# Principals' Knowledge of Law Affecting Schools

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## Abstract

Although principals in Australian schools have always had to contend with legal matters in recent years the influence of the law on school policies and practices has become a major concern. It is evident that the nation's schools are now involved with a considerable body of statute, common and criminal law. As a consequence of this involvement principals need to have a knowledge of the areas of the law they are required to manage. The study reported here clearly indicates, however, that principals, in general, do not have such knowledge. Of particular concern is the situation of novitate principals who, by and large, have neither the experience nor the qualifications to manage the legal matters that arise. It is argued in this paper that all principals need a level of legal literacy sufficient to ensure the implementation of preventive legal risk management policies and practices in their schools.

## Introduction

During the past decade there has been a considerable increase in the involvement of Australian schools with the law. It is, therefore, appropriate to consider whether school principals have the level of legal knowledge necessary to implement the preventive legal risk management such involvement implies. School principals do not need law degrees. They do, however, as Rossow (1990) advises need to be conversant with sufficient law to 'know initially what questions to ask when confronted with a potential legal problem' (p.188). Or, as Haller and Strike (1986) have suggested, school administrators need a basic sense of what kinds of 'problems and situations generate litigation and what kinds of actions are likely to generate legal difficulties' (p.5). Similarly, Sungaila (1988) has maintained that:

> ... there are two things educators need to know about the law. The first is that he or she should have an appreciation of the law as one of our most precious social institutions. The second is that he or she should have an understanding of that law which infringes on professional educational practice sufficient to recognise whether a problem which has arisen is one about which professional legal advice should be sought or not (p.xi).

In the United States, where there has been a relatively long and intense history of legislative and judicial involvement in education, a number of surveys have demonstrated that school leaders in that country have minimal levels of knowledge of the legal matters affecting their schools. Unlike the United States, the involvement of Australian schools with the law sufficient to be a cause for concern has been, to a large extent, a recent development. As a consequence, there has been a dearth of research in this area although a very recent study (Stewart, 1996) has indicated that principals in Australian schools also have minimal knowledge of the law they are expected to manage. It is pertinent to note, in this regard, that research carried out in several Australian states has clearly demonstrated that school communities expect principals to be experts in all matters affecting their schools from the moment of their first appointment (Thomas & Hornsey, 1991; Hewitson, Stewart & Whitta, 1992). Such expectations, along with a growing movement towards increased accountability in the professions generally, provide compelling reasons for principals to be more highly literate in school law than currently appears to be the case.

This paper addresses the subject of the legal knowledge of principals in Australian schools. An analysis of research carried out in the United States is followed by an examination of a study recently undertaken of the legal knowledge of principals in government primary and secondary schools in Queensland.

## Knowledge of School Law Held by School Administrators in the United States

The need for school leaders in the United States to have a sound understanding of the law that their schools are involved with, has been revealed by a variety of national and local studies (see, for example, Underwood & Noffke, 1990; Imber & Gayler, 1991; Hartmeister, 1995) as well as through a considerable number of doctoral research programs (see, for example, Dunklee, 1985; La Bush, 1993). These studies have provided a clear indication that the nation's schools are confronted by a formidable array of legal matters. Indeed, it is claimed there is in that country a problem of 'hyperlexis' (Manning, 1976), that the country's education system has been legalised (see, for example, Kirp & Jensen, 1986) and that legalism has become an obstacle to the quality of schooling (Daniel, 1985). In an analysis of the research into the legal knowledge needed by educators which was largely concerned with pre-service teachers, Pell (1994) has shown that, despite an overall decline in school-related litigation, there has been a considerable increase in actions associated with negligence, equity in funding, search and seizure, and treatment of students with special needs. Importantly Pell's analysis of research indicated that lack of awareness of school law was not confined to preservice teachers but included classroom practitioners and school administrators. In a recent study Hartmeister (1995) reported an extensive array of legal knowledge and skills which school principals identified as being necessary in order to function effectively. Benveniste (1986) has provided a summary of the extent of judicial and legislative involvement in schools in the United States with the fitting statement that:

> If we think of the governance of American education, we think of a complex mosaic where legislatures, the courts, local bodies, state and federal agencies, deal with teachers' unions, parents' organizations, students and the general public, each involved in some potential aspect of education, each partially controlled or affected by other actors (p.146).

Given such developments, it could reasonably be expected that school administrators and classroom practitioners in the United States would be able to demonstrate a sound awareness of the law that they are involved with. As Rossow (1990) has so aptly commented, the potential for a school leader to violate a teacher's or a student's rights is sufficient reason for having a knowledge of school law. He argues further that by keeping abreast of current legal developments school administrators are able to make the law their ally and not their foe.

Notwithstanding the need for legal knowledge, it is clear from research carried out over the past two decades or so, that school leaders in the United States do not have a sound knowledge of the law that affects their administration. In one of the first reported studies that sought to identify the level of legal knowledge of school leaders, Zirkel (1978) concluded that administrators are 'generally not knowledgeable about the operational dictates of Supreme Court decisions affecting education.' In a later study, Menacker and Pascarella (1983), driven by the 'increased scope and amount of judicial intervention in educational policy', sought to determine the level of legal literacy of a sample of 299 school leaders and teachers from schools throughout Chicago. Data for this study were collected by a questionnaire containing ten true/false items covering thirteen major Supreme Court cases associated with: minority rights/equal protection; church/state relationships; student discipline; rights of expression; and teachers' due process rights. These researchers concluded that, while the overall mean score of 64% of correct responses was disappointing, their findings did not support Zirkel's conclusion of a general lack of knowledge about court decisions affecting schools. Nevertheless, Menacker and Pascarella were still led to add that their findings 'were cause for concern' and that the responses for some items which they saw as being of considerable importance to school administrators 'were distressingly low.'

In a more comprehensive study carried out in 1985, Ogletree - on the basis that legal complexities and the level of litigation necessitated educators being 'knowledgeable about their legal obligations and liabilities' - sought to determine the 'extent of educators' unawareness' of legal matters facing schools and the effect of studying school law in decreasing that unawareness. The sample comprised 385 school administrators and teachers from elementary schools and high schools across the state of Illinois. Respondents were requested to complete a mailed questionnaire containing 40 items covering: 'tort liability; tenure; student rights; church/state relations; and teacher/board relations.' Despite the admitted shortcomings of the study - largely to do with the problem of reducing complex areas of law to meet the requirements of the questionnaire - Ogletree (1985) concluded that there was, in general, a considerable unawareness of school law among the respondents. He also concluded that respondents who had undertaken courses in school law were

more knowledgeable in legal matters affecting their schools than those who had not undertaken such courses.

In brief, then, the research demonstrates that, while schools in the United States are heavily involved with, and considerably influenced by, a wide range of legal matters, there is a general lack of knowledge of school law among school administrators. As Pell (1994), was led to conclude, in the United States 'innumerable studies' indicate there is little knowledge of school law and that 'in research investigations and in dissertations, time after time ignorance of education law prevails.'

## Australian School Principals' Need for A Knowledge of School Law

Historically, principals in Australian schools have not had to confront the same range of legal matters that school administrators in the United States have had to contend with. There are, however, clear indications that this situation is rapidly changing and that a process of legalisation of education is underway in Australia (Sungaila & Swafford, 1987; Ramsay, 1988; Williams, 1994, 1995). Williams (1995), for example, maintains that this process is evidenced by:

> educational decision making and practices ... being challenged by those who feel disaffected or disadvantaged by the education system. It is the law that is increasingly providing both the grounds upon which such challenges can be made and the remedies many complainants seek (p.2).

In relation to the level of common law actions affecting schools, Birch (1990) has noted that, although there has been a paucity of school law cases in Australian courts, there are enough of them to claim that school law is an established area of interest for both legal and educational practitioners. Moreover, Mr Justice Dowsett of the Queensland Supreme Court (1994) has warned that 'there is likely to be more consumer litigation in the education field' and that this would reflect growing community demands for greater accountability in the professions generally.

Some indication of the extent of potential common law actions against school personnel may be gauged from Heffey's (1985) study in which he estimated that in 1981, in Victoria alone, some 23 students for every 1,000 enrolled were seriously injured in school-related accidents. Moreover, given increased school populations, and ever more innovative school programs which frequently take students away from their school environs for extended periods, it is likely that the level of school-related accidents Australia-wide would reflect the Victorian situation. It is also likely, in view of increased community demands for higher levels of accountability as well as a greater willingness to seek legal redress for injuries suffered, that a significant number of persons injured in school accidents will bring actions against teachers, school administrators and education departments in an attempt to gain compensation.

While there may not have been in the past a great volume of school-related case law in Australia, there has been a considerable body of legislation enacted in recent years which impacts

either directly or indirectly on education. In this regard Baumann (1993) has noted that there is a real challenge in keeping up with the output of Australian legislation as it has increased by some 300% during the last decade. A considerable amount of this legislation likely influences education policy and structures as well as school processes and practices. It is pertinent, in this regard, to heed the comments of Peach (1992) who, as Deputy-Director General of Education (Queensland), warned that the 'legislation opens up the way we work, the processes we use and the judgements we make to greater public scrutiny.'

Although Australian commentators (see, for example; Sungaila & Swafford, 1987; Sungaila, 1988; Birch, 1990; Khan & Williams, 1993; Williams, 1994; 1995) have noted the increase in both judicial decisions and statute law that may impact on school leadership and management, there has not been a commensurate level of research in Australia to determine schools' actual involvement with legal matters. As a consequence there has been a dearth of information concerning principals' need for, and extent of, knowledge of the law that affects the principalship. In a recent study, however, data were collected which enables a more precise picture of Australian school principals' level of involvement with, and knowledge of the law to be drawn. The paper turns now to an analysis of that study in relation to principals' knowledge of law affecting schools and to an examination of the findings that were reached.

## Australian School Principals' Knowledge of School Law

A major consideration in the 1996 study - *School Principals and the Law: A study of the Legal Knowledge Needed and Held by Principals in Government Schools in Queensland* - was the need to provide more accurate information concerning the level of principals' knowledge of the law affecting schools than had been previously available. In order to best achieve this objective, an exploratory research design using a multimethod quantitative-qualitative research approach was utilised (Stewart, 1996).

### Survey procedures

The data for this study were collected by a range of research methods including semi-structured telephone interviews, mailed questionnaires, and, document and focus group analyses. The primary means of data collection, however, was a Principals' Questionnaire which was divided into three Parts. Part A contained sixteen items requesting demographic data including information concerning: years of experience as a school principal; school law qualifications; in-service courses in areas of school law undertaken by the respondents; involvement with legislation and the common law; amount of time spent on attending to legally related matters; and an item that sought to determine the levels of stress caused to principals through managing legal matters in their schools.

Part B of the Principals' Questionnaire comprised ten items related to the common law while Part C had twelve items related to statute law. Each of the items in Part B were based on tort

law decisions reached largely in a variety of Australian Courts and those in Part C on State and Commonwealth legislation. In order to make the questionnaire as realistic as possible the items in Parts B and C were framed as critical incidents. In addition to providing quantitative data, respondents were requested to provide qualitative data in the form of written statements on aspects of the common or statute law that they were concerned about.

The questionnaire was mailed to 186 principals in government primary and secondary schools throughout Queensland and a return rate of 82% was achieved. In relation to the quantitative data frequency counts and percentage tables were used to identify responses, 't' tests and oneway analyses of variance (Scheffe's test) were applied to determine statistical differences and content analyses were used in relation to the qualitative data.

## Overall Findings

The study concluded that principals of government schools in the Australian state of Queensland are confronted by a considerable volume of legislative, common and criminal law in their administration and management roles. Principals in the study identified some twenty three major federal and state statutes that they are either frequently or potentially involved with.

In relation to the common law, slightly over 24% of respondents indicated that their schools had been involved in an action in torts as a consequence of a physical injury suffered by a student while a further 8% of respondents indicated that their schools had been involved in incidents where defamation or intellectual harm had been alleged. Of equal concern, however, was the level of involvement of schools with the criminal law. In this regard slightly under 20% of respondents reported involvement with criminal law actions arising out of allegations of students or staff being associated with drugs or physical/emotional abuse of some kind. It is against this background that the need for school principals to have a level of legal literacy appropriate to manage the increasing incursion of the law into school affairs must be gauged. The paper turns now to a detailed analysis of the findings of the study related to principals' knowledge of school law.

### School law qualifications

In Australia, constitutional responsiblility for education falls to the states and territories rather than to the federal parliament. No state or territory, however, has a policy that requires school principals or classroom practitioners, to have school law or general law qualifications. Indeed, there are no tertiary level diploma or degree courses in school or education law. Technically, therefore, there is no discipline called school law. School policies and practices are, however, strongly influenced by both legislation and the common law which, combined, may be loosely described as school law.

With few exceptions, any exposure that pre and in-service educators have to the schools law will be largely confined to brief introductory, awareness raising, core or elective units within a

Bachelor of Education, or a Master of Educational Administration, degree. While a small number of principals do hold a Bachelor of Laws degree it would be unusual to find that there has been any exposure to areas of law specifically related to education in this qualification. There is, in brief, no official policy or Education Department requirement for school principals or classroom practitioners in Australia to have undertaken any academic study in the area of law affecting schools.

It should not come as any surprise, therefore, to find that 84% of the respondents in the study addressed here had not undertaken introductory or advanced level units in school law. Of those respondents who had such qualifications the majority were associated with a Bachelor of Education degree or with a post graduate course in educational administration. Three respondents had taken elective units concerned with school law within a Master of Education degree while five of the principals had 'pure law' units associated with their studies in a Bachelor of Business, a Bachelor of Commerce or a Bachelor of Laws degree.

## In-Service Courses

While the study revealed that there is a paucity of principals who hold some law-related qualification, it is also the case that there is a disappointingly low percentage of principals who have undertaken in-service courses in areas of law affecting schools. The data received from respondents indicated that only 39% had attended such a course. Moreover, the courses attended were only of one to eight hours duration with 50% of them being from one to four hours. As a consequence they could only have served as a minimal introduction to any of the areas of law principals are expected to manage. Interestingly, the longer courses were generally related to statute law the provisions of which principals, to some extent, are expected to implement in their schools. Prominent in this category were statutes related to workplace health and safety and to anti-discrimination. The major sources of in-servicing were identified as being provided by, or through, the Department of Education, the Teachers' Union, principals' conferences and through the Australia and New Zealand Education Law Association.

In short, more than 60% of respondents in this study had not attended an in-service course in school law and most courses that were attended would seem to have been of such insufficient duration that they would likely make little difference to the overall level of legal knowledge held by these respondents.

## Principals' Knowledge of Common Law

There were ten items in the Principals' Questionnaire which sought data related to principals' knowledge of the common law. These items were presented as critical scenarios or vignettes with respondents being required to select one response from a number of alternatives. The cases were based largely on decisions reached in Australian Courts with one being based on a case heard in the United Kingdom. All ten items dealt with the issue of duty of care in a range of school related

activities including: supervision of school grounds and buildings; classroom management and discipline; supervision while on excursions; travelling to and from school; and supervision during sports. In addition to identifying respondents' knoweldge of common law the items sought to determine whether principals have the capacity to apply their legal knowledge to school policies and practices.

The percentages of correct responses to the items ranged from 87% (duty of care for students when they are on school grounds prior to the commencement of classes) to 12% (who was held liable for an injury incurred by a student in a fight in the classroom during a chemistry lesson). No respondent answered all of the items correctly and, indeed, only two items received a correct response rate of over 50%. These two items were related to: (i) the duty of care owed to students who were on school grounds before or after the official daily opening and closing of school; and (ii) duty of care owed to students while on their way to or from school but while still outside the school grounds. Four items attracted a response rate of 48% to 39% while the remainder were in a range of 28% to 12%.

It is evident from the data that even while, on some items, respondents may have indicated a satisfactory theoretical level of knowledge of the duty of care owed to students, they are unwilling or unable to implement the policies and practices that would ensure their legal responsibilities are adequately met. Moreover, it was clear from a number of items that a significant number of principals were unaware of whom might be held legally responsible in instances where students are injured as a result of school personnel failing to implement or follow safe supervisory practices. It would seem that while most principals recognise that there is a duty of care for students' physical welfare - before and after school, for example - many do not appear to be able to translate their theoretical knowledge into practice consonant with their legal obligations. Thus, in relation to item 17 - which was based on a decision of the High Court of Australia in *Ramsay v Larsen* (1964)111 CLR16, and which was concerned, in essence, with the standard of care required while supervising school grounds and buildings during lunch or morning and afternoon intervals - there was some confusion among respondents over what action they needed to initiate in order to ensure that adequate supervision of students was provided.

Of considerable concern, furthermore, was the low level of correct responses in relation to an item which surveyed knowledge of the duty of care owed to students during sporting activities. Again, it would seem that while there is a general awareness of the need for strict supervision of student activities during sporting or physical education activities there is, too often, a lack of awareness of where personal responsibilities start and end. Thus, for example, in an item which drew on the decision reached in the Supreme Court of Queensland in *Nally v McWilliam* (Appeal No 32 of 1981) - where a teacher was held liable for failing to provide adequate supervision during a game similar to softball - less than 25% of respondent principals were able to identify who might have been held responsible. Similarly, in *Richards v State of Victoria* [1969]VR136 - an incident in which a teacher and principal were held liable for the serious injuries received by a student in a classroom fight - less than 13% of respondents correctly indicated who would have been likely to have been held responsible.

In summary, it can be stated that respondents did not, generally, know who might be held responsible for breaches of duty of care where injuries are incurred by students in situations where close supervision is required including school grounds, sporting activities,excursions, care of very young children and within classrooms.

## Principals' Knowledge of Legislation

Twelve items in Part C of the Principals' Questionnaire were directly concerned with respondents' knowledge of legislation covering the Education Act (1989) (Qld), freedom of information, workplace health and safety, family law, crimes, anti-discrimination and the Queensland criminal justice commission.

Responses to the twelve items demonstrated that principals appear to have a higher level of knowledge of legislation affecting schools than they do of the common law. Although no respondent managed to answer all of the items correctly, the percentages of correct responses ranged from 82% to 8% with only three of the items receiving a correct response rate below 50%. A further eight items were in a range of between 65% to 53%. One item - which was to do with a New South Wales Supreme Court case brought on appeal from the Equality Opportunity Tribunal of New South Wales concerning gender discrimination in relation to choice of school subjects - received a correct response rate of 82%. However, an associated item, which sought to identify principals' knowledge of how the tribunal might have decided the case, only attracted a correct response rate of 65%. A further three items received correct response rates of only 25.5%, 10.6%, and 8.1%. These three items were to do with reporting improper behaviour of school staff to the Criminal Justice Commission, procedures to be followed in accessing information under Freedom of Information legislation, and what constitutes acceptable and non acceptable touching of students.

Although the percentages of correct responses were higher for legislation than for the items associated with the common law, it should be noted that **incorrect** responses ranged from 18% to 92%which is an indication that a considerable number of principals have only a minimal level of knowledge of some of the legislation that affects their school. This is surely a cause for concern particularly in view of the fact that all principals have legal obligations to implement provisions of statutes such as the Workplace Health and Safety Act (1995) (QLD) or the Anti-Discrimination Act (1991) (QLD).

## Novitiate Principals and Knowledge of School Law

A number of Australian studies (see, for example: Thomas & Hornsey, 1991; Hewitson, Stewart & Whitta, 1992) have concluded that principals taking up their first appointment are inadequately prepared for the administrative and management responsibilities that the principalship requires. It is the case that, at least in Queensland, these principals have not generally had the opportunity prior to their appointment to the principalship, to have had the administrative experiences that

would expose them to the range of school incidents which might facilitate their understanding of the realities of administering and leading schools. Thus, for most primary school principals there has not been an opportunity to gain experience as a deputy principal before taking up their principalship. Unfortunately it is also the case that there is no prolonged Departmental induction offered to new principals. As a consequence, and absent school law qualifications or prior in-service courses, new principals are left to learn from experience and are thus at considerable risk when it comes to managing the many legal matters that arise in the life of the school.

For the purposes of this study novitiate principals were considered to be those with two years' experience or less as a principal. There were thirty-two novitiate principals in this study comprising just under 20% of the sample and they were compared with all other principals in relation to their involvement with, and knowledge of, both legislation and common law.

In general it can be noted that novitiate respondents had much the same involvement with legislation as other principals with more years of experience although they had less involvement with the Queensland Criminal Code and more involvement with the Anti-Discrimination legislation. In relation to the common law, novitiate principals reported a much lower level of involvement than their more experienced colleagues. Thus, while there was, overall, a 32% involvement of respondents with common law matters, novitiate principals had an involvement of only 6%. For involvement with the criminal law, the differences were much the same with 19% of all respondents indicating involvement compared with only 3% of the beginning principals. It is worth noting in this regard that, by and large, respondents with less than two years' experience as principals, and particularly those in the primary sector, were in schools with small populations of students. As a consequence, the less experienced principals may not have been exposed to the same level of incidents that lead to common law actions as might be the case with principals in larger and potentially more turbulent schools.

In relation to attendance at in-service courses the novitiate principals had undertaken a slightly higher percentage of courses than the more experienced respondents although it was also found that they held fewer school law related qualifications.

In view of the generally low level of knowledge concerning the common law found to exist among the total sample of principals, it should not come as any great surprise to find that novitiate principals are no more knowledgeable in this area than are their more experienced colleagues. Indeed the study concluded that there was no significant difference between the two cohorts in relation to their knowledge of the common law ($p>0.05$) . There was, however, a significant difference between the two group in their knowledge of legislation affecting schools with the data indicating that novitiate respondents have a lower level of knowledge ($p< 0.05$).

This research project concluded, then, that there was no significant statistical difference between respondents with less than two years' experience as a principal compared with those with more than two years' experience in relation to their involvement with legislation. There was, however, a statistically significant difference between the two cohorts in relation to their knowledge of legislation. A difference was also shown to exist between the two groups in relation to their involvement with the common law with those having less than two years' experience

reporting a lower level of involvement. On the other hand no difference between the two cohorts in relation to knowledge about the common law was indicated.

Novitiate principals usually begin their principalships in the more isolated and rural districts of the state and indeed the data indicated that 88% of the respondents with less than two years' experience as principals were in such localities. These principals are, therefore, more physically removed than their colleagues from the support systems potentially available to those in schools closer to the larger urban populations. It is important to note, however, that principals and staff in all schools, regardless of location, size, or experience as administrators or as teachers, have the potential to be confronted by a legal action. All principals, are also required to implement relevant provisions of some parliamentary statutes in school policies and practices and thus require a working knowledge of such legislation sufficient to meet their legal obligations.

In brief, while novitiate principals may not be involved to the same extent as their more experienced colleagues in certain aspects of the law, they do need - as do all principals - a level of legal literacy sufficient to implement appropriate preventive legal risk management practices. Moreover, given that 97% of the less experienced respondents indicated that they spend up to 20% - and some up to 40% - of their time on managing legal problems in their schools and that this causes stress to 78% of them, it would appear apposite from the moment of their very first appointment to the principalship, that principals have an adequate knowledge of that law which has an impact on their schools.

Such knowledge is particularly important in the case of the common law where inappropriate school policies and practices may well result in the school being involved in allegations of negligence accompanying physical injuries suffered by students or others in the school context. In this regard it is germane to preventive school law strategies to note that it is this area of litigation which invites the most frequent actions against personnel in Australian schools. It is well to remember that there is an ever present possibility of some form of physical harm befalling students or others associated with schools. If for no other reason, novitiate principals need to be better informed about school law than appears to be currently the case.

## Primary and Secondary Principals Compared

Research into the impact of law on schools is a relatively recent development in Australia, and, as a consequence, there has been little information available that might be used to determine the legal literacy needs of those within the various Australian education systems. In this regard no direct research has been carried out that would indicate whether the law impacts differently on primary schools compared to secondary schools. Australian courts have previously noted, however, that because of the propensity of younger children to be wilful, mischievous, inquisitive and disobedient a particularly high standard of care is required from those associated with educating and supervising them. Such comments raise the question of whether the legal knowledge of principals in primary schools needs to be, or is, different from that of secondary school principals.

An analysis of the data indicated that secondary school respondents had greater involvement with legislation as well as the common and criminal law and it could be argued, therefore, that there is a need for them to be more legally literate than principals from primary schools. The data showed, however, that there was no significant differrence between the primary and secondary school respondents in their knowledge of the common law. Interestingly, though, primary school respondents had a slightly higher level of knowledge of statute law.

It must be reiterated, however, that strictly speaking the law applies to all schools equally regardless of whether they are one teacher primary schools in an isolated area of the state or large schools in a metropolitan city such as Brisbane. Thus in both systems potential common law actions, particularly in relation to physical injuries to students, require appropriate legal risk management strategies be put in place. Similarly, with a few exceptions, primary school principals need as great an understanding of the range of legislative provisions that affect schools as do their secondary colleagues. This is not to argue that there are no areas of law that will impact differently on the two systems. Rather it is to suggest that while school situations might differ, it is the same law that influences both although each may require different application of legal risk management principles.

## Sources of Principals' Knowledge Affecting Schools

The study identified nine major sources from which principals acquire their knowledge of school law. In descending order of priority accorded them by the respondents these sources were: the Queensland Department of Education Manual; personnel in Regional Offices; personnel in Head Office; professional journals; other principals; Principals' Associations; the Teachers' Union; in-service courses; Justices of the Peace courses; school clusters/support centres; the mass media; the Education Department Gazette.

Although only slightly over one third of all respondents perceived the Department of Education Manual to be their prime source of legal knowledge it is hardly surprising that it was cited most frequently as it contains a range of materials related to legal matters and is readily accessible to all principals. This is particularly important given time and other constraints which, many researchers have noted, results in principals having to manage schools 'on the run.' However, while the Manual is obviously a first source of information for a number of principals, especially those in the more isolated districts of Queensland, it needs to be remembered that it provides secondary and not primary source material. This is particularly important in relation to complex legislation such as the Anti-Discrimination Act (1991) (QLD) as the Manual can only provide summaries and commentaries which may or may not accurately reflect the intent of the legislation. The Manual may thus be insufficient to meet the legal needs of school principals. In other words the Manual should not, but for many principals likely does, substitute for the original; it needs to be read and acted on only in combination with the relevant legislation or other primary source material.

It is timely in this regard to note the warning of Pell (1994) that not only do most educators have a lack of knowledge of school law but what knowledge they do have is often distorted, inaccurate or based on misinformation. Such knowledge Pell maintains not only affects one's understanding of the law but can also be the basis for poor decision-making.

While the Manual was cited as being an important source of legal information for many principals for others it was more appropriate or convenient to seek the advice of staff at Regional or Head Office. However, other respondents also expressed their dissatisfaction that personnel in Head Office were too often unable to meet their immediate concerns rapidly or effectively. The impression was left that a significant number of respondents felt alienated from the central beauracracy and that in times of rapid change, which the state education system has recently undergone, they were left to answer their own problems and did not have the support of Head Office they had previously enjoyed. Alternative sources of legal knowledge for many respondents were associated with the principals' networks, formal and informal, which exist across the state. These networks are of considerable importance to principals who are in schools in the very isolated districts which are a feature of a state as large as Queensland.

It was interesting to note that University courses were not perceived as an important source of legal knowledge by any of the respondents. This likely reflects a number of factors including time and workload restraints which inhibit principals undertaking those school law-related segments of courses that do exist. Moreover, principals frequently need immediate information and advice which is not usually available through traditional university study. Further, as Haller and Strike (1986) have argued, principals in managing their schools rely less on theory - however this might be acquired - than on a body of professional knowledge built up as they gain experience in their administrative and managerial roles.

Neither do principals see in-service courses as being of high priority as a means of acquiring legal knowledge. Given the potential of such courses to provide up to date information across areas noted by them to cause concern, it might have been expected that more principals would have availed themselves of the many opportunities that are available to them through this medium. That fewer than 40% of respondents had attended school law related in-service courses is a matter of some concern. Even more worrying, however, is the fact that the study clearly indicates that those principals who have attended in-service courses do not have a level of legal knowledge any higher than their colleagues who had not attended such courses! The exceptions to this finding were in relation to in-service courses which were of a highly specialist nature. These provided information needed by principals to implement policies and practices required by Departmental regulation or to meet statutory obligations contained in such legislation as the Workplace Health and Safety Act (1995) (QLD). While it is not readily possible to compare the units or courses in school law offered in the United States with those offered in Australia, Ogletree's (1985) conclusions that courses in school law do make a difference to the legal literacy of school administrators does have important implications for the structure and content of courses in this country. Thus the disappointing findings of the present study indicate further research into the content, structure and availability of in-service courses in school law needs urgent attention.

In brief, it would appear that principals are more likely to both attend and benefit from school law related courses which are of an immediate and specialist concern to them and that the more generalist courses are not of similar value. There are, of course cogent reasons why principals might not wish, or feel able, to undertake in-service courses on legally-related matters including: the low priority they accord school law issues in comparison with other matters which they consider to be of greater urgency; a reluctance to spend periods of time away from their schools particularly when the venue might be some considerable distance away; the availability of other sources of information which they perceive as providing a more rapid response to their problems; insufficient courses to meet immediate needs; and problems of funding.

## Recognition of A Legal Problem

Given the potential for preventive legal risk management strategies to provide the basis for legally safer environments, for example in relation to physical injuries to students, and in order to acquire the fullest possible picture of principals' knowledge of the law, it was considered important to identify how the respondents determined that a legal problem existed or was developing in their school. In this regard the study was predicated on a perception of principals' professional knowledge being based on an amalgam of theoretical knowledge, practical knowledge and practical experience. It was also informed by the research of Haller and Strike (1986) who have concluded that there is a body of professional knowledge which is of a very practical nature and which is independent of the knowledge usually associated with theories of educational administration, which principals draw on to manage the legal problems that emerge in the school context. Others, for example Rossow (1990), have argued that the professional knowledge needed to manage legal problems in schools must encompass sufficient understanding of the law as to enable principals to practise preventive law strategies.

In order to implement preventive legal risk management policies and practices, however, principals require a foundation of professional knowledge based on an understanding of the relevant areas of law affecting schools. Given the findings of this study that few principals have that level of knowledge of the law it is likely that their ability to introduce preventive legal risk management strategies is based on embedded tacit knowledge built up as they confront new problems with similarities to previous experiences. In this way, Kowalski and Reitzug (1993) suggest, principals build an 'implicit repertoire of techniques and strategies' which in turn lead to an 'intuitive mental image of expected outcomes.'

There is, however, some controversy as to the extent to which principals can rely on professional knowledge based largely on experience or on intuition in the management and administration of schools. Hughes and Bush (1991), for example, maintain that to manage schools on the basis of personally accumulated experience is to deny the wisdom of others' experiences. Such practices would also be likely to result in arbitrariness and lack of consistency in decision making.

Moreover, experience gained in one situation is not necessarily appropriate to new situations. In this regard Sarason (1992) has argued that school principals are being increasingly involved in a range of specialist services which go beyond the areas of personal knowledge and expertise and which, as a consequence, create problems for school administration and management. This is particularly the case where schools are involved with matters of law which can be both complex and constantly changing.

In order to implement and maintain adequate preventive legal risk management practices it would appear axiomatic, therefore, that principals, and particularly the novitiate or less experienced, need a more detailed and accurate knowledge of the law than might be acquired solely from experiences gained from school-based incidents. It is apposite then to note the comments of Sergiovanni and Starratt (1993) that appropriately selected theory has the potential to provide principals with a surer view of a situation and at the same time can serve as a basis for evolving professional practices. It is likely, then, that reliance on professional knowledge gained solely through school-based incidents would provide principals with little understanding of the wider range of legal matters which this study has shown have the potential to impact on the management of schools.

Preventive legal risk strategies, by definition, inhibit and hopefully prevent, many school based legally-laden incidents arising and would seem to be particularly valuable in enhancing the physical welfare of students. Preventive risk management is not a matter of principals being prescient. Rather it is an administrative and managerial process of putting into operation appropriate risk management policies and practices. These policies and practices utilise professional knowledge based on both a theoretical understanding of school law as well as school-based experiences. Curative law processes, on the other hand, are generally engaged in after an incident has given rise to to the school being involved with the legal system in some way. It appears to be the case that the principals involved in this study, by and large, follow curative law strategies in the administration and management of their schools. Thus, they have tended to follow reactive processes which likely include strategies based on intuition and 'gut feelings' rather than clearly thought out pre-determined management policies and practices.

In the study reported here (Stewart, 1996) item 14 of the Principals' Questionnaire was designed, to elicit data which would help identify how respondents recognise that a legal problem might be developing or exists in their school. It was anticipated that this data would provide some indication as to whether respondents utilise preventive or curative law processes. One hundred and thirty eight respondents (83% of the sample) provided information to this item which indicated principals recognise a legal problem exists or is developing in their school through a number of processes which involve: parents and community; school staff; students; personal observation and monitoring; Head or Regional Offices; outside agencies; follow up to school based incidents; school committees and reviews; complaints and threats; and from other parties including solicitors. The data collected in response to item 14 clearly demonstrated that while respondents utilised a differing number of these processes the large majority of them drew on reactive rather than preventive processes in acquiring their knowledge. Thus it was evident that most respondents only

became aware of a legal problem, or a potential problem., after an incident giving rise to the problem had occurred. One principal remarked, for example, that his awareness only came after he had been contacted by the Crown Law Office or the Education Department about a legal problem of which he had no previous knowledge. Another principal noted that her awareness was roused only after there had been 'heated disagreement' together with an 'unwillingness to come to an equitable decision and there was physical intimidation.' In brief, then, it is evident that most principals utilised reactive processes in the acquisition of their knowledge concerning a legal problem in their school. It may be argued, however, that proactive legal risk management practices would be more appropriate in schools as these would allow principals to respond more effectively to the range of legal problems that arise.

## Implications for Practice

The major implications for practice have to do with the professional knowledge required by principals in relation to school law. It was argued at the commencement of this paper that school principals do not need law degrees. They do need, however, an understanding of the areas of law that impact on schools including legislation, common law, criminal law and grievance procedures. Moreover, this knowledge should be sufficient for principals to be able to implement preventive legal risk management practices in their schools.

Furthermore, principals' professional knowledge should also be sufficient to dispel unnecessary or incorrect perceptions they have of the law as it affects the principalship. In this regard it was evident during this research project that principals have a tendency to harbour unreasonable 'doomsday' perceptions concerning their personal responsibility for all legal matters that arise in their schools. These perceptions are most pronounced in instances of physical injuries suffered by students and about which many principals expressed their concern that they would be held personally liable regardless of the measures they might have taken to prevent such incidents occurring.

## Conclusions

It is evident from this study that school principals have the potential to be involved with a considerable body of statute, common and criminal law. On the other hand, however, a major finding of the study was that principals in government schools in Queensland and, likely Australia as a whole, have a minimal level of knowledge of the very law they are required to manage.

Moreover, while different aspects of law appear to receive different emphasis between primary and secondary schools, there is no overall marked variation between the knowledge of the law needed by principals in primary schools compared with principals in secondary schools. However, variations do exist as may be seen, for example, in the range of activities undertaken in secondary schools which often involve greater dangers than is the case in primary schools. As a

consequence more students are injured in secondary school incidents and there is, therefore, a greater potential for personnel in secondary schools to face litigation.

The finding of greatest concern, however, is the fact that novitiate principals potentially face the full range of law that schools are involved with but have neither the qualifications nor expereince to effectively manage school related legal matters.

In conclusion, this paper has identified the range of legal matters with which principals in government schools are commonly involved. It has been argued that principals have only minimal knowledge of the law that impacts on them and that a higher level of legal literacy is required in order to implement preventive risk management policies and practices in their schools.


## Keywords

Australia Law
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Professional Knowledge


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