

# Singapore school principals and the law: Emerging trends from the international scene

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## Abstract

It is not beyond the bounds of possibility that Singapore teachers and principals could face the risk of being named as defendants in the judicial process. While educators have till now enjoyed the protection of a society that is not as litigious as other jurisdictions, the signs are that things are changing. Developments on the international scene suggest that serious issues are creeping onto the agenda. For example, there is a proliferation of negligence cases in Australia concerning students' physical safety. Yet, it was only a short time ago that Australia was like Singapore, with very little litigation and matters being settled before they reached the courts. In this paper, the authors identify some of the legal responsibility issues we are likely to face in Singapore, and suggest that principals and teachers need to develop legal literacy in order to manage the risks involved in modern day teaching and school leadership. As principals have found in other countries, hoping central authorities will offer total protection is no longer realistic.

## Preamble

We live in a changing world. Society, systems and thinking are undergoing remarkable levels of change. Singapore is no exception. It is generally accepted that the landscape of education, for instance, in Singapore has been dominated in recent years by calls for significant reform. In 1997, the Prime Minister's launch of a new vision, expressed as 'Thinking Schools, Learning Nation' brought to the fore a recognition that the old ways will not serve the future well. The call has not abated. In education alone, we have experienced a plethora of initiatives and drives, all designed to steer education along a course that meets the needs of a changing economy. The Centre for Research in Pedagogy and Practice, established at NIE, and funded by the government, to study, prototype and innovate a strong future-oriented agenda in Singapore schools, is one of the latest examples.

For educators, it has become increasingly noticeable that parents have changed. They are more knowledgeable, educated and informed than ever before. While they may not be able to match their American and British counterparts, they seem more conversant with their rights than in former years, and these rights include their legal rights. What are the implications for educators? It is not beyond the bounds of possibility that teachers and principals could face the risk of being named as defendants in the judicial process. It would be the height of

folly to believe that, simply because they have experienced a charitable level of protection until now, this situation will continue indefinitely. In effect, the situation has hardly been tested. Does that make it unlikely in Singapore? The answer to that depends on whom you ask.

If we look at what is happening in other countries in the field of education law, we see that issues are creeping onto the agenda that are possibly issues in Singapore education. In this paper, we identify some of the education law developments in other jurisdictions and explain how those developments might have a bearing on educators in the local context. First, though, we need to mention briefly how the changing nature of school leadership may necessitate increased understanding of legal responsibility.

## The changing leadership

It is part of the government's agenda for improvement in education to devolve more power to schools. We have already independent schools for some time and the number of autonomous schools has gradually been expanding. In such schools, the principal is expected to exert more control over the school's affairs. However, it is also true that government school principals are expected to lead their schools with a stronger sense of independence than hitherto. That is why the

'new' principals – trained in the Leaders in Education Programme at the National Institute of Education – have to demonstrate their capability to lead future schools with initiative, and innovatively and proactively. While the cluster arrangement – with a superintendent in charge of a limited number of schools – offers some form of protection and support for schools, there is still an expectation that principals will be able to manage their own affairs.

Of course, as we have said above, principals operate in a changing world, and the challenges they face are unprecedented in Singapore. With increased complexity in their roles and escalating demands FROM teachers, parents and students, it seems important – if we learn from the experience overseas – that principals should at least HAVE a fundamental understanding OF how the law impacts their work. With such an understanding, they can put simple strategies in place to minimize legal risk. Let us now look at what has been happening on the international scene.

### **Lessons from abroad**

In Australia over the past decade, there has been considerable increase in the involvement of Australian schools with the law in areas such as actions in torts as a consequence of physical injury suffered by a student, alleged defamation, rights of students with special needs, and the criminal law. In contrast, the United States of America has had a long and extensive history of legislative and judicial involvement in education, originating from the decision of *Brown v. Board of Education* (1954), where the Supreme Court abolished the racially segregated public schools. As the law evolves, the USA now has a whole range of legislation and case law involving such issues as the rights of students with disabilities, search and seizure in schools, free speech rights of students and teachers, anti-bullying legislation and the school's responsibility to prevent harm or physical injuries. "School law" or "education law", as seen in the USA and other countries, thus can be defined as the combination of both legislative and common

law, which impact school policies and practices.

Such education law has made its mark in some surprising places. In post-war Bosnia, for example, as Professor Charles J. Russo of the University of Dayton has learnt, educational leaders and policy makers recognize the importance of following the "rule of the law" in formulating policies to meet the needs of students and educators. The Bosnian approach is to use the law as a guiding principle or precedent to stabilize the educational environment (Russo & Stewart, 2001).

The move towards the "legalization" of education seems unstoppable if we follow international trends, and this is "evident in the increase in legal processes being used to frame and challenge policies, practices, and decision-making in...schools" (Russo & Stewart, 2001). The same authors argue that "educators need a sound understanding of the law associated with the many legal questions that they confront on a daily basis."

In Singapore, principals, teachers and trainee teachers arguably have little or no legal literacy or understanding of education law, as it does not exist to the same extent it does in other countries. But education law does evolve and may continue to do so as significant issues enter the arena, especially those issues that relate to teachers' and schools' legal responsibilities. An issue that is very close to home is the duty of care for students' physical welfare. In Australia, there are many negligence cases covering supervision in a range of school activities and settings, including: classrooms, school fields, before and after school arrangements, travelling to and from school, sport, and excursions. "Research in Victoria showed that in 1982 some 53 of every 1000 students enrolled in State's schools were injured in school-related accidents with 23 out of every 1000 receiving serious injuries" (Stewart, 1998). While courts are traditionally unwilling to hold schools liable for any litigation outcome, since educators are generally regarded as the pillars of society, cases in Australia have shown that the courts

are more and more prepared to hold schools responsible for the safety of their students. The notions of “duty of care” and “standard of care” are continually being heard in courts. The cases also suggest that a higher standard of care may be required for those closely involved with educating and supervising younger children, who are not only very inquisitive, wilful, playful and disobedient, but are also often incapable of recognising dangers.

### **Professionalism: a hot potato**

Another expanding area of interest in the USA, UK and Australia is in the nature of “professionalism”: what rights do parents have to be guaranteed the expected education “experience” for their children? This question has reached the courts in the USA, Canada and the UK. It touches at the heart of what a professional is, in much the same way that we think about the non-negotiable expectations of professional groups, such as physicians and lawyers.

Justice R. Atkinson of the Supreme Court in Queensland said this as recently as 2002: “In thirty years’ time, an experienced lawyer will be able to chart the development of the law in Australia with regard to educational negligence, discrimination in the provision of educational services and *liability for educational outcomes* (our italics). At present, we can but survey the international trends and local developments to try to determine where these developments might lead.” The notion of liability for failing to secure the professionally expected level of achievement for children is an awesome prospect, but one that must be taken seriously. Singapore, in a globalised context, may not be immune from such developments. It is doubtful too that we shall have to wait twenty or thirty years to experience change, but Atkinson J’s message is clear: we must look at what is happening both locally and internationally if we are to gauge what the future might hold.

One could argue that the lack of legislation and case law in the area of “education law” in Singapore will provide continued protection

for educators. Although Singapore does not have statutes that may have an impact on how schools conduct themselves legally, such as the Anti-Discrimination Act in Australia, the Individuals with Disabilities Education Act in the USA and the Education Standards Act in New Zealand, the common law of tort, especially the law of negligence and the law of contract may well find their way into the educational arena, and, in the case of copyright law, it already has! It will be no surprise that the term “educational negligence” may emerge to have a similar connotation to terms such as “medical negligence”, “accounting negligence” and “legal negligence”. Analyses from other countries suggest that teachers may well be held liable for the quality of their professional services. Since education plays such a fundamental role in society, it seems inescapable that teachers can plead non-professional status as a defence against challenge.

With a growing movement towards increased accountability in the professions generally, it becomes essential – rather than merely desirable – that principals acquire a basic knowledge of the types of problems, situations and actions that may generate litigation or legal difficulties. Singapore could look to how the basic principles of education law in countries such as the USA, the UK and Australia can be applied to develop appropriate policies in schools.

### **Of current relevance to Singapore**

As one surveys the international scene, there are many issues that seem relevant to the Singapore context right now. For example, recent legislation has made education compulsory, and this in itself raises interesting questions for educators. But the issue is not simply one of the “right to an education”, for experience in other systems has shown a shifting focus toward the rights of children to physical and emotional well-being. Can schools be sued for educational malpractice arising from the school’s want of due care and skill in looking after the educational well-being of its students? Are teachers and other

education-related professionals liable if they fail to correctly diagnose learning disabilities or to provide a sound education in an appropriate setting?

These are serious questions. In the UK, four appeal cases went up to the House of Lords concerning the liability of the local authority or its employees in the provision of appropriate educational services for children at school. The House of Lords in its decision (27 July 2000) concluded that having a sufficiently full factual picture of all the circumstances of the case, the law should provide a remedy in damages when there is manifest incompetence or negligence comprising specific, identifiable mistakes. In a nutshell, the children's problems should have been spotted and correctly diagnosed by competent professionals. The damages were considerable. Only a decade or so ago, it was unthinkable that such cases would reach the lower courts, let alone the House of Lords. Times have indeed changed.

### **A final word**

Some policy makers and practitioners in Singapore are worried that educators may suffer "paralysis" if they are intimidated by a knowledge of the extent of their legal responsibilities. But this is an absurd argument, for it suggests that ignorance is a blissful condition while risk-laden events may be going on. It also suggests that professional educators can continue to bask in sublime ignorance while the rest of the world changes. It is probably correct to say that there is very little case material from Singapore on which we can base judgements about the future, but certain events may not be reported, and so it is possible that there is more activity with legal implications than we imagine.

At the same time, principals and teachers are confronted daily with a wide array of educational matters and responsibilities without having to contemplate the law as well. However, as we have shown, it is necessary for schools, administrators and teachers to have sufficient legal literacy in carrying out their responsibilities so that the law can become

their ally rather than their foe. Other jurisdictions can give us clues as to how judicial decisions are arrived at and provide a sound evidence basis for seeking to avert risk in Singapore. In that light, we concur wholeheartedly with Russo & Stewart (2001), who state that: "In learning from each other without regard to national boundaries, educational leaders and lawyers throughout the world can further develop world-class schools that will better prepare students in the twenty-first century."

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