The duty of the teacher to supervise: More pong than ping for plaintiff

Patricia Worthy

Commonwealth of Australia v Stokes

Patricia Worthy, Canberra

In August 1996 I "inherited" a personal injury claim[1] on behalf of the plaintiff/respondent. The matter was set down for the hearing of an appeal instituted by the Commonwealth and the Australian Capital Territory Schools Authority in the ACT Supreme Court. The same counsel who had appeared for the plaintiff in the successful action in the first instance was briefed and the matter was ready to be heard. All I had to do was instruct counsel. Easy?

Justin Stokes was injured at school on 5 March 1987 when he was 11 years of age. He engaged in a game of ping pong with a number of other students, with the consent of a teacher, during which a bat flew out of the hand of one of the children, striking the plaintiff in the mouth, causing moderate injuries to his two front teeth. The injuries necessitated extensive dental treatment, with future dental implants possibly being required.

The evidence was that a group of children approached one of the teachers at lunch time seeking permission to play ping pong. At first the teacher was reluctant to agree but after some persuasion, she allowed four children to set up and play a game which commenced at 12.30 pm. As the game proceeded, a number of other students gathered around and another group indicated that they wished to take over at 1.00 pm. This group had not received permission from the teacher.

As 1.00 pm approached, the original group started to "king-hit" the ball to the strains of a countdown. As the count reached one, one of the group hit the ball towards the plaintiff with vigour and as he was in the process of completing his swing, the ping-pong bat flew out of his hand and struck the plaintiff directly in the mouth.

The plaintiff's next friend had caused proceedings to be commenced alleging, inter alia, that the defendants were negligent in that they failed to provide any proper supervision, permitted the plaintiff and others to play the game without proper supervision, and failed to have a teacher present during the game. There were certain other grounds including allegations relating to the adequacy of the bats.

The teacher gave evidence that she was reluctant to allow the game to proceed because "she was not able to directly supervise the game" but was of the view that she had a capacity to come by from time to time and view activities at a distance. She said that she had no memory of actually viewing the activities, given that she was giving evidence in April 1996 of events occurring some nine years previously. She did say, however, that she thinks she would have checked the activities on a number of occasions albeit she regarded the group of children as reliable.

What a predicament! There was no doubt that the school owed its students a duty to take reasonable care for their safety and here we had a teacher admitting that she had some misgivings about authorising the game because she was aware that she wouldn't be able to supervise directly. But does the duty extend to continuous supervision?

Magistrate Somes found that the defendants were in breach of their duty of care to provide adequate supervision of pupils such as the plaintiff by failing to provide adequate supervision to ensure that the group which began to develop during the playing of the game was broken up and dispersed. He thought it clearly foreseeable that the development of that group created an environment in which an incident might occur which would lead to a risk of injury to the plaintiff.

The plaintiff (who was now an adult) and his mother, who had brought the proceedings as next friend, were understandably anxious as to the likely outcome of the appeal.

On 15 November 1996, His Honour, Mr Justice Gallop found in favour of the appellant, publishing his reasons for judgment which began with the following quote:

"One can supervise as much as one likes, but one will not stop a boy being mischievous when one's back is turned. That, of course, is the moment he chooses for being mischievous." (Rich v London County Council (1953) 1 WLR 895 per Hodson LJ at 903.)

In allowing the appeal, His Honour stated that "this Court stands in as good a position as the Magistrate to decide on the proper inferences to be drawn; [from the facts as found and the application of those inferences to the relevant law] and it is the situation that the Magistrate was in no better position to decide the issue of negligence than this Court."

In his judgment it was clear that His Honour thought that even if the teacher had have been closely supervising the game, the accident could still have happened and there would have been nothing that the teacher could have done about it. He did not accept that the injury had occurred because of the gathering of the crowd. He thought that the accident occurred because of an unexpected and unpredictable accident for which it would have been difficult to find any of the teachers blameworthy.

In relation to the alleged breach of the duty of care, His Honour stated that in general, it is necessary to identify the step which the school authority should have taken but did not and to establish by evidence or inference that, more probably than not, the taking of that step would have prevented or minimised the injury. ■

Patricia Worthy is an Associate at Snedden Hall & Gallop, **phone** 02 6201 8986, **email** shg@netinfo.com.au

Note:

1 Commonwealth of Australia v Stokes unreported (ACT SC 15 November 1996)