

# Case Note

## After the Bell: School Authorities' duty of care to pupils after school hours

Amongst the burgeoning personal injury jurisprudence can be found numerous superior court decisions which address the issue of the scope of the legal obligations owed by school authorities to pupils and the nature of liability for personal injury.<sup>1</sup> Many of these cases derive from factual matrices in which pupils have been injured in the school grounds before classes commence. The decision in *Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman* (unreported New South Wales Court of Appeal 9 August 1996) proceeds from a different factual basis. In *Koffman*, the New South Wales Court of Appeal was asked to consider on appeal from the decision by Studdert J, the nature and extent of the legal obligation of a primary school to a pupil after classes had finished for the day. The reasoning in the decision provides guidance to educators concerning the factors influencing a finding in favour of the existence of a duty of care to pupils after school hours and the considerations which affect the standard of care required. In particular, the majority judgment highlights the importance of adequate supervising by school authorities to the determination of these legal issues, and the relevance of the level of knowledge imputed to school authorities of the risks to harm to primary aged pupils after the school day has ended. Further this, decision concerning the obligations of school authorities to pupils whilst they are travelling homeward complements the pattern of earlier negligence cases involving injuries to students sustained before the school day commences, in particular *Geyer v Downs* (1977) 138 CLR 91; *Commonwealth v Introvigne* (1982) 150 CLR 258; and *Reynolds v Haines* (SC(NSW) Common Law Division, Master McLaughlin, 27 October 1993, unreported).

### Facts

The litigation arose as the result of an injury to the eye of a twelve year old pupil of the Assumption Primary School in Bathurst. The injury to William Koffman's eye was sustained whilst he was waiting for a school bus after school. The bus stop at which he waited was located at the Bathurst High school, which is about 400 m from the primary school which he attended. His regular practice was to walk with his sister to the bus stop and wait for the school bus home. This activity was accomplished without supervision from any primary school teachers. On the day the

injury occurred he climbed a tree at the bus stop and his eye was damaged when it was struck by a stick which had been thrown by high school students who were also waiting at the bus stop. The pupil commenced an action against the school authority (and the high school authority) in the tort of negligence alleging the breach of a duty of care owed to him which resulted in the injury to his eye.

Several key findings of the judge at first instance, Studdert J, had a significant impact upon the decision of the Court on appeal. His findings also supported a finding of negligence against the high school authority: that the high school failed to exercise adequate supervision of its own students whilst they were waiting for buses and that adequate supervision by the high school authority would have prevented the injury to the appellant. In respect of the primary school, Studdert J held that it did owe a duty of care to its pupils whilst they were outside the school grounds waiting for buses and that the failure to supervise students after school at bus stops amounted to a breach of duty and was a cause of William Koffman's eye injury. The judge at first instance recognised that the primary school teachers' belief that no primary school pupils waited for the bus outside the high school was mistaken, but held that in the circumstances of the case, the primary school 'was aware or ought to have been aware' of the means of transport adopted by pupils and the risks associated therewith.

Studdert J gave consideration to the contents of a booklet issued by the primary school to parents, which sought to limit the school's duty of supervision to the period between 9:00 am and 3:10 pm. He held that this action was not determinative of the existence of a duty of care. One of the reasons for this determination was that the booklet 'was silent about the extent of any supervision afforded to pupils departing from school'. Three further factors which clearly influenced the decision of the judge at first instance were the admission by the Deputy Principal of the Primary School that had she been informed of the transport arrangements of the pupils, 'some arrangements would have [been] made', the fact that a teacher from the primary school habitually travelled on the same bus as the injured pupil, was present at the bus stop on the day the accident occurred and took no supervisory role, and the 'propensity for mischief' and consequent potential for injury inherent in the situation where primary and secondary students waited together at a bus stop after school.

## **Legal Issues**

The Catholic school authority appealed from the decision of Studdert J. The case throughout was framed and argued entirely in terms of the tort of negligence. The legal issues for determination by the Court of Appeal derived from the grounds of appeal. Firstly, it was argued on behalf of the primary school authority that it owed no duty of care to the respondent at the time and place in which the injury occurred. It was argued in the alternative that the pupil's injury had not been caused by the breach of duty of the school authority. The duty, standard of care and causation issues were considered at length in both the majority and dissenting judgments.

In determining whether the judge at first instance had erred in relation to the standard of care required of the school authority to the pupil waiting at the bus stop, the Court of Appeal relied in particular on the well known principles enunciated in *Wyong Shire Council v Shirt* (1980) 146 CLR 40, 47-48 per Mason J:

In deciding whether there has been a breach of duty of care the tribunal of fact must first ask itself whether a reasonable man in the defendant's position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff. If the answer be in the affirmative, it is then for the tribunal of fact to determine what a reasonable man would do by way of response to the risk. The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and degree of probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have. It is only when these matters are balanced out that the tribunal of fact can confidently assert what is the standard of response to be ascribed to the reasonable man placed in the defendant's position.<sup>2</sup>

The ultimate difference in result in the majority and minority opinions in *Koffman* derived from the process of balancing elucidated in *Shirt*, and the application of diverging standards concerning the obligations to be undertaken by the school authority.

### **Majority Judgment**

The majority judgment in the Court of Appeal which resolved to dismiss the appeal was written by Sheller JA, with whom Priestley JA agreed. The judgment proceeds from an extensive exposition of the facts and the findings of Studdert J at first instance. The arguments by counsel for the school authority were rejected by the majority, in particular the line of argument that the legal issue concerning the existence of a duty of care could be resolved entirely by reference to the precise chronological hours during which school classes were held at the Assumption Primary School. On this issue the reasoning accords with earlier authority dealing with injuries to pupils occurring before classes commence. However, the majority also indicates that the duty of care may extend beyond the geographical limits of the school grounds. Sheller JA, in holding that a duty of care was owed by the school authority to the pupil, stated that

... the duty the school authority owes a pupil depends on the relationship of proximity which itself derives from the fact that the injured person is a pupil ... In my opinion the extent and nature of the duty of the teacher to the pupil is dictated by the particular circumstances. *I do not think its extent is necessarily*

*measured or limited by the circumstance that the final bell for the day has rung and the pupil has walked out the school gate.* (Emphasis added)

In applying the principles in *Wyong Shirt Council v Shirt* (1980) 146 CLR 40 to determine the issue of whether the school authority had breached its duty of care to William Koffman on the day he was injured, particular attention was paid to the appropriate response to the risk of harm to a pupil in the position of the respondent. In the decision of the majority it was crucial that the school accepted that it was appropriate to supervise the children waiting for the bus outside the school itself. Sheller JA stated the Deputy Principal ‘accepted that, if she had been informed that children had to go to the high school to catch the bus, some arrangement would have been made’. The second factor which was pertinent to the majority’s decision on the breach of duty issue was its ruling in terms of the *Shirt* formula that ‘the expense, difficulty and inconvenience involved in taking alleviating action’ was minimal. In particular, the majority held that the matter of supervision of students at the bus stop was ‘easy’ because one of the primary school teachers was already catching the bus and could be directed by the school authority to provide supervision to and at the bus stop. The matter of the school authority’s potentially conflicting responsibilities to other students was left largely unexplored in the majority judgment. The issue of causation was held to be straightforward. Sheller JA held that if the teacher catching the bus had been supervising William Koffman at the bus stop, he had ‘no doubt’ that the accident would not have occurred. In dismissing the appeal he concluded that he had ‘not [been] persuaded that Studdert J erred in his conclusion that in the present case the appellant was in breach of its duty of care to Mr Koffman when he was injured’.

### **Dissenting Judgment**

The dissenting judgment of Mahoney P is characterised by great clarity of thought and expression. Its attention to balancing the legal indicia of liability against the factual background is meticulous. In reaching a decision to uphold the appeal by the school authority Mahoney P follows a divergent approach to the issues of the existence and breach of a duty of care. In an erudite exposition of the development of the legal principles in the tort of negligence in which he refers both to leading English and Australian authorities and scholarly publications, he characterises the particular decision making role of the court in personal injury litigation:

I think it has long been recognised that in reality the requirement that there be a duty of care as a condition precedent to liability is in effect a value judgment as to the factual situations in which carelessly caused loss should or should not be recoverable ... in the end, the determination is made by a normative decision of the court.

Thus he proceeds to frame the legal issues for determination in the case not so much in what has become the classical terminology of ‘duty of care’, but in terms of *relevant obligations*

owed by the school authority to the pupil: ‘... the present case turns, not upon whether a duty of care existed, but what (if anything) the school was, at the relevant time obliged to do for Mr Koffman’s safety and whether it did it’. One of the relevant obligations identified by Mahoney P as owed by a school to a pupil is the obligation ‘to take appropriate care for his safety’. The relevant legal issue then became the judgment of what that obligation requires the school to do in the circumstances of the case.

Mahoney P recognised the difficulty associated with the resolution of this legal issue and sought guidance, as the majority judges had done, from the formula of Mason J in *Wyong Shire Council v Shirt* (1990) 146 CLR 40. In applying the principles, however, he placed more emphasis on the issue of the conflicting responsibilities of the school authority and came to a different conclusion concerning the response of the reasonable defendant to the risk of harm to a pupil. In particular he reasons that notwithstanding that dangers to pupils can be foreseen in a particular situation, there is a limit to what the law imposes upon a school. It was significant for Mahoney P that the care of pupils is not the sole responsibility of the school to which they are sent by those who have the care and custody of them. In determining what the appropriate response of the school should have been to the risk of physical injury to William Koffman whilst he waited at the bus stop after school, he concluded that the law did not require staff supervision of pupils at the bus stop. However, he indicated that the obligation to take appropriate care for a pupil’s safety which was owed by the school might require a school to warn children of the risks and counsel students concerning appropriate behaviour at bus stops; to warn parents of the dangers incident to the child’s travelling arrangements; and to suggest that parents arrange supervision, from the school, the bus stop or otherwise. Thus the nature of the obligation as perceived by Mahoney P on the facts in the case was the obligation to warn of the risk in order that others (and especially parents) might act to alleviate the risk of harm. He held that the plaintiff’s injury was beyond the limit recognised by law as compensable.

In relation to the alternative ground of appeal, Mahoney P refused to accept that the notice of general situation of transport arrangements which had been imputed by the judge at first instance to the school authority by reason of the admission of the deputy principal, was a proper basis for concluding that supervision by a teacher until they boarded the bus was required for the small group of children which included the injured pupil. More weight was given in the dissenting judgment to contents of the booklet issued to parents, which was characterised as a clear attempt to limit the liability of the school authority and as a response to risk of injury to pupils outside the school’s scheduled hours. Once again in the dissenting judgment the message is that staff supervision of pupils is not the inevitable or the sole appropriate response to the identification of a foreseeable risk of personal injury.

## **Conclusion**

There are several lessons which might be drawn from the *Koffman* decision by school authorities and educators. In particular the decision of the majority reinforces the importance of staff supervision of pupils as critical to the resolution of the issue of how a reasonable school authority would respond to the foreseeable risk of physical injury to primary school pupils. Both the majority and dissenting opinions highlight the need for precision in the words used to advise parents of risks to pupils and to alert parents and guardians to the limits of responsibilities which school authorities will undertake before and after school. It is clear enough in the dissenting judgment that Mahoney P was prepared to take a much broader approach to the issue of what was an appropriate response to a risk of harm. In particular he was prepared in the circumstances of the *Koffman* case to limit the obligation of the school authority to the obligation to advise, warn and counsel the relevant parties. In part this reasoning was a response to the spectre of the potential supervision responsibilities which the school authority might in consequence owe to other 'sub groups' within the student body during the homeward journey where risks of physical injury were reasonably foreseeable.

## References

Ramsay, I. & Shorten, A. (1996) *Education and the Law*. Sydney: Butterworths.

## Endnotes

- <sup>1</sup> For a recent treatment of these cases, see Ramsay and Shorten (1996), chapter 6.
- <sup>2</sup> The litigation in the *Shirt* case arose out of a water skiing accident in the Tuggerah Lakes, which were managed by the local government authority. The legal issues in the case included the nature and extent of the duty of care owed by the Council to users of the lake and whether the duty had been discharged in the circumstances by the erection of signs adjacent to a channel dredged in the lake.