

BOOK REVIEWS

Reutter's The Law of Public Education

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Over the past two decades there has been a remarkable increase in the attention being devoted to education law in Australia such that it has now emerged as a distinct area of research and writing. One consequence of this research has been an enhanced awareness of the extent to which areas of law impact on school policies, practices and procedures not only in Australia but in other jurisdictions as well. This in turn has led to increasing attention being devoted to education law in other common law countries including Canada, New Zealand, the United Kingdom and the United States which has demonstrated quite clearly that there is considerable similarity, if not overlap, across international boundaries in legally-related matters confronting educational institutions.

Professor Russo, a leading authority on education law in the United States, has also had considerable first hand experience of common law matters in a range of jurisdictions outside of the States and is a frequent visitor to Australia having given keynote addresses and presented papers at a number of annual conferences of ANZELA. He has also published widely on education law issues. His curriculum vitae indicates that he has over 400 publications including a number of books and articles in professional and academic journals. Although his research and writing extends to other countries it is, understandably, within the United States that the greater proportion of his work has taken place and this is the setting for Reutter's *The Law of Public Education*. This work has been adopted by over 130 law and non-law faculties in educational institutions across the United States.

While the length of the work, at over 1000 pages, may appear daunting this is also one of its major strengths in that it provides an in-depth analysis of case and related statute law influencing education in the United States. From another perspective it is hardly surprising that the work would be so comprehensive given that there is such a long tradition of legal involvement in education in that country. It is a work of considerable proportions and of importance to international readers in that the case analyses and subsequent discussion effectively trace social and community issues that exist or are nascent in other common law countries. As judicial reasoning in Australia frequently extends to a consideration of comparable issues addressed in decisions reached in other jurisdictions, and, as educators here commonly adopt strategies and practices from abroad, Reutter's *Law of Public Education* would be a most useful addition to education and law libraries in this country. It would, for example, be of particular use to those wishing to explore strategies being used to address social and community problems such as drug abuse by students as it

would provide a way to more readily foresee potential legal problems that might arise here with procedures associated with search and seizure and zero tolerance policies.

Reutter's *The Law Of Public Education* contains fifteen chapters:

1. Legal Framework for Public Education
2. Church-State-Education, Relationships
3. State-Level Entities
4. Local School Boards
5. School Board Procedures and School Elections
6. School Finance
7. Use of School Funds and Property
8. Tort Liability of School Boards, Officers, and Employees
9. Contractual Liability of School Boards and Employees
10. Certification, Employment, and Contracts of Teachers
11. Terms and Conditions of Employment of Teachers
12. Tenure, Dismissal, and Teacher Retirement
13. Student Rights
14. Students with Disabilities
15. School Desegregation

In addition to a comprehensive Table of Cases and two Appendices containing 'Selected Provisions of the United States Constitution' and 'Selected Federal Statutory Provisions Applicable to schools' there is an unique, and very useful, 'Table of Legal Topics Illustrated by Cases'. The book is complemented by a brief Glossary providing easily understood definitions of legal terms used and a detailed Index completes the book.

As is noted in the Preface, Chapters 2 to 15 focus on the legal aspects of a specific area of education while Chapter 1 provides a succinct overview of the law applying to education in the United States. The structure of Chapters 2 to 15 is based on a detailed analysis of cases, each supported by appropriate references. Excerpts from judgments reached in seminal cases are provided and a 'Note' section where the author highlights specific points and raises questions about the decisions concludes each chapter.

Even a most cursory scanning of the Chapters would provide readers with an awareness of the detailed subject and case analysis they contain. For example Chapter 2, in addressing the complex relationships that exists between Church and State and the provision of education, describes the development of this relationship from important decisions reached in the early part of the twentieth century through until the present. The major backdrop is the Establishment clause of the Constitution which, briefly, is to do with the separation of Church and State; themes covered include: free textbooks for all children regardless of school attended; public funding for religious schools; publicly funded transportation for children attending religious schools; salaries for teachers and aides in religious schools; financial aid to parents of children attending religious schools; instructional materials in schools; school vouchers; and saying of prayers and reading the bible in non-religious schools.

Although the issue of separation of Church and State is not as evident in Australia as it is in the United States, ongoing debate in this country over the extent of public funding for non-government, including religious, schools, raises many issues common to both. However, cases to do with Church-State-Education, such as student initiated religious services and proselytizing in

school settings, illustrates the reality that the legal system in the United States is used to protect rights in ways not evident in Australia.

While each Chapter has a degree of relevance to Australian readers, for me, those dealing with teachers as employees (Chapters 8, 9, 10), student rights (Chapter 13) and students with disabilities (Chapter 14) were the more relevant. In each of these five chapters Professor Russo addresses issues of considerable importance to educators and legal practitioners including rights of teachers and students in such matters as freedom of speech and the right to personal privacy.

In the USA drug abuse by students has been a serious problem for many years and the strategies taken by schools to address this, such as random drug testing and, or, strip searching, have been frequently tested in the nation's courts. Of particular interest here, is Professor Russo's discussion of the associated issue of the due process rights of students in relation to the school community as a whole. Notwithstanding any differences in judicial reasoning or our two legal systems, the measures taken in the USA to meet the drugs in schools problem need to be appropriately scrutinised in Australia so as to provide a wider perspective as to how the problems faced by others might be overcome here. In this regard, the discussion on drugs in schools provided by Professor Russo traverses a wide range of strategies used in schools to redress the problem and in terms that simplifies the complex legal arguments.

Conclusion

Reutter's *The Law of Public Education*, has achieved an enviable reputation in the United States. As noted previously it has been adopted as a text in many tertiary education institutions and by libraries at many more. While its main relevance is to the education and legal professions in that country, the impact of law on educational policies, practices and procedures has emerged as a major concern in many other common law jurisdictions and consequently this book has far wider application. In this work Professor Russo has provided a comprehensive insight into many legal issues and problems extant in education in the USA and has done so in a manner that simplifies the legal complexities and draws attention to legally appropriate best practice measures in education.

It is, however, a book which would allow readers outside of the USA, and arguably, particularly in Australia, to enhance their awareness and understanding of legally-related educational problems from a comparative perspective. It can be hoped that in turn such understandings will lead to better legal risk management policies, practices and procedures in our nation's schools.

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