

Book Reviews

The Australian Professional Liability – Education

Dr Keith Tronc

CCH Australia: Sydney

1999

Introduction

This new work emphasises the growing importance and regularity of litigation in the field of education and the law. It also encapsulates the growing community, educational authority, and legal profession's awareness of this expanding area of law.

Author

The author, Dr Keith Tronc, is well known in Australia in both the legal and education professions. He is a practising barrister and former Associate Professor of Education at Griffith University, Brisbane, Australia. He has published 27 books including eight legal texts and has presented many papers and seminars on educational administration and schools and the law.

The CCH publication includes topics such as: education and the law; injuries in learning environments; precedents; leading cases; and new developments.

Education and the Law

The first section of Dr Tronc's work outlines many of the legal issues that impact on schools. Whilst they are aimed primarily at legal practitioners, educators may find the advice beneficial. This section includes a discussion of such issues as:

- changing societal responsibilities
- integration of impaired learners with mainstream schooling;
- school transport;
- teaching as a profession;
- violence within schools;
- multiculturalism;
- changing management and financial structures of modern educational facilities.

The second section, concerning conduct of litigation, is aimed primarily at legal practitioners. This is a practical checklist of steps likely to be adopted if litigation is pursued.

The third section is highly relevant for schools and includes examples of documents such as permission forms for excursions and the gathering of medical information necessary at the school level.

The remainder of this section provides an example of an expert's report and an example of an interrogatory that can be used in the examination of a potential defendant.

Injuries in Learning Environments

In this part of the Guide a comprehensive discussion of the duty of care owed to students by teachers, school administrators and education authorities is undertaken. The use of case law here is invaluable. The section is most beneficial to legal practitioners and includes a discussion of such issues as:

- non delegability of educational duty of care;
- changing standards of care;
- contributory negligence;
- causation;
- defective premises and equipment; and
- impracticability of avoiding risks.

Injuries in Learning Environments

This work dispels some myths concerning playground, supervision of school sport and *in loco parentis*. The style is easy to read and includes relevant case law. Of particular interest is the section on the changing standard of care. Traditionally the teacher – student relationship was based on the *in loco parentis* principle where teachers were required to treat students as 'good parents' would. A discussion of relevant cases dispels this myth and provides a sound guide to the standard of care required of schools and teachers.

Inherently dangerous activities involving young children and adolescents are well covered and link effectively to the standard of care required. Causation continues to be the most difficult element to establish as the amount of supervision teachers should provide depends on factors such as age, capacity, intelligence, impairment and inherent risks in the situation as well as teacher characteristics, past knowledge and experience.

Statutory obligations as well as those at common law are effectively addressed in the discussion of defective premises and equipment.

A realistic viewpoint of teachers believing they can avoid all risk provides an appropriate demonstration of Dr Tronc's knowledge of schools and the law.

The issue of sub professionals versus para professionals is an emerging area of interest and it is noted that schools are utilizing more and more help from outside specialists, especially in primary school classrooms.

An examination of the most likely locations and situations in which negligence may occur is made and this part of the work may be of interest to teachers and administrators in developing school procedures and policies designed to minimise exposure to legal liability. Hopefully such strategies will improve the safety and educational outcomes of students. Tables of cases, together with succinct case notes, provide useful background material and is an efficient way of providing the reader with the ability to quickly develop a picture of the relevant case law.

Dr Tronc also addresses in this section other actions that may arise within educational settings such as:

Breach of statutory duty, for example *Workplace Health and Safety Act (Qld)*; *Childcare Act (Qld)* and *Trade Practices Act 1974 (Cth)*;

- defamation;
- breach of contract;
- discrimination;
- educational malpractice.

The discussion of educational malpractice is timely as legal action alleging a failure to learn confronts schools at a time when teachers, as professionals, are confronted by ever increasing demands for higher levels of accountability.

Precedents

This section of the work outlines a variety of sample statements of claim that provide a useful starting point for the drafting of pleadings, for example victimisation, sporting injuries, defective premises, bullying and injuries sustained at child care centres.

Of particular interest is the inclusion of kick boxing injury as an example of a misfeasance action against a sport's instructor alleging negligence and breach of contract.

Leading Cases

Major cases from the High Court of Australia to do with schools and the law that are examined are:

- (a) *Geyer v Downs & Anor* (1977) 138 CLR 91;
- (b) *Ramsay v Larson* (1964) 111 CLR 16;

(c) *Commonwealth of Australia v Introvigne* (1981-1982) 150 CLR 258.

New Developments

This section comments on issues that are emerging, are topical, and are a matter of community and parental interest and include, for example:

- New School Education Bill 1997 (Western Australia);
- Student information kit on educational rights from New South Wales;
- Statistical data from New South Wales on school violence;
- Queensland State Ombudsman's report 1997-98 regarding the State school uniform policy
- Queensland's proposed School Uniform Bill 1999 Queensland.

Conclusion

Dr Tronc has prepared a timely and useful adjunct to the emerging field of education law. It is written with his usual readable style and accuracy. It provides a comprehensive guide for legal practitioners and provides excellent detail to commonsense research and draft pleadings. As school principals, educational administrators and classroom practitioners become more aware of the need for legal risk management, this publication will be seen to a most useful guide to sound practice.

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Being Fair: a procedural fairness manual for Australian schools

National Children's and Youth Law Centre

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The National Children's and Youth Law Centre (NCYLC) is Australia's only national community legal centre dedicated to the interests of children and young people in Australia. It advises and represents children and young people and is also actively involved in research and legal reform.