

CASE NOTE

COMPLIANCE WITH REPORTING ALLEGATIONS OF STAFF MISCONDUCT AND STUDENT SEXUAL ABUSE: *R v ZZ*¹

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Student sexual abuse is one of the most painful educational issues our schools have to address. In Queensland, legislation obliges immediate notification of allegations of sexual abuse by a school employee with a student under 18 years of age to a principal or director of a school. Following such notification, notification must be made to a police officer. Regulations specify the form notification should take. This case was the first hearing of an allegation against a school principal for failure to comply with legislation and report the suspected sexual abuse. The principal, the defendant, was found not guilty by Magistrate Haydn StJernqvist. No further charges could be laid due to time limitations. The case raised issues of clarity as to what compliance with the legislation actually meant and may lead to revision of the state legislation.

I THE FACTS

The defendant was principal of a non-government Catholic school in Queensland during 2007, the year of alleged sexual misconduct by a teacher. The chronology of events, provided from the defendant's evidence as summarised in the trial judgment,² are provided in some detail as the nature of the allegation lies in interpretation of actions and relevant dates.

At approximately 1.45pm on 3 September 2007 (a Monday), the father of a child at the school informed the principal about matters told to him by his child. On the same date, in front of the principal, a learning support teacher (who was also the student protection officer) and the father, the student provided information that 'would give rise to a reasonable suspicion that sexual abuse had occurred' by a teacher.³ The defendant informed the father that he had the right to go to the police. The father indicated that he did not intend to do this but was 'alerting the defendant' to the allegations made by his child.⁴

Notes were taken from the meeting by the learning support teacher, typed and emailed immediately to the defendant. The defendant advised the learning support teacher immediately after the meeting that he would be contacting a senior education officer at the Catholic Education Office regarding the allegations. Three officers have responsibility for school management in the Office. The defendant submitted evidence in the trial that he is required to take directions from a second officer, in matters of student protection.

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The evidence of the defendant was that:

- He phoned the Catholic Education Office to speak to the senior education officer at 9am on 4 September (the day following the parent meeting); the officer was not available.
- He asked to speak to another officer as the matter was urgent.
- He spoke to an officer who was not a direct line manager for the school and informed him of the allegations.
- The officer agreed the allegations were serious. He advised the defendant to make notes of the allegations, meet with the teacher and advise the teacher of the allegations made.
- The defendant arranged to meet with the teacher the following day, as the teacher was then in classroom activities.
- The meeting occurred the next day (Wednesday 5 September), the teacher was informed of the allegations (without naming student or parent) and that they were being treated seriously.
- A further meeting of the defendant, learning support teacher, father and child occurred 3.30pm, Thursday 6 September 2007. The child provided full details of the allegations.
- Similar statements about advice to police were made to the father as at the first meeting with the same response.
- The defendant advised he would be notifying the Catholic Education Office of the allegations. Notes were kept once more by the Learning Support teacher and provided to the defendant.
- The defendant advised the Senior Education Officer about the allegations and events. The SEO was to contact the defendant the next day (Friday 7 September 2007).
- On Friday 7 September, the defendant was away from school but contacted by the SEO by mobile phone. He was advised to provide the allegations in writing to the teacher with documents from the Diocesan Student Protection Kit and to seek a written response.
- The defendant advised this would be prepared over the weekend and provided to the teacher on Monday, 10 September 2007.
- Communications with the teacher occurred on 12 September 2007, following revision by the SEO. The defendant followed the instructions of the SEO.

II THE ALLEGATIONS

Police investigated the actions of the principal and school officials in the Catholic Education Office and compliance with the obligation to report the matter to the police. No record of a report to police between September 2007 and November 2008 was found. In April 2009, the defendant was served with a Notice to Appear for the 2007 offence. The police alleged that the defendant did not comply with legislation and provide a written report to the police as obliged by section 366 of the *Education (General Provisions) Act 2006* (Qld).

III THE ACT AND REGULATIONS

Under the *Education (General Provisions) Act 2006* (Qld), sexual abuse or suspected abuse is to be notified to police by a school's principal or principal's supervisor. The very clear intention of the act, following a 2003 amendment, was to ensure that school bodies and principals would respond in an appropriate manner and pass information on to the police. The expectation was that if a staff member became aware or suspicious of sexual abuse of a student by a school employee, they were to report the suspicions 'to specified persons within the school system who must then pass it on to the police'.⁵

Section 366 of the Act states:

Obligation to report sexual abuse of person under 18 years at non-State school

- (1) Subsection (2) applies if a staff member of a non-State school (the *first person*) becomes aware, or reasonably suspects, that any of the following have been sexually abused by another person who is an employee of the school—
 - (a) a student under 18 years attending the school; ...
- (2) The first person must give a written report about the abuse, or suspected abuse, to the school's principal or a director of the school's governing body—
 - (a) immediately; and
 - (b) if a regulation is in force under subsection (3), as provided under the regulation. ...
- (3) A regulation may prescribe the particulars the report must include.
- (4) A non-State school's principal or a director of a non-State school's governing body must immediately give a copy of a report given to the principal or director under subsection (2) to a police officer. ...
- (7) In this section — *director*, of a non-State school's governing body, means — ...
 - (b) otherwise — a person who is, or is a member of, the executive or management entity, by whatever name called, of the governing body.

The *Education (General Provisions) Regulations 2006* (Qld) state that a report about sexual abuse should include:⁶

- (a) the name of the person giving the report (the *first person*);
- (b) the student's name and sex;
- (c) details of the basis for the first person becoming aware, or reasonably suspecting, that the student has been sexually abused by an employee of the school;
- (d) details of the abuse or suspected abuse;
- (e) any of the following information of which the first person is aware—
 - (i) the student's age;
 - (ii) the identity of the employee who has abused, or is suspected to have abused, the student;
 - (iii) the identity of anyone else who may have information about the abuse or suspected abuse.

The law, then, requires a principal, or a director of a governing body of a school as broadly defined by s 366(7)(b), to notify police about suspicion of sexual abuse of a student by a school employee. The regulations describe the content that should be provided in the notification. Section 366(2) indicates the 'first person' to be aware should provide advice to the principal or the director about the suspicions.

IV APPLICATION OF THE LAW AND THE MAGISTRATE'S DECISION

The allegations by the student against a teacher and the actions of the defendant in response to the allegations were not in dispute. The defendant was the 'first person' to be aware of the allegations. The issue was whether the actions of the defendant complied with s 366 of the Act. The Magistrate provided an unorthodox finding on the matter. The police had particularised that

the defendant had an obligation to report to the police under s 366 of the Act. The defendant argued that as the ‘first person’ to be aware of the matter, his obligation under s 366 was to report to the Director or equivalent. As the Magistrate accepted this interpretation, the defendant could have been acquitted at that point. However, the Magistrate then pursued further and considered deliberations as to whether such reporting had occurred and its nature.

The Magistrate found that the emails and letter written by the defendant to the teacher and to the Senior Executive Officer of the Catholic Education Office contained the particulars identified in the Regulations, although they might not constitute ‘one neat formal written report’.⁷ Therefore, the Magistrate found that the defendant had complied with the substance of the Regulations.

The Magistrate further found that, given the timings reported above, the suspicions were reported ‘immediately’, satisfying s 366(2)(a) of the Act; and, that the suspicions were reported by the principal to a person who satisfied the definition of Director under s 366(7) of the Act, and the person to whom the defendant reported.

The Magistrate therefore found that the defendant had complied substantially with s 366(1), s 366(2) and s 366(3) of the Act.

However, although these considerations were not necessary to the finding, the Magistrate did not find that the defendant had complied in this way ‘mindful of his obligations under the [A]ct’ but considered that the defendant was ‘completely oblivious to his obligations under section 366 of the Act’.⁸ The Magistrate interpreted some of the communication provided as indicating both the defendant and the Catholic Education Office staff appeared to be ignorant of their legislative obligations.

The prosecution charge against the defendant was that he failed to give a written report pursuant to s 366 of the Act, further particularised as failure to give a written report to the police.

The magistrate did not cease his finding at the point of acquittal of the defendant. As a result of his deliberations, he found that some person or persons had erred in compliance with s 366. However, he considered the Act set up a two-stage process — under s 366 a staff member suspicious of sexual abuse of a student by another school employee had to provide a written report to the principal or to the director of the governing body. Failure to do so is an offence, but not the offence alleged against the defendant. Under the current wording of the act, and following the actions of the defendant, the magistrate found that the defendant was the ‘first person’ and that the person who received his report should have notified the police. The defendant was found not guilty. By implication, the governing body had failed in their obligation to notify police.

IV COMMENTARY

Although the defendant was found not guilty, no winners emerged from the allegations and trial. Students were harmed.⁹ The employment of the principal, and of two other Catholic Education Officers involved in the matter, was terminated by Bishop Morris.¹⁰ It is understood that civil actions to obtain damages from the Catholic Education Office have been commenced by those abused. No further charges were laid by police against any staff of the Catholic Education Office as a six month time limitations had expired.¹¹

The case demonstrates that even in such significant matters, apparently clear legislation is not necessarily understood by all, and the system can still fail.

Natural justice is one of the elements of administrative law enacted at all levels of education in Australia¹² and many international educational contexts. It applies to schools at risk of losing

accreditation,¹³ as well as students being suspended or expelled from schools¹⁴. Natural justice also applies to processes against teachers against whom allegations are made. In Queensland, allegations of professional misconduct against teachers are generally handled through a complaints process to the Queensland College of Teachers (QCT). The QCT has had the authority to investigate allegations in an internal committee, and, if the allegations are serious, to refer the matters to an independent committee.¹⁵ For a matter involving sexual abuse, the QCT is required to notify the police.¹⁶ In particular, where an allegation of misconduct is made against a teacher, ‘procedural fairness and natural justice are key elements throughout the complaint process’.¹⁷ In essence, the primary principle is that when allegations are made against an individual, the individual should be given information about such allegations, and provided with an opportunity to respond.

From the evidence in this trial, the senior officers of the Catholic Education Office appear to have followed standard procedures of allegations of teacher misconduct, and the principles of natural justice, in their dealings with the teacher at the centre of the sexual abuse allegations. There are no other details in this case regarding CEO or QCT actions regarding the teacher, although a search of the QCT register shows that the teacher is no longer registered.

However, in matters of sexual abuse, the reporting to police is the first obligation on the school principal and/or directors. While sexual abuse allegations may be harmful to a teacher where no grounds exist, the legislation clearly indicates that the wellbeing of a child is paramount. The test for reporting in the legislation is when a staff member becomes ‘aware or reasonably suspects’.¹⁸ The report by a parent to the school with direct evidence from a child must meet this test. Much lower standards for reasonable suspicion could be argued, although the interpretation of this phrase was not the focus of this prosecution.

The legislation protects a person who provides such information to police from civil, criminal or administrative liability, and from defamation charges, given a defence of absolute privilege.¹⁹ Further, a person required by other legislation or oath to maintain confidentiality on such suspicions or knowledge, does not contravene that requirement by providing the information.²⁰ Compliance with the law must be the primary action of school officials in matters of child safety; natural justice principles will be applied in subsequent procedures.

This case has highlighted for all school communities in Queensland their obligations to report under the Act and the need to ensure clear policies of action are in place in such circumstances. The legislation as it stands does not appear to have been sufficiently explicit to ensure reporting of suspicions or knowledge of sexual abuse of a student to the police.

Perhaps, the Act needs be further revised to indicate, and protect, the obligation to act. The obligation to act must be on the principal, whether they are ‘first person’ to have knowledge or reasonable suspicion of sexual abuse of a student by a school employee, or they have been informed by another with such knowledge of suspicion. Further, the obligation to act should be to provide a report not only to police, but also to: the Queensland College of Teachers, in the case of a teacher employee, or to the Commissioner of Young Children, in the case of another employee; to the school accreditation authority; and notification to school officials. This would ensure simultaneous investigations could commence as to whether a criminal charge should be laid against the staff member, the staff member is a fit and proper person to work in a school environment, and the school is a fit and proper place for children to be educated. These investigations should occur at the same time as a school or school board’s processes are being followed to ensure the intention of the Act is followed.

The Act was introduced to ensure that offences by school staff were no longer kept secret from the community. Such changes to the Act would provide clarity of action for a principal who has or obtains reasonable suspicion or knowledge of sexual abuse of a student, or other as defined under the Act, by a school staff member. This would ensure much more immediacy of response to protect students.

No doubt then, the focus of any subsequent trials for failure to comply with the legislation will be the meaning of the term ‘reasonable suspicion’.

ENDNOTES

- 1 A pseudonym has been used to prevent identification of children.
- 2 *R v ZZ Mag-00085302/09(4)* 1 December 2009.
- 3 Ibid.
- 4 Ibid.
- 5 Ibid, discussing Second Reading of the amendments to the *Education (General Provisions) Act 2003 (Education and Other Legislation (Student Protection) Amendment Act 2003 (Qld))*: Queensland, *Parliamentary Debates*, Queensland Parliament, 14 October 2003, 2 (Hon. Anna M. Bligh).
- 6 *Education (General Provisions) Regulations 2006 (Qld)* reg 68 (Report about sexual abuse—Act, s365(3), 366(3)).
- 7 *R v ZZ Mag-00085302/09(4)* 1 December 2009.
- 8 Ibid.
- 9 The teacher, held in custody following arrest in December 2008, was expected to plead guilty to the charges (Peter Hardwick, ‘Child Rapist Teacher Admits Guilt’, *The Chronicle* (Toowoomba), 28 August 2009 <<http://www.thechronicle.com.au/story/2009/08/28/child-rapist-teacher-admits-guilt/>> at 15 February 2010).
- 10 Margaret Wenham, ‘Sacked Staff “Acted in Good Faith” Over Sex Abuse Claims’, *The Courier Mail* (Brisbane), 11 December 2009 <http://www.news.com.au/couriermail/story/0,20797,26469388-3102,00.html?from=public_rss> at 15 February 2010.
- 11 ‘Police Rule Out Further Charges Over Toowoomba Abuse’ *CathNews*, 2 December 2009 <<http://www.cathnews.com/article.aspx?aeid=18092>> at 15 February 2010.
- 12 J. Joy Cumming, ‘Assessment Challenges, The Law and the Future’ in C. Wyatt-Smith & J. Cumming (eds), *Educational Assessment in the 21st Century. Connecting Theory and Practice* (2009) 157, 160.
- 13 See, eg, *Education (General Provisions) Act 2006 (Qld)* s 47G (Show cause, giving schools 30 days to respond to written reasons for intention to withdraw accreditation).
- 14 See, eg, *Education (General Provisions) Act 2006 (Qld)* s 285 (notice to student to be suspended more than 5 days), s 290 (exclusion).
- 15 The activities of this committee will now be subsumed under operations of the new Queensland Civil and Administrative Tribunal.
- 16 A fuller discussion of these issues and the role of the QCT is discussed in Ralph Mawdsley, Joy Cumming & Andrew Knott, ‘Student Allegations of Teacher Sexual Misconduct, Disclosure of Documents, and a Teacher’s Right to Privacy: Considerations from the U.S. and Queensland, Australia’, *Education: A Risky Business? Proceedings of the 2009 ANZELA Conference*, (2009).
- 17 Queensland College of Teachers, ‘Managing the Complaint’, *Professional Conduct* <<http://www.qct.edu.au/conduct/complaintManage.html>> at 15 February 2010.
- 18 *Education (General Provisions) Act 2006 (Qld)* s 366(1).
- 19 *Education (General Provisions) Act 2006 (Qld)* s 366(5)(6).
- 20 *Education (General Provisions) Act 2006 (Qld)* s 366(7).