

EDUCATION LAW, SCHOOLS, AND SCHOOL PRINCIPALS: FINDINGS FROM A MIXED METHODS STUDY OF THE IMPACT OF LAW ON TASMANIAN SCHOOL PRINCIPALS

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ABSTRACT

This article reports on recent research conducted in Tasmania, Australia, which investigated the impact of legal issues on school principals across the Government, Catholic, and Independent school sectors. The study focused on the areas of principals' legal literacy, including the legal areas they deal with, the accuracy of their legal knowledge, their confidence in their own understanding of the law, and their sources of legal support; the legal context they face; negative impacts of their legal dealings, as well as principals' views on how their legal supports might be improved. Whilst some findings of the study accorded with previous Australian research, others presented new perspectives on school principals' dealings with legal issues.

I INTRODUCTION

Recent research has been conducted in Tasmania, Australia to investigate the impact of legal issues on school principals across the Government, Catholic, and Independent school sectors.¹ The study focused on principals' legal literacy, the legal areas they deal with, accuracy of their legal knowledge and legal confidence, and legal support, and legal consciousness; the legal context they face; negative impacts of legal dealings, and ways in which their situation might be improved. While some findings accorded with previous Australian studies,² this research presents a number of new perspectives.

Education Law, a topic which deals with legal issues impacting school operations, has never been more important to the working lives of school principals and the operation of their schools.³ Whether principals are dealing with complaints about disability discrimination, counselling staff for unprofessional conduct, reporting cases of student neglect or abuse, or assessing the risks of out-of-school activities, principals' Education Law decisions are critical to the safety and welfare of students, their families, and members of staff as well as the smooth and effective operation of their schools.⁴ The importance of school leaders' legal knowledge is recognised nationally in Australia

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through its inclusion as a central aspect of principalship practice under the *Australian Professional Standard for Principals (Professional Standard)*.⁵

Over time, and particularly more recently, the educational environment within which Australian school principals practice has become increasingly legalized. School leaders now face an ever-expanding range of legal issues, areas of law are becoming more complex, and there is a widely-held perception that school stakeholders, internal and external, increasingly turn to the law to settle disputes.⁶

At the same time, it may be argued that principal preparation and development in Education Law, across all three education sectors, has not kept pace with the growing legal demands. School leaders in Australia and other jurisdictions have generally been found to possess a low level of legal literacy, despite, in some cases, their unwarranted level of confidence in their own legal knowledge. The legal element of contemporary principalship creates high levels of stress for many school leaders.⁷ As the findings from this study show, this legal stress is contributed to by deficits in principals' own legal understandings but may also be exacerbated by other aspects, including: the financial costs of legal advice; time consumed in dealing with legal problems; the degree to which legal issues distract from the principal's central role as the school's instructional leader,⁸ and impacts on the educational experiences of students.

Australian research concerning the impact of Education Law on school principals is limited. Two major studies have been undertaken in Queensland.⁹ Whilst not the earliest Australian Education Law research, Stewart's¹⁰ survey-based inquiry was the first to comprehensively examine the legal burdens borne by Government school principals. It was followed a decade later by McCann's¹¹ research which largely replicated Stewart's methodology but focused on the experiences of Catholic school principals.¹² In addition, a small-scale study conducted by the researcher in Northern Tasmania in 2011, with Government primary school principals¹³ produced some findings of interest, although its very small sample size limited generalisability.

The empirical knowledge base regarding Australian school principals and Education Law has changed very little in the 23 years since Stewart¹⁴ reported his finding even though the legal landscape within which principals work has altered noticeably. Nonetheless, these earlier studies provide important background for the present research.

II RESEARCH METHODS

In this study, a general overarching question was developed, together with specific research questions and sub-questions. The overarching question was what impact does Education Law have on Tasmanian school principals? The specific research questions asked:

- What is the legal literacy of Tasmanian school principals?

- With which legal areas do they deal with?
- What is the level of their legal knowledge?
- What sources of legal information and advice do they consult?
- What is their legal consciousness?
- What legal environment do they face?
- Do any negative impacts result from legal matters they deal with?
- How do they suggest their Education Law support might be improved (suggestions for change)?

The study used a mixed methods methodology, within a Deweyan Pragmatic paradigm. A partly concurrent triangulation design¹⁵ was developed to address the research questions. The design consisted of two main phases conducted partly concurrently. Those phases were composed of quantitative data collection, analysis, and findings; and qualitative data collection, analysis and findings. The qualitative phase was given priority over the quantitative phase.

Data for the study were collected using an on-line survey for school principals, developed by the researcher, but based on instruments used in previous research, together with semi-structured, in-depth interviews conducted by the researcher with school principals, principal network leaders, senior system leaders, administrators, as well as an education lawyer. This mixed method approach produced an account which was more complete than would have been the case if only a single method had been used.¹⁶

At the time of data collection there were 261 appointed and acting principals of Tasmanian schools: 195 in Government schools¹⁷ (Department of Education (Tasmania), 2013-14); 37 within the Catholic education system¹⁸ and 29 Independent school principals.¹⁹ Thirty-four participants completed the survey.

The sample contained a relatively small percentage of younger principals, most in the middle part of their working lives and a lower proportion identifying as older. Half the participants were in the early years of their principalships with the remainder having had a moderate or considerable amount of experience. Participants' schools were distributed throughout Tasmania, with most situated in close proximity to a city, namely Hobart, Launceston, Burnie, or Devonport. The participants worked throughout the three education sectors, with more than two-thirds from Government schools, one quarter from Independent schools and the remainder from Catholic schools. Their schools ranged from primary to senior secondary. School enrolments were evenly spread.

In contrast to the survey sample, which was populated exclusively by school principals, the sample of 23 interview participants encompassed a wider mix of persons, including a number of school principals, some of whom had responded to the survey, as well as principal network leaders, senior system leaders, administrators, and an

Education Lawyer. The participants were recruited purposively on the basis of their expert knowledge²⁰ of the impact as Education Law on principals in Tasmania at school, systemic or sectoral levels. All survey participants were invited to participate in the interview phase. This group formed a nested component²¹ within the survey sample. The 23 remaining interview participants were recruited using a snowball technique.²²

Neither sample was probability-based. The small sample size and non-random basis of the survey sample did not support generalization of the survey findings. However, in this mixed method study, the survey findings were triangulated with qualitative interview data to produce more robust and reliable results²³

The quantitative data were analysed by descriptive statistics (data reduction) and graphical software techniques (data display). Onwuegbuzie and Teddlie²⁴ advise that the use of descriptive statistics is appropriate in mixed method studies that, like the present, are exploratory in nature, and where the objective is to extend existing knowledge. The qualitative data collected for the study were all in text form. As suggested by the literature,²⁵ iterative thematic analysis using a constant comparison technique was adopted.

III KEY FINDINGS AND DISCUSSION

This research addressed various questions and sub-questions, including the legal literacy of school leaders, their legal consciousness, the legal context of their work, negative impacts, and suggestions for change.

A Legal Literacy

The first, and most challenging, research question for this study concerned the legal literacy of Tasmanian school principals, which was addressed through the following sub-questions: What legal areas do they deal with? What is the level of their legal knowledge? What sources of legal information and advice do they consult?

B Areas of Law

It is clear from this study that Tasmanian school principals who responded to the survey had dealt with an extremely broad range of legal matters during their principalships. Many of these issues had occurred with little or no prior warning. The legal areas identified as occurring most frequently, across all schooling sectors, involved the safety and welfare of students and their families, and school staff. Those legal areas include education; duty of care (negligence); child welfare; employment; family law; and discrimination. These findings, made a decade or two after the previous Australian studies, closely reflect the previous research with Queensland school principals²⁶ as well as studies from New Zealand²⁷ Canada²⁸ and the United States.²⁹

This research, together with previous studies, suggests strongly that the general nature of Education Law matters dealt with by school principals in Western countries

may be relatively constant and universal. This does not deny that principals faced novel legal situations from time to time but recognises that the legal problems of schooling exhibit a high degree of similarity across similar schooling systems. There are, of course, individual differences based on the schools' legal environment that evolved with technological changes, social developments and the like, which must be taken into account. Nevertheless, it appears that school principals in Tasmania, like those who participated in the earlier Queensland studies³⁰ are likely to face some Education Law challenges arising from a relatively settled suite of legal areas.

C Levels of Legal Knowledge

It is widely accepted that school principals need some legal knowledge in order to fulfil their legal responsibilities, as is now recognised by the *Professional Standard*.³¹ Matters that may impact on a principal's legal knowledge include legal preparation and development; levels of legal confidence; the accuracy and adequacy of legal knowledge; and sources of legal information.

D Legal Preparation and Development

Preparation and development of school principals in relation to Education Law has some impact on their overall capacity to deal appropriately with legal matters. This study revealed a very low rate of tertiary legal study among survey participants. Some 12% of participants in this study, interestingly, all from Catholic and Independent schools, had undertaken tertiary legal study. This was lower than reported in previous Australian research.³² This general absence of tertiary legal training may be a cause for concern. Indeed, it is possible that Tasmanian school leaders may have had as little as three hours of formal training about Education Law, typically received as a pre-service teacher.

By contrast, the survey data showed that most principals, across all three schooling sectors, had attended legal continuing professional development during the previous year, as was the case in the previous research. Notably, though, a considerable proportion of older principals had not attended legal continuing professional development during the previous year. Further, the interview data suggested that some very experienced principals were of the view that they had sufficient knowledge (and admittedly, a sound legal support framework to call on) and neither wanted nor needed extra training. This aspect appears not to have been reflected elsewhere in the literature.

E Levels of Legal Confidence

This study also collected data from survey participants regarding their level of confidence in relying on their own legal knowledge. Almost 60% of the respondents reported feeling a positive level of confidence. However, this was not matched by the assessed accuracy of their legal knowledge. This issue of legal over-confidence has not previously been addressed in Australian literature or research, although a lack of

alignment between principals' self-perceived confidence and objectively-assessed knowledge level has been raised in some studies from the United States³³ and Canada.³⁴

F Accuracy and Adequacy of Legal Knowledge

Based on the legal knowledge questions in the survey, participants in this study demonstrated a limited knowledge of Tasmanian discrimination law. Participants' mean score on the legal knowledge questions (52%) fell short of the 70% proficiency level generally applied in Education Law research. Catholic and Government school principals scored higher than did Independent school leaders.

Despite improvements in training technology, information access, legal training opportunities available to Tasmanian principals, and the requirement for legal knowledge expressly stated in the Professional Standard from the Australian Institute for Teaching and School Leadership³⁵ the overall results on the accuracy of principals' legal knowledge found in this study, were generally equivalent to the knowledge levels of Queensland principals reported by Stewart³⁶ and McCann.³⁷ The findings in the present study also fall within the range of results from the North American research base.

G Sources of Legal Information

Following the lead established by previous Australian research,³⁸ this study sought information from participants regarding the legal sources they consulted. Survey participants were asked to identify information sources they had consulted on routine legal matters, in addition to those used in non-routine situations. This produced two pictures of school principals' advice-seeking that were similar in content, but different in emphasis. Based on those findings the researcher developed the notion of a legal support framework, consisting of separate, but often interconnected, elements available to provide decision support to a principal. This research suggests the mix of decision support consulted by a principal are likely to be contingent on the context of the legal problem (including the parties involved and the seriousness of the likely consequences), the principal's own internal mental state, the accessibility of sources within the legal support framework, restrictions like time and money, and so on.

The study found that school principals faced with routine legal issues often considered it sufficient to rely on their own knowledge and experience, perhaps augmented by a check of relevant policy, the views of a colleague, or a law handbook. This may be appropriate for quick decisions on structured problems occurring within a relatively stable environment.³⁹ For non-routine matters which fell beyond the principals' previous experiences and may have had the capacity for serious long-term consequences, it is likely that principals may seek the support of systemic or school advisors and consult lawyers if required,⁴⁰ as was found in this research. And, of course, there will be every position in between. Depending on the context, principals may move around their legal support framework and consult sources of support appropriate to the situation involved.

Critically for many legal matters that arise in schools, principals choose to rely on their own or colleagues' legal knowledge in the belief that such knowledge is accurate and adequate. Moreover, as found in this study as well as previous Australian research,⁴¹ and Education Law studies across the world,⁴² the accuracy of principals' legal knowledge may be limited. As such, it is important that school leaders participate in continuing professional development to improve the standard of their knowledge, have reasonable access to a sound legal support framework, and recognise the need in some circumstances to seek decision support from sources more legally expert than themselves. It should also be acknowledged that principals may face dispositions such as over-confidence and practical barriers such as lawyers' fees) that potentially militate against their seeking legal decision support.⁴³

H Legal Consciousness

This study made findings also addressed the legal consciousness of school principals. Legal consciousness is a concept adopted from the field of Law and Society.⁴⁴ It relates to the beliefs held by non-lawyers, such as school principals, about the law and its operation. Previously, the idea of legal consciousness had not been expressly addressed in the context of Education Law although this gap in the literature is starting to be addressed.⁴⁵

The legal consciousness findings made in this research revolved around principals' beliefs that the law would not apply to actions if they were carried out for some higher motivation. For example, if acts were done in the interest of safety, because they were ethical, made good sense, or were good for the school. As with principals' knowledge of the law, such beliefs about the law may or may not reflect the actual law. Yet, regardless of whether they are legally accurate, it appears that these beliefs may influence principals' legal decision-making. Consequently, it is suggested that principals' legal consciousness should be investigated to ascertain if, and to what extent, those beliefs provide schemas or interpretative frameworks for principals' legal decisions.

I Legal Environment

This study found that Tasmanian school principals' dealings with legal issues are impacted by a diverse and varied, and constantly changing, set of influences located both within their schools, as well as in their external legal environments. Internally, this includes issues involving the school's primary stakeholders, namely students and families, staff, and others such as the demands of legal risk management;⁴⁶ the "legalisation" of schooling, especially the willingness of disgruntled parties to threaten or institute legal action;⁴⁷ and the general rights awareness and activism of stakeholders.⁴⁸ External factors include matters from the international arena, national concerns, Tasmanian State issues, including those relating to the education sector.

Previous Australian research acknowledged the impact of a number of internal environmental factors including: legalisation and legal risk management;⁴⁹ and the

influence of the faith community.⁵⁰ However, neither study investigated these environmental influences further or viewed those issues within a wider conceptual framework.

J Negative Impacts

The present study identified direct and indirect negative consequences flowing from participants' dealings with legal matters. For the school these included the financial costs paid by non-Government schools to obtain legal advice; and the sterilisation of learning activities from an application of an inappropriate standard of risk, as for example the banning of high school science students from carrying out chemistry experiments.⁵¹ Negative impacts related to principals' personal and professional lives were also noted, such as the time consumed by legal issues and the levels of stress involved. Only the topics of time and stress were addressed in the previous Australian research.⁵²

The findings in the present study, as to both the time occupied by dealing with legal matters and the levels of stress self-identified by participants, were noticeably lower than those reported by Stewart⁵³ and McCann.⁵⁴ This may have resulted from differences in principal preparation and development between Tasmania and Queensland; the adequacy of the legal support frameworks surrounding many of the participants in the present study; or particular characteristics of principals, their schools and their internal and external legal environments. The available data do not provide any firm explanations for the variations in findings. Even though the numerical measures of time and stress in this study were less than the findings made in previous research, the qualitative data collected in this project emphasised the importance of the identified costs for the principals and schools involved.

The costs of dealing with school legal issues are important issues for the core activities of schools. They also represent important feedback for schools as legal organisations, for teaching and learning within the institution, and for principals as their instructional leaders.⁵⁵ Through a misapplication of the principles of legal risk management or an unfounded fear of litigation, principals may unnecessarily remove valuable student learning opportunities from school programs and hence adversely affect the students' learning experiences. The time taken by principals to deal with legal issues may impact on their capacity to undertake other important leadership roles, and the quality of teaching and learning in the school may suffer as consequences. If the legal stress experienced by school principals reach unhealthy levels,⁵⁶ then the negative impacts on their well-being are likely to affect their ability to lead teaching and learning in their schools.

There may be some basic level of time and anxiety challenges related to principals' dealing with legal matters which are unavoidable, simply because the principal is the school's legal decision-maker and is not a lawyer. Nevertheless, it is clear that negative

impacts, which are ultimately likely to affect the students and staff of the school, should be limited wherever possible.

K Suggestions for Change

The findings of this study about principals' suggestions for improvement of their legal support largely reflected the previous Australian research⁵⁷ as well as recommendations made in studies from the United States⁵⁸ and Canada.⁵⁹ In the broadest terms, those findings proposed strengthening principals' legal preparation and development, as well as legal training for teachers and pre-service teachers.⁶⁰

This study's findings indicate that the priority for additional training should be given to the core legal topics which focus on the safety and welfare, as well as the legal rights, of students and their families, and school staff. In particular, participants in this study suggested that legal professional learning should be offered on an in-service or online basis; be shorter, more tightly focused, and more frequent; use real-life scenarios; and emphasise the stages when it may be appropriate to seek expert legal support. All of these matters have been raised previously in Education Law research. These proposed improvements to principals' legal support suggest that the legal education arrangements for school principals in Tasmania may still have some way to go to meet evidence-based standards.

As has been recognised by the earlier Australian research⁶¹ the legal knowledge held by individual school leaders needs to be basic, but accurate. Principals do not need to become lawyers but should know enough about the law to appropriately deal with most routine, recurrent problems, and understand when to seek support in dealing with other issues.⁶² Even so, it is unrealistic to expect school principals who do not hold legal qualifications to make decisions regarding novel and complex legal issues, with the likelihood of serious consequences, and perhaps involving multiple disputing parties, without appropriate legal decision support. This research strongly suggests that every school principal should have access to a formal legal support framework, which includes up-to-date information resources together with qualified experienced functional specialist advisors and lawyers.

IV CONCLUSION

The present study is the third in a series of doctoral research projects examining the impact of Education Law on school principals in Australia. It built on the earlier research conducted by Stewart⁶³ and McCann.⁶⁴ Each of these studies focussed on a different participant population. Stewart's⁶⁵ work involved data from primary and secondary Government school principals located throughout Queensland. McCann⁶⁶ largely replicated Stewart's survey methodology in the context of primary and secondary school principals employed within the Brisbane Catholic Education system in southeast Queensland. The present research was based on a combination of survey data provided by Tasmanian primary and secondary school principals in the Government,

Catholic, and Independent schooling systems, together with interview data collected from a wide range of participants across the Tasmanian education sector.

Notwithstanding the differences in participant populations, and the varying timeframes during which data was collected for the three studies, there are large areas of agreement in the research findings. Each of the research projects concluded that school leaders may be required to deal with a broad range of legal issues in the management and leadership of their schools, and that many principals have limited knowledge and understanding of Education Law.

Stewart's⁶⁷ finding that principals require "more extensive levels of professional [legal] knowledge in order to satisfy the demands made on them"⁶⁸ (p.226) has been similarly voiced in both the later research by McCann⁶⁹ and the present study. The evidence suggests that the Education Law preparation and professional development of school principals may not have developed markedly over the last two decades. Findings from the three studies are in clear agreement that the legal workload of Australian school leaders is on the increase and that legal matters cause principals a high degree of personal and professional stress. Based on the empirical findings, it seems that the major elements of the Education Law landscape in Australia have changed little between 1996 and 2017.

This study has, however, made a contribution to the field of Education Law research by highlighting issues which were not addressed in the earlier research. These include the concept of an holistic legal support framework which can be differently utilised in circumstances of routine and non-routine legal decision-making; the recognition that the legal decisions taken by school principals may be influenced by their beliefs and legal consciousness about the law, as well as their legal knowledge of the law, and that the former may be as inaccurate as the latter; and the impact of both the internal and external organisational environment on legal decision-making in schools. These are all matters which may warrant further research and investigation on principals' knowledge of Education Law.

Keywords: Education Law, school principals, School Law

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