

BLP BRIEF

Duty of Care and Sporting Activities

August 2018

By Tyson Brennan

Schools, teachers and Principals owe students a non-delegable duty to ensure reasonable care is taken for their safety. This means appropriate and reasonably practical steps need to be taken to prevent, or at least ameliorate, foreseeable harm.

But what is the position when students are injured during sporting or other activities?

The Duties

The duties arise from Common Law Negligence and OHS Act.

What are the risks?

The risks include:

- School grounds
- School equipment
- Sporting activities

Risks also extend to supervision at break times and outside of school hours.

The focus of this paper is the breadth of liability surrounding risks associated with sporting activities.

CASE STUDY: Roman Catholic Church for the Archdiocese of Sydney v Kondrajian (2001) NSWCA

In this case an 11-year-old student was accidentally struck by another student wielding a hockey stick during a Physical Education class. Tragically, this student was killed as a result of the incident.

At first instance the Court determined that the School was negligent. On Appeal, however, the court found that there was no negligence on the part of the school. In coming to this decision the Court looked at all the circumstances and found that the incident occurred while the students acted contrary to instruction.

The Court said:

“...the mere fact a serious injury or even death may occur while children are playing a game at school will not automatically result in finding a breach of the duty of care.”

The Court outlined that:

- The duty is to take *reasonable care* for the safety of students;

- A school is not liable just because a student sustained an injury;
 - However, students must be adequately supervised and instructed on any potential risks;
- Reasonable steps should be taken to guard against foreseeable “student mischief” that could pose harm to themselves or others
- Reasonable precaution is assessed by looking at the activity, the risk, the probability of that risk, the probability of student disobedience as well as the training, age and skill level of students

CASE STUDY: Sanchez-Sidiropoulos v Canavan (2015) NSWSC

Similarly, in this case a 10-year-old student was injured during their Physical Education class. It was again argued that the school was negligent.

The Court found that there was no negligence as the students were adequately supervised. Further the students were instructed not to push each other, and they disobeyed those instructions.

The precautions taken by the school were particularly found to be adequate as there had been a long history of the game conducted without significant injury.

The Court said:

“...it is neither practical nor desirable to attempt to establish a system of education that seeks to exclude every risk of injury...schools must encourage and teach high spirited young children to engage in games for their own health and wellbeing.”

The Court found that that the duty owed by the school did not require it to remove all risk, only to take reasonable steps to address any foreseeable risks of the activity.

CASE STUDY: Work Health Authority v NT Christian Schools (2017)

To the contrary, in this case the School pled guilty to failing to ensure health and safety of students.

The circumstances of the case were that a 12-year-old student was killed undertaking an activity at a sports carnival. Specifically the child was run over during a game of ‘tug of war’ with a vehicle.

As distinct in this case, the School had positively failed to review the safety measures before the carnival and on the day of the incident the teachers did not follow safety precautions previously set up and enforced in prior years. If this risk assessment had been undertaken and the precautions properly adhered to, the death could have been prevented.

In sentencing the Court said the activity was inherently risky and the "failure was not a minor one. Given the nature of the activity and the extent of the departure, there was...a high risk of injury because of the activity.”

The School was fined \$50,000.00.

What can your school do to protect itself and its students?

As outlined in these cases, the duty of care schools owe to students is not to prevent all injuries (indeed, this would be impossible and not in the spirit of sport participation). Instead, schools are obliged to take positive steps to provide a safe environment for the conduct of sporting and other activities.

What does “providing a safe environment” mean?

Specifically the school must:

- Warn participants and their parents of any risks associated with activities;
- Provide adequate training and instruction to students prior to commencing the activity;
- Use safe and suitable equipment that has been tested and serviced as appropriate;
- Follow any established guidelines, rules and practices with regard to safety;
- Have an emergency plan;
- Consider the student's skill level, age, size and any existing injuries;
- Consider foreseeable student misbehaviour;
- **Provide adequate supervision to ensure the students are not exposed to unnecessary risk.**

Supervision

Supervision is a key element in discharging a school's duty of care to its students. Since the 2001 case of *Kondrajian*, outlined above, it is clear that the Courts take a common-sense view of the duty and are aware of the practical restrictions on teachers in supervising every student.

The level of supervision, however, must be in proportion to the activity for it to be considered adequate. As such when

considering supervision requirements it is important to make this assessment uniquely for any given situation based on the demands of the activities, the possible risks and the particular student group exposed.

How can Brennan Law Partners assist?

Risk management, particularly in sporting activities, can be a difficult area to navigate and the answers are not always black and white.

If you have a question about an injury, the running of particular classes or events, or if your disclosure to parents document needs reviewing, please feel free to contact us at any time so that we can assist you to comply with your duty of care obligations.

This is meant as a guide only.



Tyson Brennan
Principal

tyson.brennan@brennanlawpartners.com.au
0434 942 550