new area for attention in a changing scene for education.

9.5 Limitations of the Study

The principals who participated in this research were chosen mainly from primary and secondary government and government-aided schools, so tertiary institutions, independent and special schools were not included. Further, the answers to the research questions were obtained from an opportunity sample and thus cannot be representative of the views of all the school principals in Singapore. The study never set out to be definitive and issue of generalisability, therefore, was not advanced as

an objective. Rather, the study sought to give some indications about what may be happening in the system and how the system might respond to a changing landscape.

Secondly, as this was arguably the first study in Singapore that explores the implications of the law impacting Singapore schools, there was little guidance available from earlier research to direct this study. More research will have to be undertaken to provide a more developed and refined understanding of the whole issue.

9.6 Implications - An End that Marks the Beginning

It is with optimism that the conclusion of this study provokes a cycle of research in the area of schools and the law in Singapore. Several implications may be formed from the conclusions reached in this study. These are addressed under the headings of ideas for research, implications for principals and implications for policies.

9.6.1 Ideas for Further Research

This exploratory study has provided insights into the relevance of legal issues to school management and administration in Singapore. The answers and questions raised by the participants in the study about the legal issues that schools might encounter provide several useful ideas for further research.

Using this exploratory study as a conceptual basis, quantitative research might be carried out to find out the extent of involvement of schools with the law and whether it is a growing area of concern for school leaders.

In this study, questions were asked regarding how schools might develop risk management systems and what forms of support might be given to school leaders to

cope with legal matters. Another possible development is for researchers to spend time in school and use observational techniques to understand the processes or strategies that principals actually use to manage legal problems on a daily basis. A related and interesting comparative study might be to investigate the difference in outcomes between proactive preventive legal risk management strategies and reactive forms of engagement with issues of a legal nature.

This study has indicated that the principals interviewed had, to various extents, handled legal matters in their respective jobs. It is reasonable to assume too, that many legal matters arise at the classroom level. Where do teachers stand in all this? School based or action research could be undertaken to determine whether there are any specific concerns amongst teachers about legal issues, and whether they have any adverse effect on their ability to teach. It may also be useful to investigate whether involvement in legal matters causes teachers undue stress, and, if so, the actions that might be taken to alleviate the situation.

Many legal issues were identified by participants in this study. Specific issues could be further researched, especially those that relate to meeting parents' demands for accountability. For example, what is school safety and what are students' rights exactly? And what actions might schools take to protect students and avoid liability? Another area relates to bullying, m-bullying and cyberbullying. These are serious matters that warrant extensive investigation, and there is scope for more varied and creative approaches to researching them. For example, conducting narrative research, and obtaining stories and experiences from students, parents and teachers, may provide in-depth insights into the issues and how they interface with the law.

Finally, since this research commenced with a review of emerging legal issues for schools internationally, perhaps it would be of interest to conduct a school-based comparison of the impact of law for school leaders across a different countries. Such comparisons (and the attendant contrasts, of course) might provide a useful basis for thinking about coping strategies for school leaders in Singapore.

9.6.2 Implications for Principals

A theme that came through very strongly in the study is the need for principals to acquire a professional knowledge of the law impacting school administration. As intimated by one participant, school principals do not need law degrees or to be experts in the law. However, as correctly pointed out by Participant 10,

“...we need to know enough to make good decisions, to understand, to undergird the kind of decisions that we make”.

The basic knowledge needed here would include that about relevant legislation, common law, criminal law, family law (in particular, custody issues) and grievance procedures. Where principals have sufficient professional knowledge of the law impacting their jobs, it would dispel any incorrect perceptions that a principal is always personally liable for all legal matters that arise in their schools, as seen in Participant 1’s statement:

P1: “...on the flip side, I am responsible. I cannot say that my teacher did it. I am responsible. At the end of it, the principal is accountable.”

The popular idea from the participants that a platform be set up for the sharing of incidents and coping strategies is a constructive one. As noted by Participant 6:

P6: “...my knowledge I think is quite high as a principal because of my own brushes with the law. I learnt the hard way.”

This statement confirms the observation of Stewart, 1996a, where he highlighted the comments of Kowalski and Reitzug (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 (pp. 235-236). 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.

Finally, the emergence of legal issues in schools appears to be forcing principals to rethink many conventional school policies and practices. There is an acknowledgement that society and the environment are constantly changing, and that past actions and policies may not be applicable any more. If principals were to gain appropriate and sufficient legal knowledge, it would inform policy and practice development more effectively.

9.6.3 Implications for Policies

The data in this study shows that legal issues do exist in Singapore schools and that school leaders are keen to receive some form of support in managing such risks. Singapore is noted internationally for having one of the best leadership training programmes in the world, where selected experienced education officers go through six months of full time training in preparation for principalship. The researcher had the privilege to head start an enrichment programme on “Schools and the Law” as part of the leadership training, and the programme is still running. However, while attending a single session or even a series of events on legal issues does increase the level of legal literacy in the short term, it does not sustain the knowledge needed for effective legal risk management. Thus, ongoing in-service courses on the law affecting schools over the first few years of principalship are likely to provide the sort of experience that will give leaders the confidence needed.

Schools encounter a plethora of situations involving the law. Some schools may face bullying issues, some safety issues, while others may have to constantly deal with custody issues. Therefore, in-service education needs to be extensive, focussed and regular so that legal knowledge is constantly upgraded. The education authority may also need to consider if teachers should be equipped with a similar level of knowledge so as to avoid the “legal landmines” that principals so often have to unravel.

When this research first began, the legal department in the Ministry of Education had only one legal officer, who handled enquiries from schools. Some four years later, the department had expanded to three legal officers plus support staff. That indicates a vast expansion in legally-related activity in schools, and one might question whether the situation has been exacerbated by insufficient education of school leaders. That aside, these officers, through their daily involvement with “education law” matters, may be a useful resource for schools. Perhaps it is possible to invite these legal officers to periodically share their legal knowledge as part of the ongoing in-services courses.

Last but not least, fifty per cent of the interviewees indicated in the questionnaire that the Principal’s Handbook is the most important source of legal knowledge to them (see Appendix 3C). The Handbook, however, describes mainly policies, but does not delve into the legal aspects of them. It may be timely to review the Handbook to include common issues on schools and the law. This would assist principals who need quick answers to these common issues, and, in addition, reduce the number of queries reaching the legal department daily.

Last Words

This study was prompted by a desire to discover if emerging legal issues internationally have any implications for school leaders in Singapore. The evidence so far suggests that school leaders do indeed encounter, to a small or large extent, legal issues in the leadership and management of their schools. Although this exploratory study has not provided definitive data on the need for school leaders to have a professional knowledge of legal matters in the administration of schools, it has, however, demonstrated that legal issues do exist in schools and these have important and wide-ranging implications for the education community at large. It has also shown a convincing emerging trend: that many of the issues currently encountered in other jurisdictions may well, over time, find their way into the Singapore arena, and that seems probable when one examines the changing nature of Singapore society in a globalised context. Indeed, the study of developments in other jurisdictions provides suitable warning of what is just over the horizon. It is also hoped that this study will provide the impetus for further research to be conducted in this area, both in Singapore and other jurisdictions.

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Appendix 1A

List of Statements

1. We should advise young teachers early in their careers about education law, e.g. during induction in the school.
2. MOE should give clear advice and publicise it so that schools can call up anytime. We need a legal 'Helpdesk'.
3. No need for overkill. A simple action, like a talk from a lawyer will suffice. Better not to spend too much time on it.
4. All appointment holders (P, VP, HODs, STs, DM, AM etc) should receive instruction or training in legal matters affecting the school.
5. We should develop HR skills and nurture good relationships with students, parents and teachers.
6. Everything is in the Principal's Handbook, so principals should be familiar with it.
7. Keep the best interests of the children at heart and you won't encounter problems. Even if you do, a judge would always understand your intention.
8. The government should introduce legislation to prevent schools, principals and teachers from being sued.
9. Schools should identify hazards and assess the risk of accidents occurring. The risk assessment should be recorded.
10. An MOE-sponsored conference or Principals' Forum should be organised for Ps and VPs on the legal aspects of their work.
11. The most important attribute in dealing with the law is 'experience'. Over the years, experience teaches you how to cope.
12. It is mainly PE, science lab and workshop teachers who should have law knowledge, because that is where serious accidents can occur.
13. If MOE wants us to know about legal issues, they should arrange training. In the end, they carry the can.
14. Vet teaching applicants more carefully and that would reduce legal risks.
15. Schools should adopt Standard Operating Procedures to cover all situations.
16. Often, it's the students who start things off. We should remind them about things like fighting, bullying etc and the consequences they face.
17. We need training in mediation skills: parents argue with teachers; teachers with teachers; parents with parents etc.
18. NIE should include law in its leadership programmes, like LEP and DDM.
19. Let's go back to the days when what the school said and did was indeed the law. Parents respected the school. Let's leave the law to lawyers.
20. If the school knows where there are problem areas (e.g. PE, labs, bullying places) we should increase the monitoring.
21. With more involvement from outsiders (e.g. parents and coaches) schools should publish and communicate safe working practice procedures.
22. No worries! Singapore is not like other countries. The government can step in and stop any nonsense. Look what happened to the SIA pilots!
23. There must be constant reinforcement. Principals should remind teachers of the things they do (or fail to do) that could have legal implications.

24. Hold staff meetings and student assemblies to review rules that deal with student safety.
25. A good strategy is procrastination or 'play for time'. This gives time to find out and consult. Sometimes, people even drop the issue.
26. The MOE should prevent the press from getting hold of stories about schools.
27. Having the right teachers helps to avoid legal issues. We should get rid of instructors and even teachers who can land us in hot water.
28. NIE should have legal instruction in its pre-service and perhaps in-service courses.
29. Step up supervision measures in the school.
30. We should keep in regular contact with parents, keeping them informed, then they won't create difficulties.
31. Whenever a legal issue arises, consult the MOE's legal adviser. We have one now, you know.
32. Principals should be the first ones to be given law knowledge. Then they should communicate to relevant others in the school.
33. We should draw on the help of lawyer friends or alumni if legal matters arise.
34. The principal should spell out behaviour policies and disciplinary procedures on a regular basis to teachers, pupils and others.
35. This is all a management issue. Use common sense, be sensitive and honest, and the risks will be minimised.
36. The cluster superintendent should hold a workshop every so often for principals and other officers on relevant legal issues.
37. We should give legal knowledge to teachers first. If they get things right, there is less need for principals to be involved.
38. Parents should be made to sign a statement saying they will not issue threats and cause trouble for the school.
39. All teachers should be trained and involved in routine inspections of school grounds and equipment. These prevent problems of injuries to kids.
40. What we do now is adequate: we deal with simple matters. If uncertain, we consult superintendent; for contentious things, we refer to MOE.
41. The Teacher's Handbook contains the do's and don'ts. Teachers should be made to read it from time to time.
42. We must have strong leaders in schools, leaders who will give clear instructions and ensure compliance.
43. Make the school a risk-free zone. Do everything by the book. Keep all written messages; note conversations; ensure a procedure for everything.
44. There are human resource risks. Schools should look after the welfare of teachers.
45. The government should set up legislative standards for problematic things like staff-student ratios for various hazardous activities.
46. Rules are the key: craft them well and write them down.
47. We educators must develop 'awareness' of correct courses of action, because TV and forum pages make people aware of their rights.

Appendix 1B

Instructions to participants in the study

Schools and the Law: Avoiding Legal Risk

Question on which this research is based: What should be done in our schools to ensure we don't encounter legal difficulties or to minimize the risk of legal challenge?

Instructions

This is something like a board game. It is easy if you follow these simple instructions.

You should have a pack of cards and a grid. On each card is a statement about "what could be done to help schools avoid legal risk". There are 47 statements. Some statements you may agree with; others you may disagree with. Your task is simply to arrange the cards on the grid.

1 Spend five minutes or so having a quick read through. Don't stop. Just keep reading. But, as you do so, throw the cards onto three piles:

On the **right** pile, stack the cards containing the statements with which, at first glance, you agree - that those are the *most effective* ideas.

On the **left** pile, stack those cards containing statements with which you disagree OR which you think are the *least effective* ideas.

On the **centre** pile, simply stack:

- those cards with which you neither agree nor disagree;
- those that you are not sure where to place;
- or those which you don't understand.

NB It doesn't matter if the piles are of different sizes.

2 Now, pick up the right pile. Choose the TWO statements with which you agree most strongly or that you think are the best strategies. Place them in the two boxes at the extreme right side of the grid. (It does not matter which goes at the top.)

3 Pick up the left pile. Choose the TWO statements with which you disagree the most or that you think are the least effective strategies. Place them in the two boxes at the extreme left side of the grid.

4 Go to the right pile again, and now choose the next three statements with which you strongly agree, placing them in the three boxes in the second column from the right.

5 Go to the left pile, and choose the next three statements with which you disagree.

6 By now, you should have got the hang of it. Just keep working in towards the centre of the grid. Incidentally, sooner or later, you are going to run out of cards in the left and right piles, so you will have to start working on the centre pile when that happens. There will be

many statements (from the centre pile) about which you are ambivalent. These go near to the centre of the grid.

7 When you have filled the grid, look at your arrangement and move any statements you want. You have finished the sort only when you are completely satisfied.

8 Finally, please use the glue provided to paste your statements onto the grid. Please make sure your name is included so that we can clarify anything with you if we need to.

Your questions answered...

Why do you need my name?

In case we need to interview you later. Some people's opinions load highly on a given factor after the analysis, and we need help from them in understanding the point of view.

Will anyone be able to associate my responses with me?

Only the researchers. We keep to a strict code of ethics that prevents us from identifying you in any papers arising from this research.

Will I be able to find out the results of this research?

Yes. We shall make the findings available to all those who have taken part.

Is there a 'right' answer in completing this grid?

No. All answers are 'correct'. What we are trying to do is to understand the complex opinions principals and senior officers have about this issue.

Some of the statements seem very odd! Where did you get them?

All sorts of places - some we obtained from principals; some from other education officers; and others were obtained from books and newspapers. Wherever possible, we have tried to retain the original wording for authenticity.

Appendix 2A

Research conducted by Ms Teh Mui Kim

Schools and the law: A study of the legal knowledge held and needed by principals in Singapore schools with implications on the legal responsibilities of schools.

Background information on Principals to be interviewed

QUESTIONNAIRE (Please mark the appropriate boxes)

1. How long have you been in the education profession?
 - 10 years or less
 - 11 to 15 years
 - 16 to 20 years
 - above 20 years

2. During this time, how many years did you spend as a classroom teacher?
 - 5 years or less
 - 6 to 10 years
 - 11 to 15 years
 - above 15 years

3. How long have you been a principal or the equivalent (e.g. inspector, superintendent)?
 - 5 years or less
 - 6 to 10 years
 - 11 to 15 years
 - above 15 years

4. Please indicate the type(s) of school which you have been principal (including your present school).
 - Primary co-ed school
 - Primary single-sex school
 - Secondary co-ed school
 - Secondary single-sex school
 - Junior college

5. Did you attend the DEA or LEP prior to becoming a principal?

- Yes
 No

6. Which of the following age groups are you in?

- 40 and below
 41 to 45
 46 to 50
 51 to 55
 56 and above

7. Have you held a management or leadership position outside the education service?

- yes
 no

If yes, please give brief details:

8. What knowledge do you, as a principal, have of the areas of law that affect your principalship?

- no knowledge
 some knowledge
 a lot of knowledge

9. How familiar are you with the Principals' Handbook?

- not familiar because I do not refer to it
 moderately familiar because I do refer to it
 very familiar because I almost know it by heart

10. Are you aware of the establishment of the legal department in the Ministry of Education?

- yes
 no

11. If the answer to question 10 is yes, are you aware of the functions of the legal department in the Ministry of Education?

- yes
 no

12. In your experience, have you, or your teachers or your school been involved in any legal action or threatened legal action concerning:

(a) the use of corporal punishment by teachers against pupils?

yes

no

If yes, please give a brief description: _____

(b) negligence involving the physical welfare of a student?

yes

no

If yes, please give a brief description: _____

(c) defamation?

yes

no

If yes, please give a brief description: _____

(d) criminal offences?

yes

no

If yes, please give a brief description: _____

(e) family law?

yes

no

If yes, please give a brief description: _____

(f) contracts made with private service providers?

yes

no

If yes, please give a brief description: _____

(g) other areas of law not mentioned above?

yes

no

If yes, please give a brief description: _____

13. Are you a member of the STU or any other teaching unions?

yes

no

14. Are you aware of Singapore's position in relation to the United Nations Convention on the Rights of the Child 1989?

yes

no

Appendix 2B

Research conducted by Ms Teh Mui Kim***Schools and the law: A study of the legal knowledge held and needed by principals in Singapore schools with implications on the legal responsibilities of schools.******Pilot Interview – Questions for Principals***

1. As a principal, what do you perceive are the areas of law that affect school administration?
2. In your view, do you think there is a need for principals to have knowledge of areas of law that affect their principalship? Why?
3. In your view, are there any major areas of concern relating to school law that you think are likely to emerge in Singapore? If so, what are they?
4. One of the general principles of the United Nations Convention on the Rights of the Child 1989 is that children who are capable of forming their own views shall be given the right to express their opinions on all matters concerning themselves. How does this principle affect your role as school principal in the management of students?
5. In your view, are parents and students more knowledgeable about their legal rights and more vocal in expressing them now? If so, how does it impact on your leadership in the school?
6. In what ways do you find the establishment of the legal department in the Ministry of Education useful to you in the performance of your job as a principal?
7. To what extent has the recent Kent Ridge Secondary School “porn” case made you more or less anxious about reacting to or handling student infringement incidents?
8. A primary one student and parent accuse a teacher of inflicting corporal punishment and throwing the student’s book in the air. The principal investigated but did not give the teacher a copy of the report. The teacher is adamant that such an incident did not occur and sent a lawyer’s letter to the parent asking for an apology. As a principal, how would you deal with this situation, and what are the legal issues involved here?
9. What is your view on “shared responsibilities”, i.e. is it necessary for teachers and HODs to have knowledge of school law? Why?
10. Many teachers and principals are of the view that schools should be given some form of help in avoiding “legal trouble”. In your view, what forms of help should be given?
11. If you were to attend a workshop on education law or school law, what are the topics you would like to see cover

Appendix 3A

Research conducted by Ms Teh Mui Kim

PRINCIPAL'S QUESTIONNAIRE

Schools and the law: Emerging Legal Issues Internationally with Implications for school Leaders in Singapore

Background information on Principals to be interviewed

Questionnaire: Please put a tick in the appropriate box(es) of each of the following questions.

1. How long have you been in the education profession?

Up to 2 years	
3 to 5 years	
6 to 10 years	
11 to 15 years	
16+ years	

2. During this time, how many years did you spend as a classroom teacher?

Up to 2 years	
3 to 5 years	
6 to 10 years	
11 to 15 years	
16+ years	

3. During your years of service in the education profession, how long have you spent in administrative positions:

- (a) as a senior teacher (e.g. head of department, subject head, co-ordinator)?

Up to 2 years	
3 to 5 years	
6 years or more	

- (b) as a vice-principal?

Up to 2 years	
3 to 5 years	
6 years or more	

(c) as a principal?

Up to 2 years	
3 to 5 years	
6 to 10 years	
11 years or more	

(d) in MOE Head Quarters ?

Up to 2 years	
3 to 5 years	
6 to 10 years	
11 years or more	

4. Have you held a management or leadership position outside the education service?

Yes	
No	

If your response is “yes”, please provide particulars:

Occupation:

Number of years

5. You are

female	
male	

6. Please indicate the type(s) of school in which you have been principal (including your present school).

Government primary school	
Government-aided primary school	
Government secondary school	
Government-aided secondary school	
Junior College	

7. Have you been involved in any in-service courses/workshops specifically designed to cover legal issues affecting education?

Yes	
No	

If your response is “yes”, please provide particulars:

Focus of course:

Length of course:

8. Please rank below the sources of legal knowledge which have been most influential in the administrative decisions you have taken as a school principal in relation to legal matters:

Place a “1” against the most important source, a “2” against the next most important source, and so on. Please leave those sources that have been of no significance to you blank.

Principals’ handbook	
Government’s instruction manual	
In-service courses conducted by NIE	
Academy of Principals	
Other principals’ advice	
MOE’s legal department	
Attorney-general’s chambers	
Talks and seminars by MOE	
Mass media	
Professional journals	
Sharing of experiences (e.g. cluster meeting, focus group discussions)	
Lawyer friends	

Others (Please specify): _____

9. During your period as a school principal, have you noticed any change in the extent of the law influencing school policies and practices?

Decrease in Influence of Law	
No Change	
Increase in Influence of Law	
Did not notice any influence of law as a school principal	

10. Please put a tick on each of the boxes where your school has had some involvement with the following legislation:

(NB: Involvement is defined as you having accessed or utilised the statute or its regulations or a court decision for some official purpose.)

Children and Young Persons Act	
Copyright Act	
The Constitution of the Republic of Singapore	
Defamation Act	
Education (Schools) Regulations (Education Act)	
Government Procurement Act	
Government Contracts Act	
Penal Code	
School Boards (Incorporation) Act	

Please indicate any other legislation that your school has been involved with:

13. The comment is often heard that teaching is a stressful profession, and especially so in the light of societal changes. Do you consider that legal matters associated with school administration:

(a) cause you stress; (whether a little or a lot)	Yes	<input type="text"/>
	No	<input type="text"/>
(b) cause you more stress than other administrative matters;	Yes	<input type="text"/>
	No	<input type="text"/>
(c) are more stressful than in previous years.	Yes	<input type="text"/>
	No	<input type="text"/>

14. Education law is of emerging relevance to schools in Singapore.

Agree	<input type="text"/>
Disagree	<input type="text"/>

15. Are you aware of Singapore's position in relation to the United Nations Conventions on the Rights of the Child 1989?

Yes	<input type="text"/>
No	<input type="text"/>

Appendix 3B

Interview Questions

1. What do you know about the UN Convention on the Rights of the Child?
How is the government educating the young about their rights?
E.g. One of the general principles of the United Nations Convention on the Rights of the Child 1989 is that children who are capable of forming their own views shall be given the right to express their opinions on all matters concerning themselves. How does this principle affect your role as school principal in the management of students?
2. (a) When we talk about school law, there is the notion of legal responsibility. How would you describe this “legal duty” in relation to students, teachers and parents? Where does the law come in? How has it changed?

(b) In the past, when schools encounter a legal problem, the problem is quickly referred to AG’s chambers or the MOE or if you are in an aided-school, it is referred to your legal counsel. The belief is that principals need not know anything about the law. Do you think the position has changed and if so, in what way?
3. In your view, are parents and students more knowledgeable about their legal rights and more vocal in expressing them now? (**Ask for examples - show differences over the last 5 to 10 years**) If so, how does it impact on your leadership in the school?
4. Trends in education law in other countries, particularly England, Canada, Australia, New Zealand and the U.S.A. have shown that litigation can arise against schools for various issues such as behaviour management (for example, corporal punishment, suspension and expulsion), injury to students, bullying, poor teaching and failure to provide for special needs. Let me now run through these trends in the Singapore context and perhaps you can comment on how similar issues have arisen in Singapore and the implications they have for you:

Behaviour management
Injury to students
Bullying
Poor teaching
Failure to provide for special needs
5. Do you think there is a need for principals to have knowledge of areas of law that affect their principalship? Why?

6. (a) What are the major areas of concern relating to education law that you think are likely to emerge in Singapore?

(b) How will they affect your job as a school leader?
7. Many teachers and principals are of the view that schools should be given some form of help in avoiding “legal trouble”. In your view, what forms of help should be given?

Appendix 3C

SOURCES OF LEGAL KNOWLEDGE (In order of Importance)

PARTICIPANTS	P1	P2	P3	P4	P5	P6	P7	P8	P9	P10
Principal's handbook	6	5	9	1	1	3	1	1	4	1
Government's Instruction Manual	11	NA	10	NA	NA	NA	2	7	2	3
In-service by NIE	5	1	6	5	NA	7	NA	4	3	NA
Academy of Principals	8	NA	11	NA	NA	NA	NA	8	NA	NA
Other principal's advice	1	2	4	3	4	8	NA	2	NA	NA
MOE's legal department	4	NA	3	2	5	1	4	5	NA	4
Attorney-general's chambers	9	NA	2	NA	NA	NA	3	10	NA	2
Talks by MOE	3	3	7	NA	3	6	6	6	1	NA
Mass media	7	NA	2	NA	NA	NA	NA	11	NA	NA
Professional journals	10	NA	8	NA	NA	NA	5	9	NA	NA
Sharing of experiences	2	4	5	4	2	4	7	3	5	NA
Lawyer friends	NA	NA	1	6	NA	2	NA	1	NA	NA
Singapore Teachers' Union	NA	NA	NA	NA	NA	5	NA	NA	NA	NA
School board advisers	NA	NA	NA	NA	NA	NA	1	NA	NA	NA

PQMethod2.11 Principals and the law: Avoiding legal risk
 Path and Project Name: C:\PQMETHOD\PROJECTS\lawproj

Appendix 4

Correlation Matrix Between Sorts

SORTS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
1 Law1	100	40	21	22	23	21	23	35	7	5	23	20	34	34	33	29	17	8	-9	-5	37	18	27	50	32	19	23	31	22	36
2 Law2	40	100	53	73	52	47	37	67	31	56	49	55	60	49	48	55	48	62	44	51	54	37	53	40	42	52	61	62	57	60
3 Law3	21	53	100	63	60	54	33	59	46	63	39	62	49	53	34	46	54	59	41	41	45	47	67	42	35	70	62	61	63	63
4 Law4	22	73	63	100	55	53	40	69	54	60	51	73	52	61	51	58	59	71	47	73	51	50	64	49	45	65	67	71	73	64
5 Law5	23	52	60	55	100	63	18	61	56	55	50	37	46	49	36	44	45	64	40	53	51	58	53	46	42	68	45	44	43	55
6 Law6	21	47	54	53	63	100	47	55	58	43	51	36	57	50	47	38	55	43	16	41	50	59	55	52	56	66	62	54	51	68
7 Law7	23	37	33	40	18	47	100	51	37	36	41	29	57	33	49	45	53	11	18	22	52	38	50	46	54	40	53	54	52	45
8 Law8	35	67	59	69	61	55	51	100	62	62	53	52	60	55	47	64	62	56	49	55	57	60	67	57	54	61	60	73	64	65
9 Law9	7	31	46	54	56	58	37	62	100	51	38	36	46	58	45	41	57	53	39	57	49	66	50	52	52	68	45	49	51	54
10 Law10	5	56	63	60	55	43	36	62	51	100	35	66	37	44	47	54	58	70	57	55	39	47	61	31	28	71	54	60	57	52
11 Law11	23	49	39	51	50	51	41	53	38	35	100	23	58	47	32	48	70	44	35	37	53	52	35	53	44	41	44	62	27	56
12 Law12	20	55	62	73	37	36	29	52	36	66	23	100	40	49	46	57	50	58	33	57	35	38	61	34	13	56	56	64	68	49
13 Law13	34	60	49	52	46	57	57	60	46	37	58	40	100	51	45	45	58	30	29	38	52	47	39	35	42	56	66	63	43	50
14 Law14	34	49	53	61	49	50	33	55	58	44	47	49	51	100	42	52	67	60	19	35	52	49	56	58	51	48	53	60	49	64
15 Law15	33	48	34	51	36	47	49	47	45	47	32	46	45	42	100	37	52	43	16	37	45	45	39	31	30	45	42	43	54	50
16 Law16	29	55	46	58	44	38	45	64	41	54	48	57	45	52	37	100	62	48	48	46	57	50	66	45	35	45	55	68	54	57
17 Law17	17	48	54	59	45	55	53	62	57	58	70	50	58	67	52	62	100	56	37	38	62	63	56	56	44	56	63	74	52	66
18 Law18	8	62	59	71	64	43	11	56	53	70	44	58	30	60	43	48	56	100	52	67	48	47	56	44	31	62	52	47	55	55
19 Law19	-9	44	41	47	40	16	18	49	39	57	35	33	29	19	16	48	37	52	100	46	45	33	51	15	12	46	47	47	49	29
20 Law20	-5	51	41	73	53	41	22	55	57	55	37	57	38	35	37	46	38	67	46	100	32	46	41	33	29	52	47	37	52	32
21 Law21	37	54	45	51	51	50	52	57	49	39	53	35	52	52	45	57	62	48	45	32	100	38	64	43	43	42	53	58	58	62
22 Law22	18	37	47	50	58	59	38	60	66	47	52	38	47	49	45	50	63	47	33	46	38	100	49	62	49	64	57	58	50	67
23 Law23	27	53	67	64	53	55	50	67	50	61	35	61	39	56	39	66	56	56	51	41	64	49	100	54	43	63	66	66	69	63
24 Law24	50	40	42	49	46	52	46	57	52	31	53	34	35	58	31	45	56	44	15	33	43	62	54	100	53	49	44	48	43	57
25 Law25	32	42	35	45	42	56	54	54	52	28	44	13	42	51	30	35	44	31	12	29	43	49	43	53	100	48	55	40	32	52
26 Law26	19	52	70	65	68	66	40	61	68	71	41	56	56	48	45	45	56	62	46	52	42	64	63	49	48	100	63	54	52	67
27 Law27	23	61	62	67	45	62	53	60	45	54	44	56	66	53	42	55	63	52	47	47	53	57	66	44	55	63	100	69	65	62
28 Law28	31	62	61	71	44	54	54	73	49	60	62	64	63	60	43	68	74	47	47	37	58	58	66	48	40	54	69	100	68	77
29 Law29	22	57	63	73	43	51	52	64	51	57	27	68	43	49	54	54	52	55	49	52	58	50	69	43	32	52	65	68	100	63
30 Law30	36	60	63	64	55	68	45	65	54	52	56	49	50	64	50	57	66	55	29	32	62	67	63	57	52	67	62	77	63	100
31 Law31	41	51	60	51	43	50	40	60	37	49	54	46	35	52	41	54	71	50	24	27	56	44	60	63	31	40	48	68	50	69
32 Law32	40	55	32	54	43	53	54	54	45	33	45	36	52	47	60	63	56	43	30	43	61	52	62	60	48	34	67	54	56	49
33 Law33	32	62	60	50	72	58	37	75	54	62	56	36	47	51	42	57	51	66	38	44	50	57	62	55	57	69	51	55	41	66

34	Law34	21	46	39	47	51	47	47	61	58	51	35	47	50	47	57	47	57	52	45	47	61	47	49	39	32	53	50	42	57	40
35	Law35	2	56	61	66	43	40	30	52	43	63	44	68	45	45	41	38	45	64	49	59	39	37	47	31	33	61	60	48	53	49
36	Law36	12	52	58	48	45	57	52	58	49	66	38	41	35	46	43	44	62	57	50	41	48	55	60	49	56	62	70	50	61	61
37	Law37	24	50	55	61	52	57	55	67	56	47	34	60	65	43	50	62	50	47	41	58	52	52	66	48	34	61	65	60	65	52
38	Law38	38	40	42	57	37	55	38	43	44	31	39	50	43	52	36	65	43	42	20	36	52	41	68	53	41	45	62	56	53	59
39	Law39	40	62	62	62	65	54	38	67	36	48	55	50	45	55	47	51	51	59	31	53	62	42	60	58	41	41	60	55	58	59
40	Law40	15	60	60	61	43	49	60	68	54	58	47	57	52	46	57	62	61	51	49	49	65	44	58	48	44	51	58	60	73	55
41	Law41	41	10	0	9	-17	-5	12	11	9	-18	10	-2	25	14	11	9	20	-21	-23	-9	2	7	-4	21	12	-11	12	14	7	-1
42	Law42	29	38	62	46	61	63	28	55	53	48	36	43	50	59	49	39	51	44	17	29	42	49	46	40	30	47	42	52	51	59
43	Law43	38	57	52	61	55	45	35	62	50	52	45	61	63	59	44	45	57	55	25	43	37	36	43	47	34	55	55	57	55	48
44	Law44	8	46	54	51	58	59	24	46	45	45	44	29	28	46	38	43	49	55	32	43	53	40	46	38	37	53	35	37	41	63
45	Law45	19	47	61	71	60	48	34	63	55	56	47	64	47	66	47	62	59	52	36	54	52	46	62	28	34	55	52	69	64	64
46	Law46	15	56	66	70	70	58	34	62	57	77	49	63	50	58	54	57	57	78	52	60	56	52	63	35	34	73	58	61	64	68
47	Law47	-3	59	62	62	53	49	45	52	46	69	35	55	43	57	48	48	62	64	45	50	47	42	53	34	34	60	64	52	58	55

SORTS		31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47																		
1	Law1	41	40	32	21	2	12	24	38	40	15	41	29	38	8	19	15	-3																		
2	Law2	51	55	62	46	56	52	50	40	62	60	10	38	57	46	47	56	59																		
3	Law3	60	32	60	39	61	58	55	42	62	60	0	62	52	54	61	66	62																		
4	Law4	51	54	50	47	66	48	61	57	62	61	9	46	61	51	71	70	62																		
5	Law5	43	43	72	51	43	45	52	37	65	43	-17	61	55	58	60	70	53																		
6	Law6	50	53	58	47	40	57	57	55	54	49	-5	63	45	59	48	58	49																		
7	Law7	40	54	37	47	30	52	55	38	38	60	12	28	35	24	34	34	45																		
8	Law8	60	54	75	61	52	58	67	43	67	68	11	55	62	46	63	62	52																		
9	Law9	37	45	54	58	43	49	56	44	36	54	9	53	50	45	55	57	46																		
10	Law10	49	33	62	51	63	66	47	31	48	58	-18	48	52	45	56	77	69																		
11	Law11	54	45	56	35	44	38	34	39	55	47	10	36	45	44	47	49	35																		
12	Law12	46	36	36	47	68	41	60	50	50	57	-2	43	61	29	64	63	55																		
13	Law13	35	52	47	50	45	35	65	43	45	52	25	50	63	28	47	50	43																		
14	Law14	52	47	51	47	45	46	43	52	55	46	14	59	59	46	66	58	57																		
15	Law15	41	60	42	57	41	43	50	36	47	57	11	49	44	38	47	54	48																		
16	Law16	54	63	57	47	38	44	62	65	51	62	9	39	45	43	62	57	48																		
17	Law17	71	56	51	57	45	62	50	43	51	61	20	51	57	49	59	57	62																		
18	Law18	50	43	66	52	64	57	47	42	59	51	-21	44	55	55	52	78	64																		
19	Law19	24	30	38	45	49	50	41	20	31	49	-23	17	25	32	36	52	45																		
20	Law20	27	43	44	47	59	41	58	36	53	49	-9	29	43	43	54	60	50																		

21	Law21	56	61	50	61	39	48	52	52	62	65	2	42	37	53	52	56	47
22	Law22	44	52	57	47	37	55	52	41	42	44	7	49	36	40	46	52	42
23	Law23	60	62	62	49	47	60	66	68	60	58	-4	46	43	46	62	63	53
24	Law24	63	60	55	39	31	49	48	53	58	48	21	40	47	38	28	35	34
25	Law25	31	48	57	32	33	56	34	41	41	44	12	30	34	37	34	34	34
26	Law26	40	34	69	53	61	62	61	45	41	51	-11	47	55	53	55	73	60
27	Law27	48	67	51	50	60	70	65	62	60	58	12	42	55	35	52	58	64
28	Law28	68	54	55	42	48	50	60	56	55	60	14	52	57	37	69	61	52
29	Law29	50	56	41	57	53	61	65	53	58	73	7	51	55	41	64	64	58
30	Law30	69	49	66	40	49	61	52	59	59	55	-1	59	48	63	64	68	55
31	Law31	100	53	52	35	38	52	42	43	68	55	23	57	48	57	44	45	44
32	Law32	53	100	49	47	29	50	62	70	64	56	29	42	42	33	40	38	43
33	Law33	52	49	100	44	43	56	54	46	62	52	-17	51	51	48	51	68	47
34	Law34	35	47	44	100	50	57	66	27	41	57	-1	40	55	48	45	52	59
35	Law35	38	29	43	50	100	52	46	33	52	64	-10	42	51	57	52	66	54
36	Law36	52	50	56	57	52	100	43	34	50	62	-10	39	45	44	38	54	75
37	Law37	42	62	54	66	46	43	100	62	53	67	-3	52	64	35	53	55	48
38	Law38	43	70	46	27	33	34	62	100	51	47	11	44	44	31	51	50	33
39	Law39	68	64	62	41	52	50	53	51	100	67	5	53	46	54	58	58	55
40	Law40	55	56	52	57	64	62	67	47	67	100	3	48	50	52	53	57	62
41	Law41	23	29	-17	-1	-10	-10	-3	11	5	3	100	-4	20	-6	-2	-28	-14
42	Law42	57	42	51	40	42	39	52	44	53	48	-4	100	61	50	60	63	39
43	Law43	48	42	51	55	51	45	64	44	46	50	20	61	100	25	56	59	49
44	Law44	57	33	48	48	57	44	35	31	54	52	-6	50	25	100	44	56	53
45	Law45	44	40	51	45	52	38	53	51	58	53	-2	60	56	44	100	74	49
46	Law46	45	38	68	52	66	54	55	50	58	57	-28	63	59	56	74	100	63
47	Law47	44	43	47	59	54	75	48	33	55	62	-14	39	49	53	49	63	100

PQMethod2.11 Principals and the law: Avoiding legal risk
 Path and Project Name: C:\PQMETHOD\PROJECTS/lawproj

Unrotated Factor Matrix

	Factors							
	1	2	3	4	5	6	7	8
SORTS								
1 Law1	0.3362	0.6287	-0.0074	-0.3386	-0.0340	0.0774	0.1200	0.2344
2 Law2	0.7416	0.0104	-0.1540	-0.1118	-0.1372	-0.1265	0.3051	0.1091
3 Law3	0.7600	-0.1686	0.0516	-0.2062	-0.0554	-0.0864	-0.2219	-0.0865
4 Law4	0.8282	-0.1092	-0.1910	-0.1668	0.0417	0.0082	0.1415	-0.1093
5 Law5	0.7227	-0.1737	0.4009	-0.1370	0.0975	0.1427	0.1848	0.1428
6 Law6	0.7303	0.1168	0.3354	0.1172	0.1606	0.0912	-0.1963	0.0669
7 Law7	0.5812	0.3299	-0.2007	0.4813	0.0287	-0.0724	-0.1990	0.0403
8 Law8	0.8365	0.0626	-0.0033	0.0232	0.0159	-0.0088	0.1734	-0.0273
9 Law9	0.7014	-0.0482	0.2142	0.1831	0.3578	0.0641	0.0115	-0.0815
10 Law10	0.7415	-0.4136	-0.0458	0.0012	-0.0399	-0.1237	-0.0683	-0.0654
11 Law11	0.6365	0.1972	0.2321	0.0150	-0.1349	-0.2339	0.3280	-0.2224
12 Law12	0.6961	-0.2323	-0.4232	-0.3089	0.0923	0.0202	-0.1405	-0.0632
13 Law13	0.6794	0.2457	-0.1188	0.0633	0.3509	-0.1544	0.1469	-0.0692
14 Law14	0.7260	0.1509	0.1299	-0.2178	0.0819	-0.1135	-0.0800	-0.0837
15 Law15	0.6265	0.1057	-0.1298	0.0499	0.1945	-0.1291	-0.1216	0.4387
16 Law16	0.7289	0.0945	-0.2152	-0.0257	-0.2198	0.2058	0.0760	-0.1514
17 Law17	0.7867	0.1477	0.0225	0.0959	-0.0502	-0.3362	-0.0709	-0.1993
18 Law18	0.7468	-0.3862	0.1056	-0.1617	-0.1062	0.0032	0.2068	0.0646
19 Law19	0.5274	-0.4402	-0.1915	0.2449	-0.2616	0.0571	0.2586	-0.1667
20 Law20	0.6395	-0.3598	-0.1121	0.0134	0.1749	0.1446	0.3832	0.0239
21 Law21	0.7177	0.1695	-0.0261	0.1351	-0.2695	0.0399	0.0175	0.2218
22 Law22	0.6965	0.0923	0.2675	0.1818	0.1767	0.0638	-0.0013	-0.2467
23 Law23	0.7934	0.0030	-0.0979	0.0234	-0.2256	0.3135	-0.1861	-0.0749
24 Law24	0.6493	0.3987	0.2339	0.0245	-0.0777	0.0846	0.0895	-0.0461
25 Law25	0.5764	0.3036	0.3067	0.3190	0.0711	0.0479	0.0903	-0.0918
26 Law26	0.7814	-0.2244	0.2032	0.0765	0.2342	0.0514	-0.0525	-0.1418
27 Law27	0.7924	0.0675	-0.1919	0.1799	0.0203	0.0454	-0.0381	-0.1774
28 Law28	0.8095	0.1479	-0.1763	-0.0889	-0.0944	-0.0860	-0.1019	-0.3405
29 Law29	0.7786	-0.0662	-0.3404	0.0201	-0.0177	0.0704	-0.2093	0.0779
30 Law30	0.8134	0.1249	0.2167	-0.0894	-0.1315	-0.0238	-0.2299	-0.1240

31 Law31	0.7015	0.2640	0.0867	-0.2097	-0.3677	-0.2295	-0.1339	0.0148
32 Law32	0.6963	0.4042	-0.1628	0.1742	-0.0948	0.2374	0.1270	0.1642
33 Law33	0.7587	-0.0307	0.3591	-0.0103	-0.0755	0.1665	0.1718	0.0155
34 Law34	0.6840	-0.0911	-0.1066	0.2777	0.2024	-0.1149	0.0693	0.3397
35 Law35	0.6879	-0.3649	-0.1185	-0.0580	0.0244	-0.2126	0.0749	0.0139
36 Law36	0.7280	-0.1204	0.0747	0.3834	-0.1599	-0.1433	-0.1469	-0.0002
37 Law37	0.7613	0.0358	-0.2363	0.1036	0.2485	0.3003	-0.0071	0.1033
38 Law38	0.6546	0.2808	-0.1191	-0.1187	-0.0475	0.4935	-0.1168	-0.1094
39 Law39	0.7620	0.1000	0.0361	-0.1883	-0.2729	0.0353	0.1271	0.2563
40 Law40	0.7843	-0.0273	-0.2211	0.1908	-0.1203	-0.0940	-0.0394	0.1725
41 Law41	0.0367	0.6731	-0.2659	-0.1295	0.1489	-0.3219	0.1806	-0.1205
42 Law42	0.6717	0.0473	0.2292	-0.3089	0.2121	-0.0245	-0.3029	0.1657
43 Law43	0.7071	0.0634	-0.1306	-0.2583	0.3688	-0.1544	0.0971	0.0172
44 Law44	0.6342	-0.1554	0.3440	-0.0281	-0.2278	-0.1660	-0.0488	0.2368
45 Law45	0.7502	-0.1147	-0.0753	-0.2906	0.1030	0.0615	-0.1110	-0.1134
46 Law46	0.8194	-0.3498	0.0896	-0.1529	0.0502	0.0680	-0.0485	0.0246
47 Law47	0.7318	-0.2912	-0.0621	0.1777	-0.0690	-0.2272	-0.1276	0.0841
Eigenvalues	23.6248	3.0258	1.9055	1.6679	1.4369	1.2772	1.2178	1.1724
% expl.Var.	50	6	4	4	3	3	3	2

PQMethod2.11 Principals and the law: Avoiding legal risk
 Path and Project Name: C:\PQMETHOD\PROJECTS/lawproj

Cumulative Communalities Matrix
 Factors 1 Thru

	1	2	3	4	5	6	7	8
SORTS								
1 Law1	0.1130	0.5083	0.5083	0.6230	0.6241	0.6301	0.6445	0.6995
2 Law2	0.5500	0.5501	0.5738	0.5863	0.6052	0.6212	0.7142	0.7261
3 Law3	0.5776	0.6061	0.6087	0.6512	0.6543	0.6618	0.7110	0.7185
4 Law4	0.6859	0.6978	0.7343	0.7621	0.7639	0.7639	0.7840	0.7959
5 Law5	0.5223	0.5525	0.7132	0.7320	0.7415	0.7619	0.7960	0.8164
6 Law6	0.5334	0.5470	0.6595	0.6733	0.6991	0.7074	0.7459	0.7504
7 Law7	0.3378	0.4467	0.4870	0.7186	0.7194	0.7246	0.7643	0.7659
8 Law8	0.6997	0.7036	0.7036	0.7042	0.7044	0.7045	0.7346	0.7353
9 Law9	0.4919	0.4942	0.5401	0.5736	0.7017	0.7058	0.7059	0.7126
10 Law10	0.5499	0.7209	0.7230	0.7230	0.7246	0.7399	0.7446	0.7489
11 Law11	0.4052	0.4441	0.4979	0.4982	0.5164	0.5711	0.6787	0.7281
12 Law12	0.4846	0.5386	0.7177	0.8131	0.8216	0.8220	0.8418	0.8458
13 Law13	0.4616	0.5219	0.5360	0.5401	0.6632	0.6870	0.7086	0.7134
14 Law14	0.5271	0.5499	0.5668	0.6142	0.6209	0.6338	0.6402	0.6472
15 Law15	0.3925	0.4037	0.4206	0.4231	0.4609	0.4776	0.4923	0.6848
16 Law16	0.5313	0.5403	0.5866	0.5872	0.6355	0.6779	0.6837	0.7066
17 Law17	0.6189	0.6407	0.6412	0.6504	0.6530	0.7660	0.7710	0.8107
18 Law18	0.5577	0.7068	0.7179	0.7441	0.7554	0.7554	0.7981	0.8023
19 Law19	0.2782	0.4719	0.5086	0.5686	0.6370	0.6403	0.7071	0.7349
20 Law20	0.4090	0.5385	0.5510	0.5512	0.5818	0.6027	0.7496	0.7502
21 Law21	0.5151	0.5438	0.5445	0.5628	0.6354	0.6370	0.6373	0.6865
22 Law22	0.4852	0.4937	0.5652	0.5983	0.6295	0.6336	0.6336	0.6945
23 Law23	0.6295	0.6295	0.6391	0.6396	0.6905	0.7888	0.8234	0.8290
24 Law24	0.4216	0.5805	0.6352	0.6359	0.6419	0.6490	0.6571	0.6592
25 Law25	0.3323	0.4245	0.5185	0.6203	0.6253	0.6276	0.6358	0.6442
26 Law26	0.6106	0.6609	0.7022	0.7081	0.7629	0.7656	0.7683	0.7885
27 Law27	0.6278	0.6324	0.6692	0.7016	0.7020	0.7040	0.7055	0.7370
28 Law28	0.6553	0.6772	0.7083	0.7162	0.7251	0.7324	0.7428	0.8588
29 Law29	0.6062	0.6106	0.7264	0.7268	0.7272	0.7321	0.7759	0.7820
30 Law30	0.6616	0.6772	0.7242	0.7322	0.7495	0.7500	0.8029	0.8183

31 Law31	0.4921	0.5618	0.5693	0.6133	0.7485	0.8012	0.8191	0.8193
32 Law32	0.4849	0.6483	0.6748	0.7051	0.7141	0.7704	0.7866	0.8135
33 Law33	0.5756	0.5765	0.7055	0.7056	0.7113	0.7390	0.7686	0.7688
34 Law34	0.4678	0.4761	0.4874	0.5646	0.6055	0.6187	0.6235	0.7389
35 Law35	0.4732	0.6064	0.6204	0.6238	0.6244	0.6696	0.6752	0.6754
36 Law36	0.5300	0.5446	0.5501	0.6972	0.7227	0.7432	0.7648	0.7648
37 Law37	0.5797	0.5809	0.6368	0.6475	0.7093	0.7995	0.7995	0.8102
38 Law38	0.4285	0.5073	0.5215	0.5356	0.5379	0.7814	0.7951	0.8070
39 Law39	0.5807	0.5907	0.5920	0.6274	0.7019	0.7032	0.7193	0.7850
40 Law40	0.6152	0.6160	0.6648	0.7012	0.7157	0.7245	0.7261	0.7558
41 Law41	0.0013	0.4544	0.5251	0.5419	0.5641	0.6677	0.7003	0.7148
42 Law42	0.4511	0.4534	0.5059	0.6013	0.6463	0.6469	0.7387	0.7661
43 Law43	0.4999	0.5040	0.5210	0.5877	0.7238	0.7476	0.7570	0.7573
44 Law44	0.4022	0.4263	0.5446	0.5454	0.5973	0.6249	0.6273	0.6834
45 Law45	0.5628	0.5759	0.5816	0.6660	0.6766	0.6804	0.6927	0.7056
46 Law46	0.6714	0.7938	0.8019	0.8252	0.8277	0.8324	0.8347	0.8353
47 Law47	0.5356	0.6204	0.6242	0.6558	0.6606	0.7122	0.7285	0.7356
cum% expl.Var.	50	57	61	64	67	70	73	75

QANGLES File Not Found - Apparently VARIMAX Was Used

PQMethod2.11 Principals and the law: Avoiding legal risk
 Path and Project Name: C:\PQMETHOD\PROJECTS/lawproj

Factor Matrix with an X Indicating a Defining Sort

	Loadings			
QSORT	1	2	3	4
1 Law1	-0.0123	0.2065	0.7593X	0.0609
2 Law2	0.5689X	0.2927	0.2938	0.3012
3 Law3	0.6133X	0.4816	0.1563	0.1367
4 Law4	0.7224X	0.3151	0.2565	0.2741
5 Law5	0.4105	0.7445X	0.0303	0.0908
6 Law6	0.2068	0.6725X	0.1535	0.3933
7 Law7	0.1251	0.1150	0.2245	0.7996X
8 Law8	0.4880	0.4588	0.2603	0.4332
9 Law9	0.3111	0.5510X	0.0087	0.4161
10 Law10	0.7104X	0.3742	-0.1246	0.2506
11 Law11	0.1848	0.5432X	0.2663	0.3131
12 Law12	0.8574X	0.0617	0.2453	0.1186
13 Law13	0.3304	0.2722	0.3709	0.4682
14 Law14	0.3883	0.5276	0.3906	0.1801
15 Law15	0.3816	0.2353	0.2543	0.3967
16 Law16	0.5157	0.2276	0.3288	0.4017
17 Law17	0.3756	0.4463	0.2734	0.4852
18 Law18	0.6827X	0.5159	-0.0548	0.0941
19 Law19	0.5771X	0.1147	-0.2900	0.3719
20 Law20	0.6435X	0.2616	-0.0998	0.2423
21 Law21	0.3298	0.3645	0.2641	0.5014
22 Law22	0.2087	0.5922X	0.1083	0.4385
23 Law23	0.5360	0.3567	0.2224	0.4191
24 Law24	0.0808	0.5504	0.4254	0.3813
25 Law25	-0.0429	0.5461	0.1689	0.5401
26 Law26	0.4958	0.5957X	-0.0558	0.3229
27 Law27	0.4929	0.2651	0.2174	0.5840
28 Law28	0.5406	0.3096	0.4152	0.3946
29 Law29	0.6757X	0.1481	0.2190	0.4477
30 Law30	0.3760	0.6374X	0.3103	0.2970

31 Law31	0.3292	0.4773	0.4801	0.2159
32 Law32	0.2401	0.2355	0.4571	0.6189X
33 Law33	0.3344	0.7189X	0.1008	0.2585
34 Law34	0.4390	0.2680	-0.0051	0.5477X
35 Law35	0.7028X	0.2891	-0.0544	0.2081
36 Law36	0.3655	0.4339	-0.1095	0.6028X
37 Law37	0.5354	0.2176	0.2315	0.5098
38 Law38	0.3550	0.2732	0.4823	0.3199
39 Law39	0.4716	0.4676	0.3659	0.2290
40 Law40	0.5485	0.2359	0.1407	0.5700
41 Law41	-0.1748	-0.1911	0.6703X	0.1598
42 Law42	0.3938	0.5877X	0.3163	0.0294
43 Law43	0.5554X	0.3050	0.3940	0.1761
44 Law44	0.3355	0.6392X	-0.0194	0.1547
45 Law 45	0.6635X	0.3780	0.2668	0.1089
46 Law46	0.7134X	0.5422	-0.0074	0.1493
47 Law47	0.5888X	0.3403	-0.1129	0.4250
% expl.Var.	23	18	9	14

PQMethod2.11 Principals and the law: Avoiding legal risk
Path and Project Name: C:\PQMETHOD\PROJECTS/lawproj

Free Distribution Data Results

QSORT	MEAN	ST.DEV.
1 Law1	0.000	2.638
2 Law2	0.000	2.638
3 Law3	0.000	2.638
4 Law4	0.000	2.638
5 Law5	0.000	2.638
6 Law6	0.000	2.638
7 Law7	0.000	2.638
8 Law8	0.000	2.638
9 Law9	0.000	2.638
10 Law10	0.000	2.638
11 Law11	0.000	2.638
12 Law12	0.000	2.638
13 Law13	0.000	2.638
14 Law14	0.000	2.638
15 Law15	0.000	2.638
16 Law16	0.000	2.638
17 Law17	0.000	2.638
18 Law18	0.000	2.638
19 Law19	0.000	2.638
20 Law20	0.000	2.638
21 Law21	0.000	2.638
22 Law22	0.000	2.638
23 Law23	0.000	2.638
24 Law24	0.000	2.638
25 Law25	0.000	2.638
26 Law26	0.000	2.638
27 Law27	0.000	2.638
28 Law28	0.000	2.638
29 Law29	0.000	2.638
30 Law30	0.000	2.638

31	Law31	0.000	2.638
32	Law32	0.000	2.638
33	Law33	0.000	2.638
34	Law34	0.000	2.638
35	Law35	0.000	2.638
36	Law36	0.000	2.638
37	Law37	0.000	2.638
38	Law38	0.000	2.638
39	Law39	0.000	2.638
40	Law40	0.000	2.638
41	Law41	0.000	2.638
42	Law42	0.000	2.638
43	Law43	0.000	2.638
44	Law44	0.000	2.638
45	Law45	0.000	2.638
46	Law46	0.000	2.638
47	Law47	0.000	2.638

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Rank Statement Totals with Each Factor (For full statements, see Appendix 1A)

No.	Statement	No.	Factors							
			1	2	3	4	5	6	7	8
1	We should advise young teachers early in their careers	1	1.12	7	0.23	21	0.27	20	0.76	13
2	MOE should give clear advice and publicise it so that	2	0.50	15	-0.43	31	0.28	19	1.33	6
3	No need for overkill. A simple action, like a talk fro	3	-0.66	34	-1.03	40	0.17	22	-0.39	30
4	All appointment holders (P, VP, HODs, STs, DM, AM etc)	4	2.05	1	1.24	5	-1.35	43	1.10	9
5	We should develop HR skills and nurture good relations	5	1.01	9	0.94	10	2.06	2	2.09	1
6	Everything is in the Principals' Handbook, so principa	6	-0.80	38	-0.30	28	-0.36	31	-1.22	41
7	Keep the best interests of the children at heart and y	7	-0.79	37	-0.62	36	1.98	3	-1.18	40
8	The government should introduce legislation to prevent	8	-1.31	43	-0.86	37	-0.53	33	1.35	5
9	Schools should identify hazards and assess the risk of	9	0.21	20	1.20	6	1.08	6	1.39	4
10	An MOE sponsored conference or Principals' Forum shoul	10	1.69	3	0.43	17	0.72	14	1.50	2
11	The most important attribute in dealing with the law i	11	-1.08	42	0.16	23	0.26	21	-0.40	31
12	It is mainly PE, science lab and workshop teachers who	12	-0.69	35	-0.90	38	-0.45	32	-1.29	42
13	If MOE wants us to know about legal issues, they shoul	13	-0.42	29	-0.43	30	-0.35	29	-0.42	33
14	Vet teaching applicants more carefully and that would	14	-0.75	36	-1.07	42	-0.80	37	-0.65	35
15	Schools should adopt Standard operating Procedures to	15	-0.19	26	1.14	8	-0.73	36	-0.03	23
16	Often, it's the students who start things off. We shou	16	-0.85	39	-0.12	27	0.90	9	0.33	18
17	We need training in mediation skills: parents argue wi	17	0.97	11	1.17	7	1.25	5	1.42	3
18	NIE should include law in its leadership programmes, l	18	1.84	2	0.77	12	-1.44	44	0.62	15
19	Let's go back to the days when what the school said an	19	-1.88	47	-1.79	45	-0.27	27	-1.82	47
20	If the school knows where there are problem areas (e.g	20	0.38	16	0.74	13	-1.25	41	1.26	7
21	With more involvement from outsiders (e.g. parents and	21	0.63	14	0.98	9	0.98	7	1.05	11
22	No worries! Singapore is not like other countries. The	22	-1.69	46	-2.16	47	0.64	15	-1.61	46
23	There must be constant reinforcement. Principals shoul	23	0.90	12	1.64	3	0.63	17	0.77	12
24	Hold staff meetings and student assemblies to review r	24	0.84	13	0.86	11	0.09	23	1.14	8
25	A good strategy is procrastination or 'play for time'.	25	-1.06	41	-1.35	43	-1.34	42	-1.52	44
26	The MOE should prevent the press from getting hold of	26	-1.59	44	-1.45	44	-1.70	46	-0.19	26
27	Having the right teachers helps to avoid legal issues.	27	-0.65	33	-1.06	41	-0.71	34	-0.42	33
28	NIE should have legal instruction in its pre-service a	28	1.47	4	0.28	20	-1.71	47	-0.23	28
29	Step up supervision measures in the school.	29	0.25	18	0.21	22	-1.08	39	0.33	19
30	We should keep in regular contact with parents, keepin	30	0.16	21	0.37	18	2.06	2	1.07	10

31	Whenever a legal issue arises, consult the MOE's legal	31	0.30	17	0.53	16	0.28	19	0.30	20
32	Principals should be the first ones to be given law kn	32	1.30	6	1.37	4	0.90	9	0.39	17
33	We should draw on the help of lawyer friends or alumni	33	-0.42	28	-0.60	35	0.81	10	-1.49	43
34	The principal should spell out behaviour policies and	34	1.10	8	1.68	2	0.63	17	0.23	21
35	This is all a management issue. Use common sense, be s	35	-0.45	30	-0.54	33	0.80	12	-0.91	38
36	The cluster superintendent should hold a workshop ever	36	0.04	24	-0.56	34	-1.53	45	-0.84	37
37	We should give legal knowledge to teachers first. If t	37	0.97	10	0.03	25	-0.90	38	-0.81	36
38	Parents should be made to sign a statement saying that	38	-1.60	45	-2.14	46	-0.36	31	-1.17	39
39	All teachers should be trained and involved in routine	39	-0.39	27	0.54	15	-0.18	26	-0.17	25
40	What we do now is adequate: we deal with simple matter	40	-0.64	32	-0.35	29	-0.09	24	-0.03	24
41	The Teachers' Handbook contains the do's and don'ts. T	41	-0.01	25	0.05	24	-0.28	28	0.39	16
42	We must have strong leaders in schools, leaders who wi	42	0.23	19	1.74	1	-1.25	41	-0.30	29
43	Make the school a risk-free zone. Do everything by the	43	-1.01	40	-0.52	32	-0.18	26	-1.58	45
44	There are human resource risks. Schools should look af	44	0.09	22	-0.02	26	1.25	5	0.72	14
45	The government should set up legislative standards for	45	0.04	23	-1.02	39	0.73	13	-0.63	34
46	Rules are they key: craft them well and write them dow	46	-0.53	31	0.32	19	-0.73	36	-0.02	22
47	We educators must develop 'awareness' of correct cours	47	1.39	5	0.67	14	0.80	12	-0.21	27

Correlations Between Factor Scores

	1	2	3	4
1	1.0000	0.7686	0.0893	0.6220
2	0.7686	1.0000	0.1667	0.6488
3	0.0893	0.1667	1.0000	0.2610
4	0.6220	0.6488	0.2610	1.0000

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Normalized Factor Scores -- For Factor 1

No.	Statement (For full statements, see Appendix 1A)	No.	Z-SCORES
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	2.049
18	NIE should include law in its leadership programmes, like LE	18	1.843
10	An MOE sponsored conference or Principals' Forum should be o	10	1.691
28	NIE should have legal instruction in its pre-service and per	28	1.470
47	We educators must develop 'awareness' of correct courses of	47	1.386
32	Principals hshould be the first ones to be given law knowledg	32	1.302
1	We should advise young teachers early in their careers about	1	1.120
34	The principal should spell out behaviour policies and discipl	34	1.098
5	We should develop HR skills and nurture good relationships w	5	1.008
37	We should give legal knowledge to teachers first. If they ge	37	0.974
17	We need training in mediation skills: parents argue with tea	17	0.966
23	There must be constant reinforcement. Principals should remi	23	0.898
24	Hold staff meetings and student assemblies to review rules t	24	0.837
21	With more involvement from outsiders (e.g. parents and coach	21	0.627
2	MOE should give clear advice and publicaise it so that schoo	2	0.502
20	If the school knows where there are problem areas (e.g. PE,	20	0.376
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.302
29	Step up supervision measures in the school.	29	0.250
42	We must have strong leaders in schools, leaders who will giv	42	0.231
9	Schools should identify hazards and assess the risk of accid	9	0.209
30	We should keep in regular contact with parents, keeping them	30	0.163
44	There are human resource risks. Schools should look after th	44	0.091
45	The government should set up legislative standards for probl	45	0.040
36	The cluster superintendent should hold a workshop every so o	36	0.037
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	-0.013
15	Schools should adopt Standard operating Procedures to cover	15	-0.186
39	All teachers should be trained and involved in routine inspe	39	-0.388
33	We should draw on the help of lawyer friends or alumni if le	33	-0.418
13	If MOE wants us to know about legal issues, they should arra	13	-0.422

35	This is all a management issue. Use common sense, be sensiti	35	-0.446
46	Rules are they key: craft them well and write them down.	46	-0.532
40	What we do now is adequate: we deal with simple matters. If	40	-0.641
27	Having the right teachers helps to avoid legal issues. We sh	27	-0.651
3	No need for overkill. A simple action, like a talk from a la	3	-0.664
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.687
14	Vet teaching applicants more carefully and that would reduce	14	-0.753
7	Keep the best interests of the children at heart and you won	7	-0.793
6	Everything is in the Principals' Handbook, so principals sho	6	-0.803
16	Often, it's the students who start things off. We should rem	16	-0.854
43	Make the school a risk-free zone. Do everything by the book.	43	-1.012
25	A good strategy is procrastination or 'play for time'. This	25	-1.060
11	The most important attribute in dealing with the law is 'exp	11	-1.083
8	The government should introduce legislation to prevent schoo	8	-1.313
26	The MOE should prevent the press from getting hold of storie	26	-1.591
38	Parents should be made to sign a statement saying that they	38	-1.599
22	No worries! Singapore is not like other countries. The gover	22	-1.685
19	Let's go back to the days when what the school said and did	19	-1.875

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Normalized Factor Scores -- For Factor 2

No.	Statement (For full statements, see Appendix 1A)	No.	Z-SCORES
42	We must have strong leaders in schools, leaders who will giv	42	1.738
34	The principal should spell out behaviour policies and discipl	34	1.679
23	There must be constant reinforcement. Principals should remi	23	1.643
32	Principals hshould be the first ones to be given law knowledg	32	1.375
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	1.240
9	Schools should identify hazards and assess the risk of accid	9	1.202
17	We need training in mediation skills: parents argue with tea	17	1.174
15	Schools should adopt Standard operating Procedures to cover	15	1.144
21	With more involvement from outsiders (e.g. parents and coach	21	0.981
5	We should develop HR skills and nurture good relationships w	5	0.941
24	Hold staff meetings and student assemblies to review rules t	24	0.862
18	NIE should include law in its leadership programmes, like LE	18	0.771
20	If the school knows where there are problem areas (e.g. PE,	20	0.745
47	We educators must develop 'awareness' of correct courses of	47	0.670
39	All teachers should be trained and involved in routine inspe	39	0.540
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.528
10	An MOE sponsored conference or Principals' Forum should be o	10	0.433
30	We should keep in regular contact with parents, keeping them	30	0.371
46	Rules are they key: craft them well and write them down.	46	0.317
28	NIE should have legal instruction in its pre-service and per	28	0.283
1	We should advise young teachers early in their careers about	1	0.228
29	Step up supervision measures in the school.	29	0.209
11	The most important attribute in dealing with the law is 'exp	11	0.160
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	0.052
37	We should give legal knowledge to teachers first. If they ge	37	0.030
44	There are human resource risks. Schools should look after th	44	-0.017
16	Often, it's the students who start things off. We should rem	16	-0.119
6	Everything is in the Principals' Handbook, so principals sho	6	-0.299
40	What we do now is adequate: we deal with simple matters. If	40	-0.352
13	If MOE wants us to know about legal issues, they should arra	13	-0.427

2	MOE should give clear advice and publicise it so that schoo	2	-0.432
43	Make the school a risk-free zone. Do everything by the book.	43	-0.519
35	This is all a management issue. Use common sense, be sensiti	35	-0.539
36	The cluster superintendent should hold a workshop every so o	36	-0.556
33	We should draw on the help of lawyer friends or alumni if le	33	-0.602
7	Keep the best interests of the children at heart and you won	7	-0.621
8	The government should introduce legislation to prevent schoo	8	-0.865
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.896
45	The government should set up legislative standards for probl	45	-1.020
3	No need for overkill. A simple action, like a talk from a la	3	-1.032
27	Having the right teachers helps to avoid legal issues. We sh	27	-1.062
14	Vet teaching applicants more carefully and that would reduce	14	-1.069
25	A good strategy is procrastination or 'play for time'. This	25	-1.346
26	The MOE should prevent the press from getting hold of storie	26	-1.454
19	Let's go back to the days when what the school said and did	19	-1.786
38	Parents should be made to sign a statement saying that they	38	-2.137
22	No worries! Singapore is not like other countries. The gover	22	-2.165

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Normalized Factor Scores -- For Factor 3

No.	Statement (For full statements, see Appendix 1A)	No.	Z-SCORES
5	We should develop HR skills and nurture good relationships w	5	2.062
30	We should keep in regular contact with parents, keeping them	30	2.062
7	Keep the best interests of the children at heart and you won	7	1.976
17	We need training in mediation skills: parents argue with tea	17	1.251
44	There are human resource risks. Schools should look after th	44	1.251
9	Schools should identify hazards and assess the risk of accid	9	1.079
21	With more involvement from outsiders (e.g. parents and coach	21	0.983
16	Often, it's the students who start things off. We should rem	16	0.897
32	Principals hshould be the first ones to be given law knowledg	32	0.897
33	We should draw on the help of lawyer friends or alumni if le	33	0.812
35	This is all a management issue. Use common sense, be sensiti	35	0.802
47	We educators must develop 'awareness' of correct courses of	47	0.802
45	The government should set up legislative standards for probl	45	0.726
10	An MOE sponsored conference or Principals' Forum should be o	10	0.716
22	No worries! Singapore is not like other countries. The gover	22	0.640
23	There must be constant reinforcement. Principals should remi	23	0.630
34	The principal should spell out behaviour policies and discipl	34	0.630
2	MOE should give clear advice and publicaise it so that schoo	2	0.277
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.277
1	We should advise young teachers early in their careers about	1	0.267
11	The most important attribute in dealing with the law is 'exp	11	0.258
3	No need for overkill. A simple action, like a talk from a la	3	0.172
24	Hold staff meetings and student assemblies to review rules t	24	0.086
40	What we do now is adequate: we deal with simple matters. If	40	-0.086
39	All teachers should be trained and involved in routine inspe	39	-0.181
43	Make the school a risk-free zone. Do everything by the book.	43	-0.181
19	Let's go back to the days when what the school said and did	19	-0.267
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	-0.277

13	If MOE wants us to know about legal issues, they should arra	13	-0.353
6	Everything is in the Principals' Handbook, so principals sho	6	-0.363
38	Parents should be made to sign a statement saying that they	38	-0.363
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.449
8	The government should introduce legislation to prevent schoo	8	-0.535
27	Having the right teachers helps to avoid legal issues. We sh	27	-0.706
15	Schools should adopt Standard operating Procedures to cover	15	-0.726
46	Rules are they key: craft them well and write them down.	46	-0.726
14	Vet teaching applicants more carefully and that would reduce	14	-0.802
37	We should give legal knowledge to teachers first. If they ge	37	-0.897
29	Step up supervision measures in the school.	29	-1.079
42	We must have strong leaders in schools, leaders who will giv	42	-1.251
20	If the school knows where there are problem areas (e.g. PE,	20	-1.251
25	A good strategy is procrastination or 'play for time'. This	25	-1.336
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	-1.346
18	NIE should include law in its leadership programmes, like LE	18	-1.442
36	The cluster superintendent should hold a workshop every so o	36	-1.528
26	The MOE should prevent the press from getting hold of storie	26	-1.699
28	NIE should have legal instruction in its pre-service and per	28	-1.709

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Normalized Factor Scores -- For Factor 4

No.	Statement (For full statements, see Appendix 1A)	No.	Z-SCORES
5	We should develop HR skills and nurture good relationships w	5	2.089
10	An MOE sponsored conference or Principals' Forum should be o	10	1.497
17	We need training in mediation skills: parents argue with tea	17	1.424
9	Schools should identify hazards and assess the risk of accid	9	1.394
8	The government should introduce legislation to prevent schoo	8	1.354
2	MOE should give clear advice and publicaise it so that schoo	2	1.332
20	If the school knows where there are problem areas (e.g. PE,	20	1.256
24	Hold staff meetings and student assemblies to review rules t	24	1.136
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	1.098
30	We should keep in regular contact with parents, keeping them	30	1.071
21	With more involvement from outsiders (e.g. parents and coach	21	1.048
23	There must be constant reinforcement. Principals should remi	23	0.774
1	We should advise young teachers early in their careers about	1	0.762
44	There are human resource risks. Schools should look after th	44	0.718
18	NIE should include law in its leadership programmes, like LE	18	0.618
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	0.392
32	Principals hshould be the first ones to be given law knowledg	32	0.389
16	Often, it's the students who start things off. We should rem	16	0.329
29	Step up supervision measures in the school.	29	0.329
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.303
34	The principal should spell out behaviour policies and discip	34	0.227
46	Rules are they key: craft them well and write them down.	46	-0.020
15	Schools should adopt Standard operating Procedures to cover	15	-0.031
40	What we do now is adequate: we deal with simple matters. If	40	-0.033
39	All teachers should be trained and involved in routine inspe	39	-0.173
26	The MOE should prevent the press from getting hold of storie	26	-0.189
47	We educators must develop 'awareness' of correct courses of	47	-0.211
28	NIE should have legal instruction in its pre-service and per	28	-0.235
42	We must have strong leaders in schools, leaders who will giv	42	-0.303

3	No need for overkill. A simple action, like a talk from a la	3	-0.391
11	The most important attribute in dealing with the law is 'exp	11	-0.403
13	If MOE wants us to know about legal issues, they should arra	13	-0.420
27	Having the right teachers helps to avoid legal issues. We sh	27	-0.420
45	The government should set up legislative standards for probl	45	-0.627
14	Vet teaching applicants more carefully and that would reduce	14	-0.654
37	We should give legal knowledge to teachers first. If they ge	37	-0.812
36	The cluster superintendent should hold a workshop every so o	36	-0.841
35	This is all a management issue. Use common sense, be sensiti	35	-0.905
38	Parents should be made to sign a statement saying that they	38	-1.170
7	Keep the best interests of the children at heart and you won	7	-1.182
6	Everything is in the Principals' Handbook, so principals sho	6	-1.220
12	It is mainly PE, science lab and workshop teachers who shoul	12	-1.289
33	We should draw on the help of lawyer friends or alumni if le	33	-1.490
25	A good strategy is procrastination or 'play for time'. This	25	-1.515
43	Make the school a risk-free zone. Do everything by the book.	43	-1.575
22	No worries! Singapore is not like other countries. The gover	22	-1.610
19	Let's go back to the days when what the school said and did	19	-1.821

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Descending Array of Differences Between Factors 1 and 2

No.	Statement (For full statements, see Appendix 1A)	No.	Type 1	Type 2	Difference
10	An MOE sponsored conference or Principals' Forum should be o	10	1.691	0.433	1.259
28	NIE should have legal instruction in its pre-service and per	28	1.470	0.283	1.187
18	NIE should include law in its leadership programmes, like LE	18	1.843	0.771	1.072
45	The government should set up legislative standards for probl	45	0.040	-1.020	1.060
37	We should give legal knowledge to teachers first. If they ge	37	0.974	0.030	0.944
2	MOE should give clear advice and publicaise it so that schoo	2	0.502	-0.432	0.934
1	We should advise young teachers early in their careers about	1	1.120	0.228	0.892
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	2.049	1.240	0.810
47	We educators must develop 'awareness' of correct courses of	47	1.386	0.670	0.716
36	The cluster superintendent should hold a workshop every so o	36	0.037	-0.556	0.593
38	Parents should be made to sign a statement saying that they	38	-1.599	-2.137	0.538
22	No worries! Singapore is not like other countries. The gover	22	-1.685	-2.165	0.479
27	Having the right teachers helps to avoid legal issues. We sh	27	-0.651	-1.062	0.411
3	No need for overkill. A simple action, like a talk from a la	3	-0.664	-1.032	0.367
14	Vet teaching applicants more carefully and that would reduce	14	-0.753	-1.069	0.317
25	A good strategy is procrastination or 'play for time'. This	25	-1.060	-1.346	0.286
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.687	-0.896	0.209
33	We should draw on the help of lawyer friends or alumni if le	33	-0.418	-0.602	0.184
44	There are human resource risks. Schools should look after th	44	0.091	-0.017	0.108
35	This is all a management issue. Use common sense, be sensiti	35	-0.446	-0.539	0.093
5	We should develop HR skills and nurture good relationships w	5	1.008	0.941	0.067
29	Step up supervision measures in the school.	29	0.250	0.209	0.041
13	If MOE wants us to know about legal issues, they should arra	13	-0.422	-0.427	0.006
24	Hold staff meetings and student assemblies to review rules t	24	0.837	0.862	-0.025
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	-0.013	0.052	-0.064
32	Principals hshould be the first ones to be given law knowledg	32	1.302	1.375	-0.073
19	Let's go back to the days when what the school said and did	19	-1.875	-1.786	-0.090
26	The MOE should prevent the press from getting hold of storie	26	-1.591	-1.454	-0.137
7	Keep the best interests of the children at heart and you won	7	-0.793	-0.621	-0.172
30	We should keep in regular contact with parents, keeping them	30	0.163	0.371	-0.208

17	We need training in mediation skills: parents argue with tea	17	0.966	1.174	-0.209
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.302	0.528	-0.226
40	What we do now is adequate: we deal with simple matters. If	40	-0.641	-0.352	-0.289
21	With more involvement from outsiders (e.g. parents and coach	21	0.627	0.981	-0.354
20	If the school knows where there are problem areas (e.g. PE,	20	0.376	0.745	-0.369
8	The government should introduce legislation to prevent schoo	8	-1.313	-0.865	-0.448
43	Make the school a risk-free zone. Do everything by the book.	43	-1.012	-0.519	-0.493
6	Everything is in the Principals' Handbook, so principals sho	6	-0.803	-0.299	-0.504
34	The principal should spell out behaviour policies and discip	34	1.098	1.679	-0.581
16	Often, it's the students who start things off. We should rem	16	-0.854	-0.119	-0.735
23	There must be constant reinforcement. Principals should remi	23	0.898	1.643	-0.745
46	Rules are they key: craft them well and write them down.	46	-0.532	0.317	-0.849
39	All teachers should be trained and involved in routine inspe	39	-0.388	0.540	-0.928
9	Schools should identify hazards and assess the risk of accid	9	0.209	1.202	-0.993
11	The most important attribute in dealing with the law is 'exp	11	-1.083	0.160	-1.244
15	Schools should adopt Standard operating Procedures to cover	15	-0.186	1.144	-1.330
42	We must have strong leaders in schools, leaders who will giv	42	0.231	1.738	-1.507

PQMethod2.11 Principals and the law: Avoiding legal risk
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Descending Array of Differences Between Factors 1 and 3

No.	Statement (For full statements, see Appendix 1A)	No.	Type 1	Type 3	Difference
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	2.049	-1.346	3.395
18	NIE should include law in its leadership programmes, like LE	18	1.843	-1.442	3.285
28	NIE should have legal instruction in its pre-service and per	28	1.470	-1.709	3.179
37	We should give legal knowledge to teachers first. If they ge	37	0.974	-0.897	1.871
20	If the school knows where there are problem areas (e.g. PE,	20	0.376	-1.251	1.627
36	The cluster superintendent should hold a workshop every so o	36	0.037	-1.528	1.564
42	We must have strong leaders in schools, leaders who will giv	42	0.231	-1.251	1.482
29	Step up supervision measures in the school.	29	0.250	-1.079	1.329
10	An MOE sponsored conference or Principals' Forum should be o	10	1.691	0.716	0.975
1	We should advise young teachers early in their careers about	1	1.120	0.267	0.853
24	Hold staff meetings and student assemblies to review rules t	24	0.837	0.086	0.751
47	We educators must develop 'awareness' of correct courses of	47	1.386	0.802	0.584
15	Schools should adopt Standard operating Procedures to cover	15	-0.186	-0.726	0.539
34	The principal should spell out behaviour policies and discipl	34	1.098	0.630	0.468
32	Principals hshould be the first ones to be given law knowledg	32	1.302	0.897	0.405
25	A good strategy is procrastination or 'play for time'. This	25	-1.060	-1.336	0.277
23	There must be constant reinforcement. Principals should remi	23	0.898	0.630	0.268
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	-0.013	-0.277	0.264
2	MOE should give clear advice and publicaise it so that schoo	2	0.502	0.277	0.225
46	Rules are they key: craft them well and write them down.	46	-0.532	-0.726	0.194
26	The MOE should prevent the press from getting hold of storie	26	-1.591	-1.699	0.108
27	Having the right teachers helps to avoid legal issues. We sh	27	-0.651	-0.706	0.055
14	Vet teaching applicants more carefully and that would reduce	14	-0.753	-0.802	0.049
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.302	0.277	0.025
13	If MOE wants us to know about legal issues, they should arra	13	-0.422	-0.353	-0.069
39	All teachers should be trained and involved in routine inspe	39	-0.388	-0.181	-0.207
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.687	-0.449	-0.238
17	We need training in mediation skills: parents argue with tea	17	0.966	1.251	-0.285
21	With more involvement from outsiders (e.g. parents and coach	21	0.627	0.983	-0.357
6	Everything is in the Principals' Handbook, so principals sho	6	-0.803	-0.363	-0.440

40	What we do now is adequate: we deal with simple matters. If	40	-0.641	-0.086	-0.555
45	The government should set up legislative standards for probl	45	0.040	0.726	-0.686
8	The government should introduce legislation to prevent schoo	8	-1.313	-0.535	-0.778
43	Make the school a risk-free zone. Do everything by the book.	43	-1.012	-0.181	-0.830
3	No need for overkill. A simple action, like a talk from a la	3	-0.664	0.172	-0.836
9	Schools should identify hazards and assess the risk of accid	9	0.209	1.079	-0.870
5	We should develop HR skills and nurture good relationships w	5	1.008	2.062	-1.054
44	There are human resource risks. Schools should look after th	44	0.091	1.251	-1.160
33	We should draw on the help of lawyer friends or alumni if le	33	-0.418	0.812	-1.230
38	Parents should be made to sign a statement saying that they	38	-1.599	-0.363	-1.236
35	This is all a management issue. Use common sense, be sensiti	35	-0.446	0.802	-1.248
11	The most important attribute in dealing with the law is 'exp	11	-1.083	0.258	-1.341
19	Let's go back to the days when what the school said and did	19	-1.875	-0.267	-1.608
16	Often, it's the students who start things off. We should rem	16	-0.854	0.897	-1.752
30	We should keep in regular contact with parents, keeping them	30	0.163	2.062	-1.899
22	No worries! Singapore is not like other countries. The gover	22	-1.685	0.640	-2.325
7	Keep the best interests of the children at heart and you won	7	-0.793	1.976	-2.770

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Descending Array of Differences Between Factors 1 and 4

No.	Statement (For full statements, see Appendix 1A)	No.	Type 1	Type 4	Difference
37	We should give legal knowledge to teachers first. If they ge	37	0.974	-0.812	1.786
28	NIE should have legal instruction in its pre-service and per	28	1.470	-0.235	1.705
47	We educators must develop 'awareness' of correct courses of	47	1.386	-0.211	1.597
18	NIE should include law in its leadership programmes, like LE	18	1.843	0.618	1.225
33	We should draw on the help of lawyer friends or alumni if le	33	-0.418	-1.490	1.072
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	2.049	1.098	0.951
32	Principals hshould be the first ones to be given law knowledg	32	1.302	0.389	0.913
36	The cluster superintendent should hold a workshop every so o	36	0.037	-0.841	0.877
34	The principal should spell out behaviour policies and discip	34	1.098	0.227	0.871
45	The government should set up legislative standards for probl	45	0.040	-0.627	0.667
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.687	-1.289	0.602
43	Make the school a risk-free zone. Do everything by the book.	43	-1.012	-1.575	0.563
42	We must have strong leaders in schools, leaders who will giv	42	0.231	-0.303	0.534
35	This is all a management issue. Use common sense, be sensiti	35	-0.446	-0.905	0.459
25	A good strategy is procrastination or 'play for time'. This	25	-1.060	-1.515	0.456
6	Everything is in the Principals' Handbook, so principals sho	6	-0.803	-1.220	0.417
7	Keep the best interests of the children at heart and you won	7	-0.793	-1.182	0.388
1	We should advise young teachers early in their careers about	1	1.120	0.762	0.358
10	An MOE sponsored conference or Principals' Forum should be o	10	1.691	1.497	0.194
23	There must be constant reinforcement. Principals should remi	23	0.898	0.774	0.124
13	If MOE wants us to know about legal issues, they should arra	13	-0.422	-0.420	-0.001
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.302	0.303	-0.001
19	Let's go back to the days when what the school said and did	19	-1.875	-1.821	-0.054
22	No worries! Singapore is not like other countries. The gover	22	-1.685	-1.610	-0.076
29	Step up supervision measures in the school.	29	0.250	0.329	-0.079
14	Vet teaching applicants more carefully and that would reduce	14	-0.753	-0.654	-0.098
15	Schools should adopt Standard operating Procedures to cover	15	-0.186	-0.031	-0.155
39	All teachers should be trained and involved in routine inspe	39	-0.388	-0.173	-0.215
27	Having the right teachers helps to avoid legal issues. We sh	27	-0.651	-0.420	-0.231
3	No need for overkill. A simple action, like a talk from a la	3	-0.664	-0.391	-0.273

24	Hold staff meetings and student assemblies to review rules t	24	0.837	1.136	-0.299
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	-0.013	0.392	-0.405
21	With more involvement from outsiders (e.g. parents and coach	21	0.627	1.048	-0.421
38	Parents should be made to sign a statement saying that they	38	-1.599	-1.170	-0.429
17	We need training in mediation skills: parents argue with tea	17	0.966	1.424	-0.458
46	Rules are they key: craft them well and write them down.	46	-0.532	-0.020	-0.512
40	What we do now is adequate: we deal with simple matters. If	40	-0.641	-0.033	-0.608
44	There are human resource risks. Schools should look after th	44	0.091	0.718	-0.628
11	The most important attribute in dealing with the law is 'exp	11	-1.083	-0.403	-0.681
2	MOE should give clear advice and publicaise it so that schoo	2	0.502	1.332	-0.830
20	If the school knows where there are problem areas (e.g. PE,	20	0.376	1.256	-0.880
30	We should keep in regular contact with parents, keeping them	30	0.163	1.071	-0.908
5	We should develop HR skills and nurture good relationships w	5	1.008	2.089	-1.081
16	Often, it's the students who start things off. We should rem	16	-0.854	0.329	-1.183
9	Schools should identify hazards and assess the risk of accid	9	0.209	1.394	-1.185
26	The MOE should prevent the press from getting hold of storie	26	-1.591	-0.189	-1.402
8	The government should introduce legislation to prevent schoo	8	-1.313	1.354	-2.667

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Descending Array of Differences Between Factors 2 and 3

No.	Statement (For full statements, see Appendix 1A)	No.	Type 2	Type 3	Difference
42	We must have strong leaders in schools, leaders who will giv	42	1.738	-1.251	2.988
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	1.240	-1.346	2.586
18	NIE should include law in its leadership programmes, like LE	18	0.771	-1.442	2.213
20	If the school knows where there are problem areas (e.g. PE,	20	0.745	-1.251	1.995
28	NIE should have legal instruction in its pre-service and per	28	0.283	-1.709	1.992
15	Schools should adopt Standard operating Procedures to cover	15	1.144	-0.726	1.870
29	Step up supervision measures in the school.	29	0.209	-1.079	1.288
34	The principal should spell out behaviour policies and discip	34	1.679	0.630	1.049
46	Rules are they key: craft them well and write them down.	46	0.317	-0.726	1.042
23	There must be constant reinforcement. Principals should remi	23	1.643	0.630	1.013
36	The cluster superintendent should hold a workshop every so o	36	-0.556	-1.528	0.972
37	We should give legal knowledge to teachers first. If they ge	37	0.030	-0.897	0.928
24	Hold staff meetings and student assemblies to review rules t	24	0.862	0.086	0.776
39	All teachers should be trained and involved in routine inspe	39	0.540	-0.181	0.721
32	Principals should be the first ones to be given law knowledg	32	1.375	0.897	0.478
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	0.052	-0.277	0.329
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.528	0.277	0.251
26	The MOE should prevent the press from getting hold of storie	26	-1.454	-1.699	0.245
9	Schools should identify hazards and assess the risk of accid	9	1.202	1.079	0.123
6	Everything is in the Principals' Handbook, so principals sho	6	-0.299	-0.363	0.064
21	With more involvement from outsiders (e.g. parents and coach	21	0.981	0.983	-0.003
25	A good strategy is procrastination or 'play for time'. This	25	-1.346	-1.336	-0.010
1	We should advise young teachers early in their careers about	1	0.228	0.267	-0.039
13	If MOE wants us to know about legal issues, they should arra	13	-0.427	-0.353	-0.074
17	We need training in mediation skills: parents argue with tea	17	1.174	1.251	-0.076
11	The most important attribute in dealing with the law is 'exp	11	0.160	0.258	-0.097
47	We educators must develop 'awareness' of correct courses of	47	0.670	0.802	-0.132
40	What we do now is adequate: we deal with simple matters. If	40	-0.352	-0.086	-0.266
14	Vet teaching applicants more carefully and that would reduce	14	-1.069	-0.802	-0.268
10	An MOE sponsored conference or Principals' Forum should be o	10	0.433	0.716	-0.283

8	The government should introduce legislation to prevent schoo	8	-0.865	-0.535	-0.330
43	Make the school a risk-free zone. Do everything by the book.	43	-0.519	-0.181	-0.337
27	Having the right teachers helps to avoid legal issues. We sh	27	-1.062	-0.706	-0.356
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.896	-0.449	-0.447
2	MOE should give clear advice and publicaise it so that schoo	2	-0.432	0.277	-0.709
16	Often, it's the students who start things off. We should rem	16	-0.119	0.897	-1.016
5	We should develop HR skills and nurture good relationships w	5	0.941	2.062	-1.121
3	No need for overkill. A simple action, like a talk from a la	3	-1.032	0.172	-1.203
44	There are human resource risks. Schools should look after th	44	-0.017	1.251	-1.268
35	This is all a management issue. Use common sense, be sensiti	35	-0.539	0.802	-1.341
33	We should draw on the help of lawyer friends or alumni if le	33	-0.602	0.812	-1.414
19	Let's go back to the days when what the school said and did	19	-1.786	-0.267	-1.518
30	We should keep in regular contact with parents, keeping them	30	0.371	2.062	-1.691
45	The government should set up legislative standards for probl	45	-1.020	0.726	-1.746
38	Parents should be made to sign a statement saying that they	38	-2.137	-0.363	-1.774
7	Keep the best interests of the children at heart and you won	7	-0.621	1.976	-2.597
22	No worries! Singapore is not like other countries. The gover	22	-2.165	0.640	-2.805

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Descending Array of Differences Between Factors 2 and 4

No.	Statement (For full statements, see Appendix 1A)	No.	Type 2	Type 4	Difference
42	We must have strong leaders in schools, leaders who will giv	42	1.738	-0.303	2.041
34	The principal should spell out behaviour policies and discipl	34	1.679	0.227	1.452
15	Schools should adopt Standard operating Procedures to cover	15	1.144	-0.031	1.175
43	Make the school a risk-free zone. Do everything by the book.	43	-0.519	-1.575	1.056
32	Principals hshould be the first ones to be given law knowledg	32	1.375	0.389	0.986
6	Everything is in the Principals' Handbook, so principals sho	6	-0.299	-1.220	0.921
33	We should draw on the help of lawyer friends or alumni if le	33	-0.602	-1.490	0.888
47	We educators must develop 'awareness' of correct courses of	47	0.670	-0.211	0.881
23	There must be constant reinforcement. Principals should remi	23	1.643	0.774	0.869
37	We should give legal knowledge to teachers first. If they ge	37	0.030	-0.812	0.843
39	All teachers should be trained and involved in routine inspe	39	0.540	-0.173	0.713
11	The most important attribute in dealing with the law is 'exp	11	0.160	-0.403	0.563
7	Keep the best interests of the children at heart and you won	7	-0.621	-1.182	0.561
28	NIE should have legal instruction in its pre-service and per	28	0.283	-0.235	0.518
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.896	-1.289	0.393
35	This is all a management issue. Use common sense, be sensiti	35	-0.539	-0.905	0.366
46	Rules are they key: craft them well and write them down.	46	0.317	-0.020	0.337
36	The cluster superintendent should hold a workshop every so o	36	-0.556	-0.841	0.285
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.528	0.303	0.225
25	A good strategy is procrastination or 'play for time'. This	25	-1.346	-1.515	0.169
18	NIE should include law in its leadership programmes, like LE	18	0.771	0.618	0.153
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	1.240	1.098	0.142
19	Let's go back to the days when what the school said and did	19	-1.786	-1.821	0.036
13	If MOE wants us to know about legal issues, they should arra	13	-0.427	-0.420	-0.007
21	With more involvement from outsiders (e.g. parents and coach	21	0.981	1.048	-0.067
29	Step up supervision measures in the school.	29	0.209	0.329	-0.120
9	Schools should identify hazards and assess the risk of accid	9	1.202	1.394	-0.192
17	We need training in mediation skills: parents argue with tea	17	1.174	1.424	-0.249
24	Hold staff meetings and student assemblies to review rules t	24	0.862	1.136	-0.274

40	What we do now is adequate: we deal with simple matters. If	40	-0.352	-0.033	-0.319
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	0.052	0.392	-0.341
45	The government should set up legislative standards for probl	45	-1.020	-0.627	-0.393
14	Vet teaching applicants more carefully and that would reduce	14	-1.069	-0.654	-0.415
16	Often, it's the students who start things off. We should rem	16	-0.119	0.329	-0.448
20	If the school knows where there are problem areas (e.g. PE,	20	0.745	1.256	-0.511
1	We should advise young teachers early in their careers about	1	0.228	0.762	-0.534
22	No worries! Singapore is not like other countries. The gover	22	-2.165	-1.610	-0.555
3	No need for overkill. A simple action, like a talk from a la	3	-1.032	-0.391	-0.641
27	Having the right teachers helps to avoid legal issues. We sh	27	-1.062	-0.420	-0.642
30	We should keep in regular contact with parents, keeping them	30	0.371	1.071	-0.700
44	There are human resource risks. Schools should look after th	44	-0.017	0.718	-0.735
38	Parents should be made to sign a statement saying that they	38	-2.137	-1.170	-0.967
10	An MOE sponsored conference or Principals' Forum should be o	10	0.433	1.497	-1.065
5	We should develop HR skills and nurture good relationships w	5	0.941	2.089	-1.148
26	The MOE should prevent the press from getting hold of storie	26	-1.454	-0.189	-1.265
2	MOE should give clear advice and publicaise it so that schoo	2	-0.432	1.332	-1.764
8	The government should introduce legislation to prevent schoo	8	-0.865	1.354	-2.219

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Descending Array of Differences Between Factors 3 and 4

No.	Statement (For full statements, see Appendix 1A)	No.	Type 3	Type 4	Difference
7	Keep the best interests of the children at heart and you won	7	1.976	-1.182	3.158
33	We should draw on the help of lawyer friends or alumni if le	33	0.812	-1.490	2.302
22	No worries! Singapore is not like other countries. The gover	22	0.640	-1.610	2.250
35	This is all a management issue. Use common sense, be sensiti	35	0.802	-0.905	1.707
19	Let's go back to the days when what the school said and did	19	-0.267	-1.821	1.554
43	Make the school a risk-free zone. Do everything by the book.	43	-0.181	-1.575	1.394
45	The government should set up legislative standards for probl	45	0.726	-0.627	1.353
47	We educators must develop 'awareness' of correct courses of	47	0.802	-0.211	1.013
30	We should keep in regular contact with parents, keeping them	30	2.062	1.071	0.991
6	Everything is in the Principals' Handbook, so principals sho	6	-0.363	-1.220	0.857
12	It is mainly PE, science lab and workshop teachers who shoul	12	-0.449	-1.289	0.840
38	Parents should be made to sign a statement saying that they	38	-0.363	-1.170	0.807
11	The most important attribute in dealing with the law is 'exp	11	0.258	-0.403	0.660
16	Often, it's the students who start things off. We should rem	16	0.897	0.329	0.568
3	No need for overkill. A simple action, like a talk from a la	3	0.172	-0.391	0.562
44	There are human resource risks. Schools should look after th	44	1.251	0.718	0.532
32	Principals hshould be the first ones to be given law knowledg	32	0.897	0.389	0.508
34	The principal should spell out behaviour policies and discipl	34	0.630	0.227	0.403
25	A good strategy is procrastination or 'play for time'. This	25	-1.336	-1.515	0.179
13	If MOE wants us to know about legal issues, they should arra	13	-0.353	-0.420	0.067
39	All teachers should be trained and involved in routine inspe	39	-0.181	-0.173	-0.008
31	Whenever a legal issue arises, consult the MOE's legal advis	31	0.277	0.303	-0.026
5	We should develop HR skills and nurture good relationships w	5	2.062	2.089	-0.027
40	What we do now is adequate: we deal with simple matters. If	40	-0.086	-0.033	-0.053
21	With more involvement from outsiders (e.g. parents and coach	21	0.983	1.048	-0.064
37	We should give legal knowledge to teachers first. If they ge	37	-0.897	-0.812	-0.085
23	There must be constant reinforcement. Principals should remi	23	0.630	0.774	-0.144
14	Vet teaching applicants more carefully and that would reduce	14	-0.802	-0.654	-0.148
17	We need training in mediation skills: parents argue with tea	17	1.251	1.424	-0.173
27	Having the right teachers helps to avoid legal issues. We sh	27	-0.706	-0.420	-0.286

9	Schools should identify hazards and assess the risk of accid	9	1.079	1.394	-0.315
1	We should advise young teachers early in their careers about	1	0.267	0.762	-0.495
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	-0.277	0.392	-0.669
36	The cluster superintendent should hold a workshop every so o	36	-1.528	-0.841	-0.687
15	Schools should adopt Standard operating Procedures to cover	15	-0.726	-0.031	-0.694
46	Rules are they key: craft them well and write them down.	46	-0.726	-0.020	-0.706
10	An MOE sponsored conference or Principals' Forum should be o	10	0.716	1.497	-0.781
42	We must have strong leaders in schools, leaders who will giv	42	-1.251	-0.303	-0.947
24	Hold staff meetings and student assemblies to review rules t	24	0.086	1.136	-1.050
2	MOE should give clear advice and publicaise it so that schoo	2	0.277	1.332	-1.055
29	Step up supervision measures in the school.	29	-1.079	0.329	-1.408
28	NIE should have legal instruction in its pre-service and per	28	-1.709	-0.235	-1.474
26	The MOE should prevent the press from getting hold of storie	26	-1.699	-0.189	-1.510
8	The government should introduce legislation to prevent schoo	8	-0.535	1.354	-1.889
18	NIE should include law in its leadership programmes, like LE	18	-1.442	0.618	-2.060
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	-1.346	1.098	-2.444
20	If the school knows where there are problem areas (e.g. PE,	20	-1.251	1.256	-2.507

PQMethod2.11 Principals and the law: Avoiding legal risk
 Path and Project Name: C:\PQMETHOD\PROJECTS/lawproj

Factor Q-Sort Values for Each Statement

		Factor Arrays				
No.	Statement (For full statements, see Appendix 1A)	No.	1	2	3	4
1	We should advise young teachers early in their careers about	1	3	0	1	2
2	MOE should give clear advice and publicise it so that schoo	2	1	-1	1	3
3	No need for overkill. A simple action, like a talk from a la	3	-2	-3	0	-1
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	5	4	-4	3
5	We should develop HR skills and nurture good relationships w	5	3	2	5	5
6	Everything is in the Principals' Handbook, so principals sho	6	-2	-1	-1	-3
7	Keep the best interests of the children at heart and you won	7	-2	-2	4	-3
8	The government should introduce legislation to prevent schoo	8	-4	-2	-1	4
9	Schools should identify hazards and assess the risk of accid	9	1	3	3	4
10	An MOE sponsored conference or Principals' Forum should be o	10	4	1	2	5
11	The most important attribute in dealing with the law is 'exp	11	-3	0	0	-1
12	It is mainly PE, science lab and workshop teachers who shoul	12	-2	-2	-1	-3
13	If MOE wants us to know about legal issues, they should arra	13	-1	-1	-1	-1
14	Vet teaching applicants more carefully and that would reduce	14	-2	-3	-2	-2
15	Schools should adopt Standard operating Procedures to cover	15	0	3	-2	0
16	Often, it's the students who start things off. We should rem	16	-3	0	3	1
17	We need training in mediation skills: parents argue with tea	17	2	3	4	4
18	NIE should include law in its leadership programmes, like LE	18	5	2	-4	1
19	Let's go back to the days when what the school said and did	19	-5	-4	0	-5
20	If the school knows where there are problem areas (e.g. PE,	20	1	2	-3	3
21	With more involvement from outsiders (e.g. parents and coach	21	2	3	3	2
22	No worries! Singapore is not like other countries. The gover	22	-5	-5	1	-5
23	There must be constant reinforcement. Principals should remi	23	2	4	1	2
24	Hold staff meetings and student assemblies to review rules t	24	2	2	0	3
25	A good strategy is procrastination or 'play for time'. This	25	-3	-4	-3	-4
26	The MOE should prevent the press from getting hold of storie	26	-4	-4	-5	0
27	Having the right teachers helps to avoid legal issues. We sh	27	-1	-3	-2	-1
28	NIE should have legal instruction in its pre-service and per	28	4	1	-5	-1
29	Step up supervision measures in the school.	29	1	0	-3	1

30	We should keep in regular contact with parents, keeping them	30	0	1	5	2
31	Whenever a legal issue arises, consult the MOE's legal advis	31	1	1	1	1
32	Principals hshould be the first ones to be given law knowledg	32	3	4	3	1
33	We should draw on the help of lawyer friends or alumni if le	33	-1	-2	2	-4
34	The principal should spell out behaviour policies and discipl	34	3	5	1	0
35	This is all a management issue. Use common sense, be sensiti	35	-1	-1	2	-2
36	The cluster superintendent should hold a workshop every so o	36	0	-2	-4	-2
37	We should give legal knowledge to teachers first. If they ge	37	2	0	-2	-2
38	Parents should be made to sign a statement saying that they	38	-4	-5	-1	-3
39	All teachers should be trained and involved in routine inspe	39	0	1	0	0
40	What we do now is adequate: we deal with simple matters. If	40	-1	-1	0	0
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	0	0	-1	1
42	We must have strong leaders in schools, leaders who will giv	42	1	5	-3	-1
43	Make the school a risk-free zone. Do everything by the book.	43	-3	-1	0	-4
44	There are human resource risks. Schools should look after th	44	0	0	4	2
45	The government should set up legislative standards for probl	45	0	-3	2	-2
46	Rules are they key: craft them well and write them down.	46	-1	1	-2	0
47	We educators must develop 'awareness' of correct courses of	47	4	2	2	0

Variance = 6.809 St. Dev. = 2.609

PQMethod2.11 Principals and the law: Avoiding legal risk
 Path and Project Name: C:\PQMETHOD\PROJECTS/lawproj

Factor Q-Sort Values for Statements sorted by Consensus vs. Disagreement (Variance across normalized Factor Scores)

		Factor Arrays				
No.	Statement (For full statements, see Appendix 1A)	No.	1	2	3	4
13	If MOE wants us to know about legal issues, they should arra	13	-1	-1	-1	-1
31	Whenever a legal issue arises, consult the MOE's legal advis	31	1	1	1	1
14	Vet teaching applicants more carefully and that would reduce	14	-2	-3	-2	-2
25	A good strategy is procrastination or 'play for time'. This	25	-3	-4	-3	-4
17	We need training in mediation skills: parents argue with tea	17	2	3	4	4
21	With more involvement from outsiders (e.g. parents and coach	21	2	3	3	2
27	Having the right teachers helps to avoid legal issues. We sh	27	-1	-3	-2	-1
41	The Teachers' Handbook contains the do's and don'ts. Teacher	41	0	0	-1	1
40	What we do now is adequate: we deal with simple matters. If	40	-1	-1	0	0
12	It is mainly PE, science lab and workshop teachers who shoul	12	-2	-2	-1	-3
39	All teachers should be trained and involved in routine inspe	39	0	1	0	0
1	We should advise young teachers early in their careers about	1	3	0	1	2
6	Everything is in the Principals' Handbook, so principals sho	6	-2	-1	-1	-3
24	Hold staff meetings and student assemblies to review rules t	24	2	2	0	3
23	There must be constant reinforcement. Principals should remi	23	2	4	1	2
32	Principals hshould be the first ones to be given law knowledg	32	3	4	3	1
46	Rules are they key: craft them well and write them down.	46	-1	1	-2	0
3	No need for overkill. A simple action, like a talk from a la	3	-2	-3	0	-1
9	Schools should identify hazards and assess the risk of accid	9	1	3	3	4
44	There are human resource risks. Schools should look after th	44	0	0	4	2
10	An MOE sponsored conference or Principals' Forum should be o	10	4	1	2	5
43	Make the school a risk-free zone. Do everything by the book.	43	-3	-1	0	-4
11	The most important attribute in dealing with the law is 'exp	11	-3	0	0	-1
34	The principal should spell out behaviour policies and discip	34	3	5	1	0
5	We should develop HR skills and nurture good relationships w	5	3	2	5	5
36	The cluster superintendent should hold a workshop every so o	36	0	-2	-4	-2
47	We educators must develop 'awareness' of correct courses of	47	4	2	2	0
29	Step up supervision measures in the school.	29	1	0	-3	1
26	The MOE should prevent the press from getting hold of storie	26	-4	-4	-5	0

2	MOE should give clear advice and publicise it so that schoo	2	1	-1	1	3
16	Often, it's the students who start things off. We should rem	16	-3	0	3	1
35	This is all a management issue. Use common sense, be sensiti	35	-1	-1	2	-2
38	Parents should be made to sign a statement saying that they	38	-4	-5	-1	-3
45	The government should set up legislative standards for probl	45	0	-3	2	-2
19	Let's go back to the days when what the school said and did	19	-5	-4	0	-5
15	Schools should adopt Standard operating Procedures to cover	15	0	3	-2	0
30	We should keep in regular contact with parents, keeping them	30	0	1	5	2
37	We should give legal knowledge to teachers first. If they ge	37	2	0	-2	-2
33	We should draw on the help of lawyer friends or alumni if le	33	-1	-2	2	-4
20	If the school knows where there are problem areas (e.g. PE,	20	1	2	-3	3
8	The government should introduce legislation to prevent schoo	8	-4	-2	-1	4
42	We must have strong leaders in schools, leaders who will giv	42	1	5	-3	-1
22	No worries! Singapore is not like other countries. The gover	22	-5	-5	1	-5
28	NIE should have legal instruction in its pre-service and per	28	4	1	-5	-1
18	NIE should include law in its leadership programmes, like LE	18	5	2	-4	1
7	Keep the best interests of the children at heart and you won	7	-2	-2	4	-3
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	5	4	-4	3

Factor Characteristics	Factors			
	1	2	3	4
No. of Defining Variables	14	10	2	4
Average Rel. Coef.	0.800	0.800	0.800	0.800
Composite Reliability	0.982	0.976	0.889	0.941
S.E. of Factor Scores	0.132	0.156	0.333	0.243

Standard Errors for Differences in Normalized Factor Scores

(Diagonal Entries Are S.E. Within Factors)

Factors	1	2	3	4
1	0.187	0.205	0.359	0.276
2	0.205	0.221	0.368	0.288
3	0.359	0.368	0.471	0.412
4	0.276	0.288	0.412	0.343

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Distinguishing Statements for Factor 1

(P < .05 ; Asterisk (*) Indicates Significance at P < .01)

Both the Factor Q-Sort Value and the Normalized Score are Shown.

Factors

No. Statement (For full statements, see Appendix 1A)	No.	1		2		3		4	
		RNK	SCORE	RNK	SCORE	RNK	SCORE	RNK	SCORE
4 All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	5	2.05*	4	1.24	-4	-1.35	3	1.10
18 NIE should include law in its leadership programmes, like LE	18	5	1.84*	2	0.77	-4	-1.44	1	0.62
28 NIE should have legal instruction in its pre-service and per	28	4	1.47*	1	0.28	-5	-1.71	-1	-0.23
37 We should give legal knowledge to teachers first. If they ge	37	2	0.97*	0	0.03	-2	-0.90	-2	-0.81
9 Schools should identify hazards and assess the risk of accid	9	1	0.21	3	1.20	3	1.08	4	1.39
36 The cluster superintendent should hold a workshop every so o	36	0	0.04*	-2	-0.56	-4	-1.53	-2	-0.84
16 Often, it's the students who start things off. We should rem	16	-3	-0.85*	0	-0.12	3	0.90	1	0.33
43 Make the school a risk-free zone. Do everything by the book.	43	-3	-1.01	-1	-0.52	0	-0.18	-4	-1.58
11 The most important attribute in dealing with the law is 'exp	11	-3	-1.08	0	0.16	0	0.26	-1	-0.40
8 The government should introduce legislation to prevent schoo	8	-4	-1.31	-2	-0.86	-1	-0.53	4	1.35

Distinguishing Statements for Factor 2

(P < .05 ; Asterisk (*) Indicates Significance at P < .01)

Factors

No. Statement (For full statements, see Appendix 1A)	No.	Factors			
		1 RNK SCORE	2 RNK SCORE	3 RNK SCORE	4 RNK SCORE
42 We must have strong leaders in schools, leaders who will giv	42	1 0.23	5 1.74*	-3 -1.25	-1 -0.30
34 The principal should spell out behaviour policies and discipli	34	3 1.10	5 1.68*	1 0.63	0 0.23
23 There must be constant reinforcement. Principals should remi	23	2 0.90	4 1.64*	1 0.63	2 0.77
15 Schools should adopt Standard operating Procedures to cover	15	0 -0.19	3 1.14*	-2 -0.73	0 -0.03
37 We should give legal knowledge to teachers first. If they ge	37	2 0.97	0 0.03	-2 -0.90	-2 -0.81
38 Parents should be made to sign a statement saying that they	38	-4 -1.60	-5 -2.14*	-1 -0.36	-3 -1.17

Distinguishing Statements for Factor 3

(P < .05 ; Asterisk (*) Indicates Significance at P < .01)

		Factors							
		1		2		3		4	
No.	Statement (For full statements, see Appendix 1A)	No.	RNK SCORE	RNK SCORE	RNK SCORE	RNK SCORE	RNK SCORE	RNK SCORE	RNK SCORE
30	We should keep in regular contact with parents, keeping them	30	0 0.16	1 0.37	5 2.06	2 1.07			
7	Keep the best interests of the children at heart and you won	7	-2 -0.79	-2 -0.62	4 1.98*	-3 -1.18			
33	We should draw on the help of lawyer friends or alumni if le	33	-1 -0.42	-2 -0.60	2 0.81*	-4 -1.49			
35	This is all a management issue. Use common sense, be sensiti	35	-1 -0.45	-1 -0.54	2 0.80*	-2 -0.91			
22	No worries! Singapore is not like other countries. The gover	22	-5 -1.69	-5 -2.16	1 0.64*	-5 -1.61			
24	Hold staff meetings and student assemblies to review rules t	24	2 0.84	2 0.86	0 0.09	3 1.14			
19	Let's go back to the days when what the school said and did	19	-5 -1.88	-4 -1.79	0 -0.27*	-5 -1.82			
29	Step up supervision measures in the school.	29	1 0.25	0 0.21	-3 -1.08*	1 0.33			
42	We must have strong leaders in schools, leaders who will giv	42	1 0.23	5 1.74	-3 -1.25	-1 -0.30			
20	If the school knows where there are problem areas (e.g. PE,	20	1 0.38	2 0.74	-3 -1.25*	3 1.26			
4	All appointment holders (P, VP, HODs, STs, DM, AM etc) shoul	4	5 2.05	4 1.24	-4 -1.35*	3 1.10			
18	NIE should include law in its leadership programmes, like LE	18	5 1.84	2 0.77	-4 -1.44*	1 0.62			
28	NIE should have legal instruction in its pre-service and per	28	4 1.47	1 0.28	-5 -1.71*	-1 -0.23			

Distinguishing Statements for Factor 4

(P < .05 ; Asterisk (*) Indicates Significance at P < .01)

Both the Factor Q-Sort Value and the Normalized Score are Shown.

Factors

No. Statement (For full statements, see Appendix 1A)	No.	Factors			
		1 RNK SCORE	2 RNK SCORE	3 RNK SCORE	4 RNK SCORE
8 The government should introduce legislation to prevent schoo	8	-4 -1.31	-2 -0.86	-1 -0.53	4 1.35*
2 MOE should give clear advice and publicaise it so that schoo	2	1 0.50	-1 -0.43	1 0.28	3 1.33
30 We should keep in regular contact with parents, keeping them	30	0 0.16	1 0.37	5 2.06	2 1.07
26 The MOE should prevent the press from getting hold of storie	26	-4 -1.59	-4 -1.45	-5 -1.70	0 -0.19*
47 We educators must develop 'awareness' of correct courses of	47	4 1.39	2 0.67	2 0.80	0 -0.21
33 We should draw on the help of lawyer friends or alumni if le	33	-1 -0.42	-2 -0.60	2 0.81	-4 -1.49*
43 Make the school a risk-free zone. Do everything by the book.	43	-3 -1.01	-1 -0.52	0 -0.18	-4 -1.58

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Consensus Statements -- Those That Do Not Distinguish Between ANY Pair of Factors.

All Listed Statements are Non-Significant at $P > .01$, and Those Flagged With an * are also Non-Significant at $P > .05$.

No.	Statement (For full statements, see Appendix 1A)	No.	Factors							
			1		2		3		4	
			RNK	SCORE	RNK	SCORE	RNK	SCORE	RNK	SCORE
12	It is mainly PE, science lab and workshop teachers who should	12	-2	-0.69	-2	-0.90	-1	-0.45	-3	-1.29
13*	If MOE wants us to know about legal issues, they should arrange	13	-1	-0.42	-1	-0.43	-1	-0.35	-1	-0.42
14*	Vet teaching applicants more carefully and that would reduce	14	-2	-0.75	-3	-1.07	-2	-0.80	-2	-0.65
17*	We need training in mediation skills: parents argue with tea	17	2	0.97	3	1.17	4	1.25	4	1.42
21*	With more involvement from outsiders (e.g. parents and coach	21	2	0.63	3	0.98	3	0.98	2	1.05
24	Hold staff meetings and student assemblies to review rules t	24	2	0.84	2	0.86	0	0.09	3	1.14
25*	A good strategy is procrastination or 'play for time'. This	25	-3	-1.06	-4	-1.35	-3	-1.34	-4	-1.52
27	Having the right teachers helps to avoid legal issues. We sh	27	-1	-0.65	-3	-1.06	-2	-0.71	-1	-0.42
31*	Whenever a legal issue arises, consult the MOE's legal advis	31	1	0.30	1	0.53	1	0.28	1	0.30
40	What we do now is adequate: we deal with simple matters. If	40	-1	-0.64	-1	-0.35	0	-0.09	0	-0.03
41*	The Teachers' Handbook contains the do's and don'ts. Teacher	41	0	-0.01	0	0.05	-1	-0.28	1	0.39

QANALYZE was completet at 11:32:27



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OFFICE OF RESEARCH AND HIGHER DEGREES

Samuel Tickell

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15 October 2007

Ms Muikim Teh
PO Box 910
Harvey Bay QLD 4655

Dear Ms Teh

Re: Ethics Clearance for Research Project, Schools and the Law: Emerging Legal Issues Internationally with Implications for School

The USQ Human Research Ethics Committee recently reviewed your application for ethics clearance. Your project has been endorsed and full ethics approval has been given. Reference number **H07STU697** is assigned to this approval that remains valid to **12 October 2008**.

The Committee is required to monitor research projects that have received ethics clearance to ensure their conduct is not jeopardising the rights and interests of those who agreed to participate. Accordingly, you are asked to forward a **written report** to this office after twelve months from the date of this approval or upon completion of the project.

A questionnaire will be sent to you requesting details that will include: the status of the project; a statement from you as principal investigator, that the project is in compliance with any special conditions stated as a condition of ethical approval; and confirming the security of the data collected and the conditions governing access to the data. The questionnaire, available on the web, can be forwarded with your written report.

Please note that you are responsible for notifying the Committee immediately of any matter that might affect the continued ethical acceptability of the proposed procedure.

Yours sincerely

Samuel Tickell
Postgraduate and Ethics Officer
Office of Research and Higher Degrees



University of Southern Queensland

HUMAN RESEARCH ETHICS COMMITTEE ETHICS APPROVAL FORM

Approval details	Principal Researcher/ Principal supervisor:	Mui-Kim Teh Prof Peter Albion and Dr Sally Varnham	
Approval Number:	H07STU697	Commencement /completion date:	NA/ NA
Title of Project:	<i>Schools and the Law: Emerging Legal Issues Internationally with Implications for</i>		
<i>School</i>			

Approval conditions	Expiration date:	12/10/2008	
Approved as submitted if no fill question below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Is this an extension/amendment? Previous approval:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If no – what modifications are needed?	The data must be kept for five (5) years under a password secured file. The respondents are to be made aware of how the data will be Used.		

Other details	Was this application agreed through expedited review?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Does the application involve Aboriginal and Torres Strait Islander peoples?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Additional Comments: