



Risk Matters!
A – Z of School Board Liability

Canadian School Boards' Association
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 St. John's, Newfoundland
 Scott C. Norton Q.C.


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 When results count.



Warm Up




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Overview

1. The Statutory Duty of Care
2. The Common Law Duty of Care
3. Case Law
4. How to Limit Risk
5. Waivers: Feint Hope!

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The Legal Concept of Negligence

Negligence Components

- Defendant owed **duty of care** to plaintiff;
- Defendant **breached duty of care** (standard);
- Defendant's breach was **proximate cause** of plaintiff's injury;
- Plaintiff suffered **actual damage or loss** as a result of injury.



1. The Statutory Duty of Care

Provincial Legislation (e.g. Nova Scotia *Education Act*)

- Sets out duties for various levels of education system. These duties are in addition to duties that exist at common law.
- Often Includes specific defined duties for:
 - Teachers
 - Principals
 - Superintendents
 - Support Staff



The Statutory Duty of Care

Example (Nova Scotia s. 26)

Teachers

- (a) respect the rights of students;
- ...
- (f) take all **reasonable** steps necessary to create and maintain an orderly and safe learning environment;
- ...



The Statutory Duty of Care

s. 38 Principals

- (e) Ensure that **reasonable** steps are taken to create and maintain a safe, orderly, positive and effective learning environment;

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The Statutory Duty of Care

s. 39 Superintendents

- (g) Maintain a **safe**, orderly and supportive learning environment in all schools in the school district or school region;

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Common Law Duty of Care

- Canadian common law clearly establishes that schools owe students a duty of care.
- Teachers and principals have a unique and special relationship with students attending their school.
- Because students are “required” to attend school, parents who send their children to school are entitled to expect that educators will take reasonable precautions to protect students from foreseeable risks of harm.

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Standard of Care

- Canadian courts have held that the standard of care owed to a pupil by a school board, principals and teachers is that of a:

reasonable careful or prudent parent in the circumstances

- This is a “heightened” standard of care from normal negligence cases involving an adult defendant where the standard of care is “reasonable person in the circumstances”.



Standard of Care

- Application of parental standard of care to educators in their work with students reflects the special relationship shared with students.
- *in loco parentis* – standing in the place of a parent



Case Law – Position of Trust

R v. M (M.R.) – Supreme Court of Canada (“SCC”)

- *Teachers and principals are placed **in a position of trust** that carries with it onerous responsibilities. When children attend school or school functions, it is they who must care for the children’s safety and well-being. It is they who must carry out the fundamentally important task of teaching children so that they can function in our society and fulfil their potential. In order to teach, school officials must provide an atmosphere that encourages learning. During the school day they must protect and teach our children.*



Case Law

Myers v. Peel County Board of Ed. – Supreme Court of Canada

- 15-year old student suffered serious injuries when attempting to dismount rings in a high school gymnastics class. Student attempted difficult maneuvers without spotter. Fell off rings, broke his neck and was left paraplegic.
- Court had to determine whether board negligent in choice of matting and whether teacher negligent in allowing student, with only a “spotter”, to perform gymnastics maneuvers otherwise unsupervised in exercise room.



Case Law

Myers v. Peel County Board of Ed. – SCC

- Court acknowledged that standard of care must be applied flexibly in modern times where larger groups of students participate in a wider variety of more complicated activities.



Case Law

Myers v. Peel County Board of Ed. – SCC

- **Factors** that affect the application of the standard of care include:
 - Number of students being supervised at any given time;
 - Nature of exercise or activity in progress;
 - Age of the students;
 - Degree of skill and training that students may have received in connection with the activity;
 - Nature and condition of equipment in use at time; and
 - Competence and capacity of the students involved.



Case Law

Myers v. Peel County Board of Ed. – SCC

- Court held foreseeability of an accident or injury depends on an accurate appreciation and assessment of these risk factors.
- Court concluded, on facts of the case, that the standard of care to be exercised in providing for supervision and protection of students – that of a careful and prudent parent – was not met.

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Case Law

Myers v. Peel County Board of Ed. – SCC

- Court said a prudent parent would not be content to provide the protective matting used when other, more protective mats, were available.
- He also stated that a prudent parent would not permit his or her son to leave the gymnasium to practice potentially dangerous maneuvers in a room without adult supervision.

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Case Law – Contributory Negligence

Myers v. Peel County Board of Ed. – SCC

- **Contributory Negligence** – Court held student “partly responsible for his gymnastics injury”:

[T]here was contributory negligence on the part of [the plaintiff] in performing a difficult maneuver, fraught with danger, without announcing his move and without the presence of a spotter in position to break his fall.

- Contributory Negligence is age dependent.

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Case Law – Vicarious Liability

Moddejonge v. Huron (County) Bd. Of Ed. (Ont: 1972)

- Principle is that an employer is strictly liable for torts of employees committed during the course of their employment.

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Case Law – Vicarious Liability

Bain v. Calgary Bd. Of Ed. (AB: 1993)

- Defendant vicariously liable for negligent supervision of a 19-year old student who fell from a cliff on a hiking expedition and suffered brain damages.
- \$3,000,000 + damages.

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Case Law – Vicarious Liability

Piercey v. Lunenburg District School Board (NS: 1998)

- Defendant's were responsible for 14-year old student who was injured when participating in game of "electric fence" at an adventure camp organized by the Board.
- Court of Appeal held duty owed by School Board cannot be delegated to third parties hired for their expertise, e.g. camp counselors.

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Case Law – Balancing Risk

Bain v. Calgary Bd. Of Ed. (AB: 1993)

- “I do not wish to be taken as in any way appearing to disapprove of properly organized school programs which encourage students to develop a healthy sense of self worth and self reliance. Properly planned outdoor recreation programs are, in my view, one of the best ways to develop these essential attributes in people of all ages, and they should be encouraged”.



Board Policies

- School board policy = standard of care
- Policy that is not being followed is a major risk
- Failure to follow policy = breach of standard of care. If loss or injury results = negligence.



4. How to Limit Risk

Review Factors

- Number of students being supervised;
- Nature of exercise or activity in progress;
- Age of the students;
- Degree of skill and training that students may have received in connection with the activity;
- Nature and condition of equipment in use at time; and
- Competence and capacity of the students involved.



4. How to Limit Risk

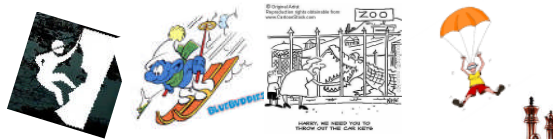
Review risk factors

- Generally, problems do not arise in the classroom although “the nature of the activity” in the classroom may, from time to time, be a consideration.



4. How to Limit Risk

- Identify risks
- Be Prudent – Exercise Good Judgment
- When a “special” event – Apply *Peel* factors but bring facts to the attention of parents through a consent form



5. Waivers – Feint Hope

- Liability may be limited by a waiver but waivers are construed strictly against the party seeking to uphold the waiver.
- Waiver alone, especially for a minor, will usually not be sufficient to protect the school board.
- Wong v. Lok’s Martial Arts (2009) BCSC 1385
 - Held that Infants Act in BC did not allow a parent to sign a waiver of liability for an infant
 - Review of Law Reform Commission of Manitoba review of law of waivers that concluded legal validity of parent waivers is “doubtful”.

Waivers

Requirements

- Clear wording – informed consent
- Cover physical as well as legal risks - scope
- Include all parties
- Include all activities
- Proper signatures



Waivers

- Include all activities the student will be engaged in as part of the experience.
- Anticipate all activities from the “drop off” of the student at school prior to the trip – during the trip – to the “pick up” of the student after the trip.

Best Practice: Do not be “routine” with releases. Assess each “risky” activity and tailor consent document accordingly. Focus more on informed consent and acceptance of risk then waiver of right to claim.



Questions

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