

PRINCIPALS AND LEGAL RISK: CONTRASTING PERSPECTIVES

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

I INTRODUCTION

The move towards the law becoming a noticeable part of school life of education seems 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'.¹ Legal responsibility for school leaders, indeed, has changed significantly. There are now many areas of responsibility of which principals need to have an overall understanding and for which they carry a duty. Often, they have to deal with the specifics of the law for issues such as workplace health and safety, students with disability (in terms of equity and access), custody in family law, and even the banning of religious clothing or symbols in schools (if it is discriminatory)² rather than just the general duty of care for health and safety.³ This is particularly true for principals in independent schools, as those from government schools may have easy access to a legal branch in the Ministry of Education or Education Department to advise them.

There has been an increasing awareness across many jurisdictions of potential legal issues that might arise in schools. These issues range from bullying to sexual misconduct, from injury to negligence. This paper compares the range of attitudes of a small sample of 16 school principals in Singapore and Australia (Queensland) towards legal risk and the strategies to minimise it. Semi-structured interviews were employed to seek these 16 principals' views on the trends in legal issues impacting schools and whether similar issues had arisen for them and the implications of such issues for their job.

II NATIONS OF INTEREST

School principals in Singapore and Queensland, Australia are the focus of this study. Singapore is a small island in a strategic location, but it has no natural resources. Thus it is not surprising that its government often refers to the population as its only natural resource, with education being seen as a significant economy driver. Policies are initiated to nurture students

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in order that the nation has future leaders to meet the challenges of an increasingly service- and knowledge-based economy.⁴ In such a culture of academic excellence, it became interesting to find out from school leaders whether legal issues do affect schools in Singapore and whether the legal responsibility of principals is more than just the provision of education.

The participating principals in Singapore were from a mix of government and government-aided primary and secondary schools (government aided schools being autonomous schools), while the participating principals in Queensland were from two independent full schools and primary and secondary public schools. The interviews were conducted face to face for approximately an hour each and the questions related to issues such as how the legal responsibility of principals has changed over the years, the common legal issues encountered by principals and the implications, the major concerns (present and emerging) for school principals, and effective strategies for managing legal risk. Permission was given by the principals to tape record the interviews and transcripts were prepared for the analysis. Confidentiality was kept by not identifying individual participants and not revealing to participants who took part in the project. This study was exploratory and so the findings here are only indicative of the current views about schools and the law and what can be done to avoid legal risk. The principals interviewed are referred to throughout this paper as 'Participants'. A Singaporean principal is termed 'SP' while an Australian principal is referred to as an 'AP'.

These two jurisdictions represent quite different approaches to the governance of education. For a long time, educators in Singapore experienced a high level of protection from legal actions, either from the public's ignorance of their rights or from the Ministry of Education's intervention before any case went to court. In fact, the first civil case brought by parents against the government for negligence and breach of the duty of care was decided by the Singapore courts as recently as 11 September 2007.⁵ Educators in Australia, on the other hand, are more exposed to legal risk and experienced their first school-related negligence case in 1910,⁶ where 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.

III. LEGAL RESPONSIBILITY – HOW IT HAS CHANGED

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

- SP: Day 1 teachers – no such thing as legal issue. Never know about it. In the 80s, what legal issues? Just do – and nobody sues.
- APs: As a beginning teacher, I didn't have much knowledge of education law and I also believe that the need to know was not there – there is a greater willingness by the community to challenge the school over a range of issues.

It has been argued by Mawdsley and Cumming that the gradual increase in judicial opinions and legislative enactments involving schooling issues supports the argument for a new field of law, known as 'Education Law'. Even as far back as 2001, the then Deputy Director General of Education in Queensland, Professor Roger Slee, made the point that '[t]he study of education law is a central requirement for the profession as a whole'.⁷ It is also argued by Stewart and Knott that the law has increasingly come to be 'used by' and to affect people and institutions in more direct ways and is not simply confined to lawyers.⁸ The prevalence of the consideration of law in all

areas of life necessarily leads to significant changes to ‘structures, attitudes and procedures’¹⁰ in many organisations in the community, and schools, as a microcosm of society, are at the forefront of this. It is also noted that managing legal issues has led to stress-related illnesses, with one study citing 78% of principals indicating that it had caused them stress.¹¹ A principal in the same study commented:

It would appear in most situations the buck stops with the principal. This adds considerable stress to the point that one should seriously consider banning all sport, all excursions, all school social dances etc. A balance needs to be found and a more common sense attitude towards responsibility.¹²

With the legislative and regulatory demands placed on the teaching profession, the need for legal literacy becomes essential for school leaders. As pointed out by two SPs when asked if principals need to have knowledge about legal issues:

- 1: Yes, so that they will not be so frightened. I think knowledge is powerful, because you will not be threatened with baseless cases.
- 2: We need to know enough to make good decisions, to understand, to undergird the kind of decisions that we make.

Similarly, an AP had this to say:

Legal responsibility, e.g. duty of care, has been lifted, may be not in the legal sense, but in terms of community expectations and community understanding – there is a greater willingness to challenge schools over a range of issues than once was. There is a need, therefore, to understand the legal issues and even legislation that affects the school and to have the discernment to strike a balance in ensuring teachers understand obligations and accountability, but yet not creating a fear that stops teachers from doing anything.

In this study, some of the perennial legal issues that affect schools and school leadership are explored through the interactions with the Participants, and arguments are put forward as to why Education Law should be an important component in leadership and teacher training.

IV LEGAL ISSUES ENCOUNTERED BY PRINCIPALS

A Personal Injuries

Like Australia, the law of negligence in Singapore is largely based on English law and for a cause of action to succeed, three elements must be satisfied: the defendant owing the plaintiff a duty of care, breach of that duty, and that breach must have caused the damage or injury to the plaintiff. The most common area of negligence law encountered by the Participants was that of supervision and student injuries. In Australia, since the case of *Commonwealth v Introvigne*¹³ in 1982, it has been established that educational authorities owe their pupils a non-delegable duty of care. To describe the duty of a school authority as non-delegable does not mean a duty that extends beyond taking reasonable care to avoid a foreseeable risk of injury; it is simply to say that, where reasonable care is not taken to avoid a foreseeable risk of injury, the school authority is liable, notwithstanding that it engaged a ‘qualified and ostensibly competent’ person to carry out some or all of its functions and duties.¹⁴ In a study conducted in Queensland by Stewart,¹⁵ these negligence cases covered mainly the area of supervision, involving a wide range of school activities, such as before and after school supervision, school excursions, sports and classroom management. The Participants felt that the attitude of parents towards incidents in school has

indeed changed. There is a greater demand for accountability and a greater awareness of legal rights. This is what one AP had to say:

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

Similarly, a SP commented:

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. 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.

The statements suggest that the presence or absence of negligence seemed to be the determining factor as to whether litigation might arise for injury to students in school. If supervision were provided and standard operating procedures were in place to ensure safety, then it would be more difficult to establish negligence.

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

A welcomed decision in this respect was heard in the case of *Trustees of the Roman Catholic Church for the Diocese of Canberra and Goulburn v. Hadba* (2005)¹⁶ (*Hadba*). In this case, the majority of the High Court judges held that it is not reasonable to have a system in which children are observed during particular activities, or 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.

They also agreed with Spender J, who, in his dissenting judgment at the Court of Appeal stage, said that to require a supervision system that is free of any risk 'is a requirement of unrealistic and impractical perfection. It is born of hindsight. It offends the standard of reasonableness. It amounts to the imposition of the responsibility of an insurer'.

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

B Bullying

Many cases, both in Australia and overseas, have shown that litigation for bullying mainly arises if a school, having knowledge about the bullying, fails to take reasonable care to prevent foreseeable risk of injury. It is now also recognised that this duty extends not only to physical injury but also psychological injury.¹⁸ In the case of *Cox v. State of New South Wales*,¹⁹ it was alleged that the Education Department advised the plaintiff that 'bullying builds character' as opposed to taking the necessary steps to stop the bullying. In *Oyston v St Patrick's College*²⁰ (*Oyston*), the College had a good anti-bullying policy, but as a result of its inadequate implementation of the policy, the court held that it had failed to meet its duty of care. The College relied on the High Court's reasoning in *Hadba* that the duty of care should not be 'a requirement of unrealistic and impractical perfection'. However, on the evidence, the Supreme Court in *Oyston* found that the school failed in its duty because

[w]hat was required of the College was not a system of impractical perfection. Rather, what was required was the practical implementation of its own system, to bring ongoing bullying to an end and to monitor the victim to ensure such behaviour did not continue. That, it failed to do so.²¹

The school appealed against this decision in the NSW Court of Appeal and the decision was upheld.²² The court found that the plaintiff had been subject to ongoing bullying which the College was aware of, and had failed to take reasonable steps to bring that conduct to an end.

The Participants in this study indicated a similar perception, in that litigation should not arise for bullying in schools if the schools are managing the bullying well. All also agree that there is now a more subtle and insidious kind of emotional bullying, and that is cyberbullying – the 'newest breed of bully'.²³ 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.²⁴ This sentiment is reflected in the statement of a SP:

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

The Participants from Australia, however, took a different view on this. Although a lot of incidents happen outside school and on weekends, they believe it is still a disciplinary issue. One AP said:

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

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

With the widespread occurrence of cyberbullying, it would be reasonable to expect schools to have some form of anti-bullying policy that targets cyberbullying specifically. Whether such policies extend to outside school grounds or hours depends on the school's preparedness to bring into existence a duty of care where otherwise no duty of care would have been owed.

C. Behaviour Management

Corporal punishment in Australian state schools is either prohibited by way of policy or by legislation. In its place, schools are required to develop a Responsible Behaviour Plan for Students. In Queensland, corporal punishment in state schools was abolished as a policy in 1995 but private schools could still administer it. Corporal punishment is not banned in Singapore, but schools are given strict guidelines by the Ministry of Education on how and when to administer it. It is interesting to note that, though education policy is used to curb corporal punishment, the common law defence of 'reasonable chastisement' is arguably available to teachers. For example, a magistrate in the Gold Coast, Queensland, dismissed an assault charge against a teacher who admitted to slapping a Year 8 student, citing the recognition of 'domestic discipline' that allows a teacher to use reasonable force 'by way of correction, discipline, management or control'.⁸

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

Our handbook rules are very clear. If you choose to come to this school, you have to agree to what is said in the handbook. The consequences of their actions are defined very clearly and made known to all the students. This is important. There's no excuse to say that they are not aware that this action will be taken against them, even in a primary school.

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

In Australia, each jurisdiction has its own legislation and policy to guide the issue of suspension and expulsion. Legislative provisions set out the grounds allowing this action to be taken, the procedure to be followed, and where the final power to suspend or expel a student lies.²⁹

D Educational Negligence

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 (and even emotional well-being where bullying is concerned) while they are in school, and negligence in doing so may result in liability. Arguably, the same duty of care should include looking after the educational needs of students as well. The question put to the Participants was whether they perceived a possibility of parents making legal claims on the basis that their children did not achieve expected educational outcomes due to poor teaching. Two interesting points of view emerged from this question.

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

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

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

As far back as the early 1980s, the now retired High Court judge, Justice Kirby, noted that it was anomalous that teachers and educationalists do not owe a legal duty for the intellectual development or advancement of a student, even though that is the main reason for a child attending school.³⁰ Williams³¹ has listed a range of examples where a school authority could potentially be liable for negligence in teaching:

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

Admittedly, the difficulty of establishing the breach of duty of care in the context of educational outcomes, and the causal link between such breach and the consequential loss to the child, would limit cases of educational negligence to exceptional situations. Nevertheless, 'though such actions are likely to be exceptional, the very possibility of an educational negligence

action may however, in itself operate to promote the highest possible professional standards among professional educationists'

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.'

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 12.⁴

In another case in 2009, parents of four children were sued for outstanding school fees but counterclaimed against the school for the school's failure to 'address or correct' problems with one of their daughters' academic work ultimately leading her to underperforming in the 2006 Higher School Certificate.⁵ In 2012 a student and her mother brought a claim against a school alleging that the school had failed to provide the academic support the student needed and resulting in her not being able to study law at the University of Sydney.⁶ The claims that are made in these cases are generally based on misleading and deceptive conduct or false representation, rather than common law negligence. Nevertheless they reinforced the point made by judges and academics that parents are increasingly expecting a high level of professionalism in the delivery of education.

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

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

One might take a contrary stance. Paradoxically while the intent may be to define teacher performance as objectively as possible in order to weed out poor teachers (and reward the good ones) such measures of performance may provide a clear indication that unacceptable standards (for example a D grade) are tolerated. Defining standards can actually backfire especially if the data becomes available to those outside the domain of evaluator and evaluated. Further this belief does not address the issue of what constitutes 'weak' or 'incompetent'. It is an over-simplified view that overlooks the context of increasing demands from all quarters on the profession and a job that is no longer confined to providing instruction in the classroom. In the context therefore, of a multidimensional remit (i.e. that teachers and educators do far more than stand in front of a class of 30 or 40 children) how does one evaluate performance and give relative weightings to the various dimensions? That difficulty aside although it may not have been an immediate

concern to the Participants and other educational leaders, the notion of 'educational negligence' may need to be treated more seriously than it currently is.

E *Sexual Misconduct*

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

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

A SP says the same:

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. I mean, morally, how do you judge? For example, this teacher teaching for 3 years, started to have sexual relationship with children. I remember, he was... was jailed? Third year only, you know. That's what I mean. Quite frightening, you know. In my time, never heard of this. Only recently. Yes, teacher sexual misconduct. Quite worrisome.

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

An interesting point that emerged from the research is the question of whether the school authority would be liable should students be sexually abused by a school employee. In the Australian case of *Lepore*,³⁵ the High Court was reluctant to impose a non-delegable duty of care on school authorities for an intentional act of an employee. A non-delegable duty of care involves the imposition of strict liability upon the person or organisation that owes that duty for 'foreseeable harm'. In other words, it is a liability that the person or organisation must assume in the event of injury, even if it had engaged a qualified and ostensibly competent person to carry out some or all of its functions and duties. In the case of vicarious liability, an employer (for example, a school authority) will only be liable if the offending act of the teacher was authorised by the school authority or if the act was within the scope of the teacher's employment. The real issue here, therefore, is whether the unauthorised acts of teachers can be said to be so connected with the authorised acts that the school authority that employed them should be held vicariously liable; for example, requiring teachers to go on a school trip with Year 12 students. A related issue is: where a teacher has been charged with offences of sexual misconduct or is being investigated for the same, to what extent does the school authority or board have a duty to notify parents of the teacher's conduct? Recently, there was an outcry in Adelaide by parents for the lack of transparency in such cases.³⁹ As a matter of public interest, parents are naturally anxious to know if the sexual misconduct occurred over a period of time and where the teacher had previously worked. But this has to be balanced with the teacher's right to privacy in his or her identity before

the allegations are proved. These are complex issues and are outside the scope of this paper but the point is made that school leaders must recognise the issue of sexual misconduct in schools and take the necessary precautions to prevent sexual abuse of students by both teaching and non-teaching staff. As rightly stated by Russo,⁴⁰ if educational leaders are conscientious in devising clearly written policies to address issues of sexual misconduct, and in informing all educational personnel, including students, staff and volunteers, of the standard of behaviour that they are expected to display, the less likely they will have to deal with litigation in this area.

F Students with Special Needs

In Australia, legislation is enacted to ensure that children with disabilities are not discriminatorily excluded from schools, and that equal opportunity and access are provided for them. Singapore, on the other hand, does not have similar legislation, and children with physical or intellectual disabilities are exempted from the compulsory education provisions. Hence, the policy in Singapore is one of 'inclusive education' whenever appropriate and feasible, with special education schools (run by voluntary welfare organisations) being the main providers of education for children with disabilities.⁴¹ The SPs indicated that, although there is a general acceptance and satisfaction with the current arrangement, there is an increasing demand for special needs children to be integrated into the mainstream classroom.

Parents in Australia are generally knowledgeable about their rights in this area, as well as what is required by legislation for schools to do. Thus, according to some APs, 'the threat of litigation in this area will always be there'. One AP also went as far as to say that some schools are not prepared to suspend or discipline a child with disability in case it is construed as discrimination. Other APs go out of their way to provide for special needs.

The educational rights of special needs children require special provisions to be made by education providers. In Australia, the education of children with special needs is built on the philosophy of inclusion (mainstreaming) as reflected in the legislation and policies of the various States.⁴² Singapore, however, has taken a different line, and while the prevalent discourse internationally has placed some pressure on Singapore to move towards more inclusive policies, there is little evidence to suggest that the current policies have seriously compromised the education of children with disabilities. That said, the government is now more acutely aware of the need to respond to the wishes of parents and it is likely that the incremental changes over recent years will change the policy landscape quite noticeably.

G Family Law

In both Singapore and Australia, family breakdowns are on the rise and teachers are experiencing an increased amount of exposure to the legal consequences of divorce and separation. A SP recounted her experience:

I had one case where a parent expected me to settle a custody issue by not allowing the father to have access to the child. I sought advice from the legal department in MOE and was told I could not get involved as long as the school has not received a court order.

An AP commented:

I've encountered many family law issues – parents who have split and in the process of splitting – parental access or lack of access – one parent wanting to know and the other

parent not wanting the other to know etc... Two or three times I've ended up in court to give evidence.

Teachers and principals are dragged onto the scene when disputes arise between parents concerning enrolment, school attendance, collection of children and the sharing of information.⁴³ 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. School staff confronting these issues therefore feel an increasing need to be aware of all family law orders that relate to children in their care.

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, teachers' continued involvement with family law will be inevitable.

V IMPLICATIONS

All the participants were asked if they thought school principals should have a knowledge of the legal aspects of education. The answer was a unanimous 'yes', but the reasons differed. It was observed by all the Participants that there is an increase in the influence of law on school policies, and that legal matters caused more stress than they had in previous times. Reasons given for the need for such knowledge were that it may help them to make judicious decisions, deal effectively with legal issues and filter that knowledge to the staff so that teachers need not be distracted from the important job of teaching. Thus, knowledge of legal issues puts educators in a stronger position when confronted by problems that could have legal consequences.

Two other reasons emerged from the interviews. First, parents are more knowledgeable and vocal about educational issues, so principals should be equipped with at least an equivalent level of knowledge. There is no excuse for being ignorant about the law. Second, there is an accountability issue. As suggested by one SP, it is not only limiting to make decisions concerning legal matters without any background knowledge:

Principals need to have knowledge about legal issues so that they will not be so frightened. I think knowledge is powerful, because you will not be threatened. I mean like baseless cases, your intellect, you know, will tell you it's rubbish or not logical sounding, so you need to know;

but it is also potentially dangerous where children's lives are concerned. Thus, as aptly summarised by an AP:

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

In Singapore, since the first civil case against a school was brought in 2007, a new tone has been set for managing legal risks in schools. School leaders cannot now hide behind the ubiquitous disclaimer, 'It may happen elsewhere, but it won't happen in Singapore'. Singapore now has its own precedent in terms of the standard required of a school when exercising its duty of care; and, additionally, lessons can be learnt from cases heard in other countries if schools

are serious about averting legal risks. Similarly, in Australia, as observed by the APs, there are greater demands for accountability and a greater awareness of legal rights. The conclusion one can draw from all this 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.

VI MAJOR AREAS OF CONCERN

From their experience, the Participants were asked what they thought were the major areas of concern relating to schools and the law that would likely emerge in their respective systems.

The major area of concern identified by all the Participants was that of 'safety and negligence'. As educators acting *in loco parentis* or as professionals skilled in their particular trade, it was felt that accountability for student safety is fundamental, even non-negotiable. The importance of this issue arises from the change in the way the typical school day unfolds. Previously, students were usually desk-bound and involved in simple and relatively harmless activities. 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. As rightly pointed out by an AP:

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.

And this was the attitude of a SP who summed it up with resignation:

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

But injury to students may not always result from organized activities. One SP's comment - 'something happened to the child, but it had nothing to do with the school' - arose from a suicide case in her school in which the parents alleged that the school was negligent in not informing them immediately that their child had admitted to stealing a hand phone.⁴⁴ This case highlights the fact that the area of negligence is not limited to physical injury, but could possibly extend to psychological safety, such as dealing with bullies and cyberbullies, or informing parents of potential suicidal tendencies where such tendencies are exhibited.

After safety and negligence, there was a mixed response as to the other legal issues that might take prominence in the near future. Some felt that incidences of sexual misconduct amongst teachers will continue to rise, while others were more concerned with behaviour management and bullying. There was also a strong view by some Participants that student attainment rather than academic results will be an emerging concern. They were, in essence, referring to the notion of educational negligence as an AP commented:

An emerging one is school accountability as far as quality of education is concerned. This is especially so in the higher fees school. Over time it will become more of an issue.

Similarly, a SP believed that, although this is not an issue now, it may be a question of time before it will become a problem:

Poor teaching – at the moment I believe it's not a problem partly because our systems are pretty rigorous 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.

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

VII MANAGING LEGAL RISK

It was clear from the conversations with the Participants that proactive strategies should be taken to reduce legal risk, and ideas were put forward about the types of strategies that would be effective. There was no uniform answer, but the prevalent viewpoints are summarised below, with some Participants indicating that these strategies should be ‘bundled’ together to make a workable and complete solution, while others clearly expressed a preference for a single strategy, which, they argued, would obviate the need for other strategies.

A *The Training Solution*

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

Interestingly, some Participants were of the view that training should impart not just knowledge but also skills, such as mediation skills. One AP said:

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

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

B *The Guidelines Solution*

According to this solution, the real key to running a relatively ‘risk-free’ school is to have a strong principal, one who will give clear instructions and ensure compliance. Principals should spell out behaviour policies and disciplinary procedures to teachers and pupils, and make them aware of the correct courses of action; and this includes protocols for dealing with bullying. 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.F. facilities and workshops, and then monitor them closely. Standard Operating Procedures will help in averting risk, and schools should identify hazards and assess the risk of accidents occurring. These assessments should then be carefully documented and regularly reviewed.

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

Guidelines and training must work together. Having documentation but no training is useless and vice versa.

Thus, for there to be strong principals, educational management and leadership needs to feature prominently. In Singapore, principalship preparation is arguably taken more seriously than probably any other country. Enormous resources are allocated by the government to management at all levels in the school, and this has been going on since the 1980s, with tailored training for principals, heads of department, subject and year heads, and for those in senior teaching positions. In 2000, the government decided to fund principalship preparation at an unprecedented level. Those vice-principals and senior education officers who had been identified as suitable candidates for principalship were taken out of their schools for six months, on full salary, and given intensive training, part of which included visiting schools on the other side of the world. Most of them were posted as principals at the end of the program, and they were largely so successful at operating in the new paradigm of innovation that the government, after intense scrutiny and evaluation, continued to invest in the training.

Singapore has given considerable attention to well-defined policies and guidelines. The Ministry of Education has thought through a whole range of procedures, such that principals are generally clear about how to respond to almost any situation. Further reporting structures are in place to accommodate those instances that are more ambiguous in nature and that require new precedents to be set.

There are, of course, dangers in relying exclusively on guidelines and in attempting to cover all eventualities; there can be a proliferation of policies, which may only serve to confuse. Additionally, there is the problem that rigid protocols may stifle the sort of creativity and innovation that educators are urged to engender, but in an increasingly litigious arena of education it is a price that probably has to be paid.

C. The Relationship Solution

This is an interesting solution, in that the key to managing legal risk lies in the quality of human relationships. Schools should, for example, keep in regular contact with parents and keep them informed, and should look after the welfare of teachers. Also, if educators keep the best interests of children at heart, they will lessen the chances of legal risk, because, as one SP said, 'No judge is going to condemn you if you are doing things for the children's sake'. Some training too in mediation skills will serve to enhance relationships.

Another aspect of this solution is that of principals establishing a close relationship with district officers and superintendents. The reason given is that these people are placed in a position

to provide support and they are able to access information more quickly. It is therefore critical that principals have open channels of communication with their support officers.

VIII CONCLUSION

As highlighted in the introduction, schools in Singapore had for a long time been sheltered from managing legal risks. This is because the government's stance was that any push for rights had to be balanced against the nation's need to preserve political and cultural autonomy.⁴⁵ This stance took a dramatic change from 2003 when the government issued a report entitled 'The Remaking of Singapore' which altered the rules of engagement and increased the avenues for expression.⁴⁶ In Australia, although the first school injury related case was heard in 1910, legal issues in education have only been developing since the 1970s when changing attitudes, greater demands for accountability and greater awareness of legal rights became apparent.⁴⁷ Although the Singapore and Australian systems are different socially and culturally, this paper has found some commonalities of view among some principals concerning legal risk in schools and the management of it. While there are differences in opinion in relation to the provision of special needs and behaviour management, a common theme came through very strongly about the need for principals to acquire a professional knowledge of the law impacting school administration. 'We need to know enough to make good decisions, to understand, to undergird the kind of decisions that we make', said one Participant.

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

These statements confirm the observation of Stewart⁴⁸ who highlighted the comments of Kowalski and Reitzug⁴⁹ (1993) that professionals are guided by 'an embedded, tacit knowledge' which is based on 'an implicit repertoire of techniques and strategies for handling situations' that evolves over time. A good starting point would be for school leaders – heads of department, vice-principals and principals – to work closely together in the same school to develop such a range of techniques and strategies. These experiences would be invaluable when principals come together to share their knowledge.

Keywords: principals; legal responsibility; legal issues; managing legal risks.

ENDNOTES

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 - 8 Foreword by Professor Roger Slee, Deputy Director General in Douglas J Stewart and Andrew E Knott, *Schools, Courts and the Law* (Pearson Education Australia, 2002) vi
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 - 10 *Ibid*
 - 11 *Ibid* 8.
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 - 13 *Commonwealth v Introvigne* (1982) 150 CLR 258
 - 14 *New South Wales v Lepore, Samin v State of Queensland, Rich v State of Queensland* (2003) 212 CLR 511, 551–553
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 - 16 [2005] HCA 31 In this case, a child struck her face on a platform when she was pulled off a ‘flying fox’ piece of equipment in the school playground. The accident occurred when the teacher on supervision was surveying another part of the school compound. The plaintiff contended that the school was liable for negligence as a different system of supervision would have prevented the accident
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 - 18 *Oxston v St Patrick’s College* [2011] NSWSC 269
 - 19 (2007) NSWSC 471
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 - 23 Kathleen Conn and Kevin P Brady, ‘MySpace and Its Relatives: The Cyberbullying Dilemma’ (2008) 226 *Education Law Report* 1, 5 citing Charlene C Giannetti and Margaret Sagarese ‘Cyberbully, The Newest Breed of Bully’ (March 2006) *California State PTA The Communicator*, at <http://www.counseling4christians.com/PDF%20Files/Cyberbully%20The%20Newest%20Breed%20Of%20Bully.pdf>
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- 36 *Weir v Geelong Grammar School* (Civil Claims) [2012] VCAT 1736.
- 37 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.
- 38 *New South Wales v Lepore; Samin v State of Queensland; Rich v State of Queensland* (2003) 212 CLR 511.
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- 42 Jackson and Varnham, above n 30 113.
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