

Legal Liability in Catholic Schools: A Failure of Community

Peter C Gaughwin



Recent discussion in national and local newspapers and in Eureka Street (March and April 2002) has focussed on the problem of increasing personal injury litigation and possible solutions to the problem. As Angela Shanahan has commented (The Australian: 19/02/02), schools too are being caught up in this maelstrom.

In a talk I gave some years ago to a meeting of school principals and district superintendents of education I remarked facetiously that there were no longer schoolyard accidents, just torts. A tort is a wrong, an act which causes harm to a determinate person, whether intentionally or not, being a breach of a duty arising out of a personal relationship or contract (Osborn 's Concise Law Dictionary, 7th Ed at page 325). The remedy for harm resulting from such a wrong may be monetary damages. All this assumes too that the resulting harm was foreseeable as the law defines foreseeability. Unfortunately, my comment now has a more serious tone to it than was intended at the time.

For example, once upon a time a child falling off play equipment in a schoolyard and breaking his or her arm was considered to be an unfortunate accident. **Now, more likely than not, such a fall will be seen as a breach of the duty of care the school owed to the student and damages will be sought.**

Injury can be either or both physical or mental. The student falling off the play equipment may not break his/her arm, but nonetheless may claim that the fall caused him or her a mental injury such as depression, or (currently the most popular i.e. over diagnosed one) Post Traumatic Stress Disorder (PTSD).

A claim will only be successful if it can be proved by the plaintiff (the injured person) that there was a breach of the duty of care that was owed and the injury was, or ought to have been foreseeable. Thus, for example, climbing equipment set up on bitumen

with no landing matter beneath will most certainly be seen as a breach of the duty of care owed if someone is injured.

What are some of the issues which impact on schools as a result of recent legal liability legislation in Australia? How does this legislation relate to the schools' duty of care? Peter Gaughwin's paper deals expertly with these topics.

If, though, all the proper procedures in relation to play equipment are taken (i.e. they meet the Australian Standards), then all other things equal, a fall may be seen as an accident, not as negligence and a claim in negligence will fail.

In this brief article I do not intend to look at the bases of legal liability and the steps a school needs to take to ensure it will not be found to have breached its duty of care. Rather, I want to reflect upon the relationship between increasing litigation and school community.

Threats of litigation can affect schools in a number of ways.

In the extreme the end result may be a school that is so regimented that it becomes a fortress where children are not permitted to do anything other than schoolwork and a contract is signed between the school and parents which, inter alia, spells out clearly when the duty of care begins and ends.

So what is the root cause of such a situation? No doubt there are many perspectives on this. **In the context of Catholic Schools one could argue that the risk of litigation increases in a directly proportional manner to the decrease or failure of community.**

Catholic schools are about, or should be about, not only the provision of sound educational services, but also about the development of communities. At the end of his or her life in a Catholic school a student should not only be schooled well in, for example, English, but also in the principles of community: in brief, the coming together freely of persons for the pursuit and enhancement of a common good through a commitment to those religious principles that enable the soul to thrive.

One of the reasons why a lot of Catholic schools have been able to function fully is the goodwill of

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parents and others, for example through working bees, staffing the school canteen, coaching sports teams, driving students to sports venues and so on. These are activities that can build and enhance school community.

Some schools provide activities whereby students reach out to people less fortunate, for example through loneliness, ill-health, poverty and so on. Such activities have the potential to provide students with a basis for the development of a caring and sharing community in the wider world.

But, in all these contributions, what happens if someone is injured?

The obvious answer is that insurance will cover it. However, what happens if the insurance company claims that the activity went beyond the insurance contract, or the school has limited or no insurance because premiums are too high? While the latter case may be unlikely, the former is a possibility.

For example, what if a volunteer driver has a string of drink driving convictions? An insurance company might argue, and I think properly, that the school had a duty to check the credentials of the volunteer.

Similarly, with sport. If there is an accident during sports training, one of the questions likely to be asked is whether the person who was coaching the students was qualified to carry out the coaching. **Realistically, a lot of teachers are not properly qualified to carry out sports coaching.**

How does one solve these problems? Two simple answers might be apparent. An obvious one is to cancel all extra curricula activities and leave it to the students and their parents to find suitable activities. Another is to do a police check on all persons who have dealings with children, but that is not perfect and, in the absence of legislation to the contrary, usually requires the permission of the person to be checked.

However, while such approaches have a superficial attractiveness about them, a wider issue needs consideration. What happens to community? **Community, inter alia, teaches people about acceptance of personal responsibility. Non community is about teaching people that they have no personal responsibility and that someone else, preferably someone else with deep pockets, is always responsible for something that happens.** In this scenario, someone who breaks into a school and is injured will argue that the school is responsible for his injury and should pay compensation. The issue of breaking in then becomes lost and with it the acceptance of personal responsibility.

One of the fundamental bases of Christianity is the relationship between the individual and God. That relationship encourages an acceptance of personal responsibility for our behaviour and an acceptance of others for who they are and their difference. That relationship also provides the means to confess and seek forgiveness for our wrongdoing.

In such a way our relationship and responsibility to the wider community matures, for community can only exist when individuals learn how much they need the community, how much they have to contribute to it and how much they can learn from it.

In my opinion, blame thrives when individuals have not learnt personal responsibility, acceptance of others and have not been willing to contribute to and learn from community. Thus, it follows then that curricula must give emphasis to these tasks: personal responsibility to carry out the tasks set and the unmitigated duty to accept those different persons in the community through a preparedness to assist and to learn.

That does not mean that schools do not have to work to ensure that those in their care and on their premises are not endangered. However, such care, in the context of a community, will be a natural part of daily life, not a burden imposed from outside the community. When such a mindset is a natural part of life, then the capacity to say sorry and to make amends for failures of care will also become natural and not something determined by insurance and legal considerations.

The growth in personal injury claims is, I suggest, a statement about the failure of the communal sense and its corollary: the increasing alienation of people from the community.

Or, as I have put it previously, the ability of people to appreciate difference: their own and that of others. Thus, the growth in personal injury claims may be described as a *cri de coeur* from persons who want, rightly, to be noticed and treated fairly. Whether the legal process involved in bringing a claim achieves such a result is another question.

In this new century Catholic schools have to be more alert to their duty of care and have to work harder to ensure they do not become careless in their approach to it. With that, though, they must also be more alert to a possible cause of the failure of duty of care: whether the school is a community or merely a collection of individuals linked only by a conformity and quest for blame that long ago made a Faustian bargain to abandon the essence of community - the Soul.

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