

**Research Paper: Are principals adequately prepared for risk management issues in
Ontario schools today?**

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ABSTRACT

The research paper will examine the proposition, “*In the eyes of the law, are principals adequately prepared to address risk management issues in the normal operations of schools in Ontario today?*” The paper will define risk management, in relation to education law, examine current laws and regulations governing risk management issues in Ontario schools, examine case law with a focus on specific cases involving school administration and, finally, will examine the key stakeholders and the broad risk management challenges facing principals in their roles and responsibilities in schools today. The paper will identify what measures are in place (at the school/board/ministry levels) to prepare, support and monitor the success of principals in the realm of risk management including duty of care, negligence, liability and the law. The paper will conclude with a general observation relating to the proposition.

Keywords: risk management, principal, negligence, liability, professional responsibilities

Introduction

The research paper will examine the proposition, “In the eyes of the law, are principals adequately prepared to address risk management issues in the normal operations of schools in Ontario today?” The paper will define risk management, in relation to education law, examine current laws and regulations governing risk management in Ontario schools, will examine case law citing specific examples relevant to the school administrator’s role and, finally, will examine the key stakeholders and the challenges.

Further, this paper will provide a broad overview of the Education Act that relates to the roles and responsibilities (teacher/principal/board) and all related regulations pertaining to risk management. The focus will be on what measures are in place (at the school/board/ministry levels) to prepare and monitor a principal’s success in this area including duty of care, negligence, liability and the law. This examination will also include a review of the Principals’ Qualification Programs (PQP), Mentoring Programs and Principals’ Performance Appraisal (PPA) program in terms of risk management readiness.

The paper will conclude with a general observation that relates to the proposition.

The Ontario Education Climate

In 1997 the Ontario Legislature passed extensive amendments to the Education Act. The changes were initiated under Bill 160, the Education Quality Improvement Act. The resulting affect was that educational change occurred in the 1999-2000 school year in Ontario. It was brought about by the governing party at that time under the label ‘The Common Sense Revolution’. The changes in the education system resulted in changes in

school governance, financing, curriculum and assessment policies. In terms of school governance, 66 school districts were created through the amalgamation of 129 school boards. There was a reduction in the total number of trustees from 1,900 to 700. School councils were established with advisory powers only. *Principals were removed from the teachers' bargaining unit and placed in administration within the board organization.* There were also significant changes made to the educational funding model in Ontario which resulted in funding for schools on a per pupil formula basis. Significant changes have also been made to the provincial curriculum and pupil assessment including the implementation of province-wide assessment testing (i.e. EQAO). All of these changes were implemented to increase school accountability. Ten years after Bill 160 was implemented, the accountability measures remain in place today. These initiatives plus additional school improvement based initiatives have caused many changes in school board operations including among them many new demands and challenges on educational leadership and specifically, the role of the principal. These changes are in addition to the daily operational administrative duties required by the Education Act and based on Education Law that involve a broad range of risk management issue associated with them. Have principals received the training and support needed over the past decade to address these responsibilities?

Risk Management Defined

The Ontario School Board Insurance Exchange (OSBIE) defines risk management as the process of leading, organizing, directing and controlling the management activities associated with: (1) Identification of risk; (2) Identification of risk management strategies; (3) Selection of appropriate risk management strategies; (4) Implementation of

selected risk management strategies; and (5) Monitoring the effectiveness of the selected risk management strategies.

Brown and Zuker (2007) define risk management as “taking steps to prevent situations from occurring which may lead to loss or harm, and to legal liability...risk management involves identifying, evaluating and controlling risks, as well as insuring against them” (p.178)

The Education Safety Association of Ontario (ESAO) addresses risk management through the following statement; “Accident reduction through good work practices does not happen by chance, but by hard work and a change of attitude, attitudes that require a good basic understanding of safety principles developed through training.” (p. 2)

The above examples that define risk management clearly align and focus on understanding, assessing and implementing prevention programs. With this in mind, how is public education governed in terms of the law and risk management responsibilities?

The Law

School authorities, administrators and teachers, in the eyes of the law, must have a comprehensive understanding of educational law, governing acts and regulations, and the legally defined duties and responsibilities associated with their roles and responsibilities. This understanding of potential negligence and liability implications associated with operating schools in Ontario today is an essential concept for all educators involved in supporting student learning thus ensuring a safe, comfortable and risk free learning environment for all.

The following legal definitions and examples taken from case law will help to provide an overview of key concepts and illustrate their importance within the area of risk management responsibilities.

Negligence

Duty of Care: As identified by Brown and Zuker (2007) the law governs that the “duty of care upon boards and teachers to ensure the safety and well being of students has been well-established in both common law and statute for over 100 years.” (p. 95). The Ontario Public Schools Act (1891) outlined the duties of school trustees a century ago which included the duties and responsibilities to ensure the comfort of pupils and the efficiency of schools. Further, the act stated that the teacher’s responsibility, in a public school, was to ensure proper order and discipline. Roher and Wormwell in their book, *An Educator’s Guide to The Role of the Principal*, state that the duty of care, in terms of public education, is based on statute or common law. The statute for duty of care for public school educators in Ontario is set out in the Education Act (the Act) and its regulations. Roher and Wormwell further stated that “school authorities acting in *loco parentis* owe a common law duty of care to students on or off school premises during official school hours and at times when they voluntarily assume responsibility for students.” (p. 51).

Standard of Care: Roher and Wormwell (2008) state that “A standard of care is essentially the standard of behaviour against which the actions or omissions of the defendant in a negligence claim will be judged.” (p.52). The legal term, vicarious liability addresses the issue of employer’s responsibility for staff’s conduct while under their employment and, in which school boards are held legally responsible for the actions

of their staff, as a corporate entity. Hence, it is prudent, based on law and the governing acts and regulatory responsibilities, that school boards have diligent policies and supportive training programs for their staff in carrying these responsibilities.

Duty to Provide Proper Supervision: Roher and Wormwell (2008) state that “Many negligence lawsuits against teachers, principals and school boards are based on allegations that the supervision of the student(s) involved was insufficient. For principals, such allegations are directly linked to their regulatory duties towards the students. Specifically, section 11(3)(e) and (f) of Regulation 298 under the Education Act...” 9p.62). The other concepts of law that public school boards need to be aware of is Tort and Fiduciary Law. Tort law is a civil wrong in which it may not be a criminal act, but a failure to follow a prescribed policy or procedure resulting in an accident or injury leading to negligence. Fiduciary law helps us to understand the legal relationship between teacher and student in context to duty or standard of care as outlined in the Education Act. The law of fiduciary responsibility often results from negligence due to sexual misconduct that involves teacher/student relationships.

In referencing research from both Brown and Zuker - Education Law, and Roher and Wormwell – An Educator’s Guide to The Role of the Principal, we note that both research teams cite the case, Myers v. Peel County Board of Education (1981), where the Canadian courts have held the standard of care for students by a school authority, its principals and teachers is that of a reasonable careful or prudent parenting while a student is under their care. Specifically, Brown and Zuker (2007) noted that “Myers dealt with a claim on behalf of a 15 year-old boy who broke his neck after attempting a straddle dismount from a gymnastic rings apparatus. A teacher was not present in the room at the

time of the accident, and the plaintiff spotter had moved away from the apparatus by the time the plaintiff attempted the dismount...the court (McIntyre J.) stated:

Against the background I am unable to conclude that a prudent parent would be content to provide as protective matting only the two and on-half inch compressed slab mats when other and more protective mats could be obtained. I am also unable to conclude that, considering the nature of the activity which was contemplated in the gymnastics course, a prudent parent would have been content to have his son permitted to depart from the gymnasium into a room where there would be no adult supervision to practice gymnastic manoeuvres on the rings which could involve the straddle dismount with its potential dangers.” p. 101.

Based on the above, it is clear that the responsibility for pupil safety based on statutory regulation and common law fall on the responsibility of school boards and their staff while a student is charged under their care. In the above noted case (Myers v. Peel County) the Court of Appeal ruled that the plaintiff also had responsibility under a higher standard of care based on the risky nature of the act being undertaken.

Brown and Zuker (2007) identified a “leading case vicarious liability of a school board for the conduct of their teachers is H. (S.G.) v. *Gorsline*, the Alberta Court of Queen’s Bench (MaMahon J.) considered the liability of a school board for the sexual misconduct of a teacher...the court found that Gorsline was liable for the intentional torts of assault and battery, and, in addition, for breach of his fiduciary relationship as a teacher toward the plaintiff...The Court held that the school board should not be held vicariously liable for the teacher’s action” (p. 156-157). The Court in this ruling noted that the teacher did not have job duties requiring him to be alone with the plaintiff for extended periods of time and that the “Court was not satisfied that the board permitted an atmosphere that tolerated inappropriate conduct that would encourage sexual assault or prevent its disclosure.” (p. 157).

Liability

The final section of law that the paper will examine is in terms of *Duty to Keep School Safe and Good Repair*: The Occupier's Liability Act and the Education Act places responsibility on the school board and their principals in terms of ensuring that school buildings and grounds are safe for the purposes of educating students. Brown and Zuker (2007) state that "the duty of care applies both to the condition of the premises and to the activity being carried on. The duty does not apply to risks willingly assumed by the person who enters the premises. However, even if a person voluntarily assumes risks, the occupier must not create a danger with the deliberate intent of doing harm or damage to the person or his or her property, and must not act with reckless disregard for the presence of the person or his or her property." p. 139. An example of case law where parents have been successful in suing schools boards for injuries caused because of unsafe and poorly maintained equipment or building conditions is demonstrated in a 2002 Ontario case where "a high school student had most of her left Achilles tendon severed. While walking through one door of a set of double doors, the sharp bottom edge of the other door struck her when another student opened it." (Brown and Zuker, 2007, p. 83). A review of Court documents found that while the principal and his staff conducted regular monthly health and safety inspections as required by the collective agreements, the principal and maintenance personnel were not aware of the dangerous condition of the door. Further evidence found that the principal was not conducting regular weekly inspections as required under the Education Act and as such the Court, under the Occupier's Liability Act found the principal and school board liable for the injury.

If we examine the issue of negligence and liability under the law we note that contributory negligence is where the individuals involved in an accident (student or staff) can also be held partly responsible for the negligence. This section of the paper helps to understand the concepts of law that govern risk management within public education and specifically, civil liability of school boards and their employees as well as case law that illustrates application of Education Law.

The Education Act – Duties of the Principal

Brown and Zuker (2007) denote that “the exercise of provincial power over education is achieved by means of legislation, regulations, guidelines and policies.” (p. 36). The Education Act references the role of the principals in section 265 and regulation 298. Specifically section 265 outlines the duties of the principal in addition to the principal’s duties as a teacher and include discipline, co-operation, register pupils, record attendance, pupil records, timetable, examinations and reports, promote pupils, textbooks, reports, care of pupils and property, report to M.O.H., person with communicable diseases, access to school or class and visitor’s book.

Regulation 298 outlines the operations of schools and specifically within section 11 of regulation 298 the duties of principals. Under the risk management understanding of the duties of a principal, a complete understanding of sub-section (3) of section 11, is required to fully understanding the scope of responsibilities in the role...student, teacher, parent, property, curriculum, etc. Roher and Wormwell (2008) noted that regulation 298 “creates additional duties and, to a certain extent, reinforces the duties found in the Education Act.” (p. 17).

Principal's Role

A review of Keel and Tymochenko (2010) in their book *An Educator's Guide to The Health and Safety of Students - Table of Contents* denotes the wide range of responsibilities that principals are required to know and administer in their roles as both the curriculum leader and school operations manager. These responsibilities include and curriculum and extracurricular activities, premises, emergency preparedness, communicable diseases, food and water, transportation, special needs and required inspections and check lists that must be conducted on a regular basis. So how do principals gain the knowledge required to carry out these primary responsibilities?

All principals in Ontario begin their careers as teachers. This section of the paper with examine the formal fundamental training and support received for principals in relation to the Education Act and specifically, the legislative regulations governing professional accreditation and any related professional development in terms of risk management skills. The following information has been researched from the Ontario College of Teachers web page:

Ontario College of Teachers (OCT)

The Ontario College of Teachers was established in 1997 to allow teachers to regulate and govern their own profession in the public interest. Teachers who want to work in publicly funded schools in Ontario must be certified to teach in the province and be members of the College.

The College:

- ensures Ontario students are taught by skilled teachers who adhere to clear standards of practice and conduct
- establishes standards of practice and conduct
- issues teaching certificates and may suspend or revoke them
- accredits teacher education programs and courses and
- provides for ongoing professional learning opportunities for members.

The regulatory law that governs teacher accreditation is found under the Ontario Teachers College Act (1996) which defines the objectives of the college as:

3. (1) The College has the following objects:

1. To regulate the profession of teaching and to govern its members.
2. To develop, establish and maintain qualifications for membership in the College.
3. To accredit professional teacher education programs offered by post-secondary educational institutions.
4. To accredit ongoing education programs for teachers offered by post-secondary educational institutions and other bodies.
5. To issue, renew, amend, suspend, cancel, revoke and reinstate certificates of qualification and registration.
6. To provide for the ongoing education of members of the College.
7. To establish and enforce professional standards and ethical standards applicable to members of the College.
8. To receive and investigate complaints against members of the College and to deal with discipline and fitness to practise issues.
9. To develop, provide and accredit educational programs leading to certificates of qualification additional to the certificate required for membership, including but not limited to certificates of qualification as a supervisory officer, and to issue, renew, amend, suspend, cancel, revoke and reinstate such additional certificates.
10. To communicate with the public on behalf of the members of the College.
11. To perform such additional functions as are prescribed by the regulations. 1996, c. 12, s. 3 (1); 2001, c. 14, Sched. B, s. 2; 2004, c. 26, s. 2; 2009, c. 33, Sched. 13, s. 2 (1, 2, 11).

The *Standards of Practice for the Teaching Profession* provide a framework of principles that describes the knowledge, skills, and values inherent in Ontario's teaching profession. These standards articulate the goals and aspirations of the profession. These standards convey a collective vision of professionalism that guides the daily practices of members of the Ontario College of Teachers.

The Purposes of the Standards of Practice for the Teaching Profession are:

- to inspire a shared vision for the teaching profession
- to identify the values, knowledge and skills that are distinctive to the teaching profession

- to guide the professional judgment and actions of the teaching profession
- to promote a common language that fosters an understanding of what it means to be a member of the teaching profession.

The Standards of Practice for the Teaching Profession are:

Commitment to Students and Student Learning

Members are dedicated in their care and commitment to students. They treat students equitably and with respect and are sensitive to factors that influence individual student learning. Members facilitate the development of students as contributing citizens of Canadian society.

Professional Knowledge

Members strive to be current in their professional knowledge and recognize its relationship to practice. They understand and reflect on student development, learning theory, pedagogy, curriculum, ethics, educational research and related policies and legislation to inform professional judgment in practice.

Professional Practice

Members apply professional knowledge and experience to promote student learning. They use appropriate pedagogy, assessment and evaluation, resources and technology in planning for and responding to the needs of individual students and learning communities. Members refine their professional practice through ongoing inquiry, dialogue and reflection.

Leadership in Learning Communities

Members promote and participate in the creation of collaborative, safe and supportive learning communities. They recognize their shared responsibilities and their leadership roles in order to facilitate student success. Members maintain and uphold the principles of the ethical standards in these learning communities.

Ongoing Professional Learning

Members recognize that a commitment to ongoing professional learning is integral to effective practice and to student learning. Professional practice and self-directed learning are informed by experience, research, collaboration and knowledge.

A review of the Ontario College of Teachers Act acknowledges the primary professional requirements of the teaching profession including standards, knowledge and leadership focused on the student learning but has little preparation on formal training associated with legal obligation under the law and specifically, risk management.

Principal's Preparation

As indicated above, the review of the Ontario Teachers College Act and related governing body clearly demonstrates the professional commitment to student achievement in accrediting teachers for their roles. The question at hand is how are principals prepared for the administrative leadership role and specifically, the operational challenge of this position in terms of site-based administrators overseeing the daily operations of schools?

Teachers who are interesting in pursuing administrative roles attend Principal Qualification Programs (PQP). A review, as noted below, highlights the key learning modules, (reference OPC site). Outlined below are the steps that teachers take to become a principal. The Principal's Qualification Program (PQP) is organized into 12 modules of equal length:

Part I: Modules 1-6

- Module 1: What does it mean to be a principal?
- Module 2: Human Resources: Supervision of Staff
- Module 3: Interpersonal Skills, Decision Making and Use of Data
- Module 4: Legal Issues Related to School Operations
- Module 5: Students with Exceptionalities
- Module 6: Legal Issues: Protecting our Students

Part II: Modules 7-12

- Module 7: Human Resources: Selection processes, staff development & leadership
- Module 8: School Planning
- Module 9: School Program
- Module 10: Leadership
- Module 11: Community
- Module 12: Management of Resources

A review of the PQP program notes that modules 4 and 6 provide some discussion on Education Law, but is limited in terms of risk management awareness and related issues. In a word, the PQP program addresses instructional leadership as its main goal with limited discussion on the operational responsibilities of a school administrator. The same problem exists for the Supervisory Officers Qualification Program (SOQP) for principals aspiring to Supervisory Officer's roles.

As indicated above, the professional body responsible for ensuring that risk management accreditation content is added is the Ontario College of Teachers and governing OCT Act 1996. The O.C.T. Act governs the content of Principals' Qualification Program (PQP), Supervisory Officers Qualification Program (SOQP) and Additional Qualification (AQ) courses all of which lack an indepth review of educational law and specifically the breath of risk management duties associated with the role of the principal in an Ontario school.

In a democratic society bound by law and its regulations, policies and guidelines, principals, in their leadership roles, require indepth training and support to ensure that the primary function is the education of students and the wellbeing of teachers and support staff. The principal's role is a difficult and challenging one!

Observations and Conclusion

During the course of conducting research for this paper, I interviewed David Beal, Director of Risk Management with OSBIE, who is frequently called by school boards to provide workshops on Liability/Risk Management to board administration and principals. He indicated that the most common comment that he receives, across the education sector, is that risk management awareness should be a mandatory part of all teacher/principal training programs. This comment suggests that the majority of principals are conceding that they are not well prepared to address risk management issues in their schools. Beal offered the following comment with regard principals' preparedness to address risk management, "I see the whole range of principals - those who are very astute about risk management and in very good control of their school, and the other end of the spectrum where principals are simply not showing leadership. Most are somewhere in between on the issue of risk management preparedness."

The answer to the proposition: In the eyes of the law, are principals adequately prepared to address risk management readiness in the normal operations of schools in Ontario today? is no. The findings based on a review of all programs in place as demonstrated in this paper is that principals are not adequately prepared for risk management readiness (e.g. negligence, liability, pandemic, financial errors, lawsuits/grievances). If I were a principal that was required to defend my actions with regard to a risk management issue that was before the courts, I would argue that none of the current professional qualifications, or additional qualification (AQ) programs, nor the Association's (i.e. Ontario Principals' Council - OPC, Ontario Catholic Principals' Council - OCPO) current professional learning programs, in any way, sufficiently trained

me to be successful in risk management preparedness. In essence, in today's educational and political climate, the principal is the site-based administrator responsible for curriculum leadership and school improvement and, as outlined in the Education Act, assumes the responsibilities of risk management in the daily operations of the school to which they are assigned. Based on the above review of law, case law and the legal expectations of the role, it is clear that the principal is not adequately prepared (or is currently being prepared) for this kind of responsibility.

Table of Cases

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Cox (Guardian of) v. Marchen, 2002 CanLII 36967 (ON S.C.) – 2002-11-05

Myers v. Peel County Board of Education (1981), 123 D.L.R.(3d) 1, [1981] 2 S.C.R. 21.

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Keel, R.G., Tymochenko, N., (2010), *An Educator’s Guide to the Health and Safety of
Students*, Canada Law Book.

Roher, E., Wormwell. S. (2008), *An Educator’s Guide to the Role of the Principal*
(Second Edition). Canada Law Book.

Resource: Web Links

Catholic Principals Council of Ontario (CPCO)	http://www.cpco.on.ca/ProfessionalDevelopment
Site for PQP qualifications for OPC	http://www.principals.on.ca
Experienced Principals OPC Course Modules	http://www.principals.on.ca
Ontario College of Teachers, OCT Act 1996	http://www.elaws.gov.on.ca
Site for SOQP qualifications	http://www.principals.on.ca/cms/
Ontario Education Safety Association (ESAO), <i>Quotation for the Provision of ESAO's Ontrac Health and Safety Audit</i> , June 19, 2009	http://www.esao.on.ca/
Ontario School Board Insurance Exchange (OSBIE)	http://www.osbie.on.ca/risk-management
Statutes and Case Law for Canada	http://www.canlii.ca