

Vicarious Liability and Negligence

Implications for Educational Leaders

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As an educational leader, it is easy to get caught up in the demands of the school day. Given the high standard of care expected of Principals and Vice-Principals, and the increasing complexity of the work, it becomes even more important that educators appreciate and understand the differences between vicarious liability and negligence, especially when considering the legal risks and ethical responsibilities of educational leaders employed by boards of education in British Columbia.

What Are Vicarious Liability and Negligence?

I first learned about the premise of vicarious liability during an employment law course. It was not something I had heard much about through regular professional development opportunities and, over time, I came to realize the importance of legal responsibilities for employers and employees in the education sector.

The Supreme Court of Canada has stated that “vicarious liability imputes liability to the employer... of a tortfeasor, not on the basis of the fault of the employer... , but on the ground that as the person responsible for the activity or enterprise in question, the employer... should be held responsible for loss to third parties that result from the activity or enterprise.”

In simple terms, **vicarious liability** means that an employer may be held responsible for the actions or omissions of its employees, particularly those actions that occur while employees are doing their job. This means that a board of education could be held legally liable if an employee does something wrong while carrying out their duties, where there is a significant connection between the conduct authorized by the employer and the wrong.

Negligence focuses on whether a board of education failed to meet the standard of care owed to students. In British Columbia, the courts have found boards of education negligent where a teacher, acting within the scope of their duties, acted in a way which was below the standard expected of a reasonable and prudent educator, for example, by failing to provide proper instruction, supervision, or adhere to safety protocols. Negligence has been found where inadequate oversight or failure to follow established procedures contributed to the risk of harm.

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How does This Apply to Principals and Vice-Principals?

Under the School Act, boards of education in British Columbia are corporate bodies responsible for managing schools. Teachers are employees of the board, and the board may be held vicariously liable for the conduct of a teacher (or Principal or Vice-Principal) acting in the course of their employment where there is a sufficient connection between the employee’s duties and the harm that has been caused by the teacher. Principals and Vice-Principals are appointed by a board of education within this structure and are assigned operational leadership over their schools.

The School Act speaks to several issues of liability. First, it provides immunity for trustees, officers, and employees for acts or omissions in the performance of their duties, except where there is dishonesty, gross negligence, or malicious or willful misconduct. Second, that immunity does not relieve a board of education from vicarious liability for torts committed by trustees, officers, employees, students, or volunteers. Third, the School Act authorizes indemnification and, importantly, directs that boards must not seek indemnity from trustees, officers, or employees except in cases of gross negligence or where an officer or employee willfully contravened employment terms or orders. Boards of education must also maintain insurance.

Every Principal and Vice-Principal has a duty of care to ensure the safety and well-being of all students while they are in the school or under the school’s supervision. The Principal and Vice-Principal of a school must take all reasonable steps to prevent harm and ensure the learning environment is safe, that the school code of conduct is followed, and that all employees they may direct are appropriately supervised. A Principal or Vice-Principal is also responsible for identifying and addressing risks in the school setting.

In British Columbia, negligence claims in school settings are typically brought against the board of education, not individual administrators. While Principals and Vice-Principals have operational duties (supervision, policy enforcement, safety oversight), courts usually analyze any shortfall in those duties as part of the board of education’s duty of care to students. As a result,

claims are commonly framed against the board, with administrators' decisions forming the factual basis of a claim rather than separate personal liability.

Consequences of Harm to a Student

Vicarious liability could arise for boards of education in regard to an employee's wrongful conduct only where there is a strong connection between the duties the board assigned and the harm that has occurred. The wrongful conduct could be grooming, sexual exploitation, neglect, physical abuse, or emotional abuse. However, not all harm will support a claim of vicarious liability.

While inadequate supervision or institutional inaction may support a claim of direct negligence, this will not necessarily establish vicarious liability. The courts in British Columbia require more than a mere opportunity for misconduct, and have emphasized that vicarious liability will not arise unless the board of education's enterprise, including the authority, responsibilities, or power it grants to an employee, materially increased the risk of the wrong.

In particular, situations that could potentially trigger a legal claim include:

- Failure to ensure a safe learning environment.
- Failure to report misconduct under statutory duty to report provisions, such as those found in the School Act and the Teachers Act, which require reporting to the Commissioner for Teacher Regulation.
- Negligence in supervision, where the administrator neglects their obligation to monitor, guide, and intervene appropriately in staff conduct.

In these kinds of situations, the employer may be held legally responsible if they have failed to supervise, investigate, or enforce training or proper application of policies and guidelines to prevent misconduct towards or harm to children. This shows how important it is for educational leaders to not only react to issues as they arise, but to take proactive steps to ensure policies and



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procedures are followed, and to ensure that all staff are regularly trained on how to deal with potential risks to students before they arise.

Personal Accountability for Educational Leaders

School administrators are required to take reasonable steps to prevent foreseeable harm and to avoid breaching the duty of care. This legal duty also aligns with the position of trust that educators hold within their communities. All certificate holders are expected to care for students and act in their best interest while – first and foremost – safeguarding the physical, emotional, and mental well-being of their students. Although Principals and Vice-Principals are not likely to be vicariously liable for the misconduct of their staff, they may face professional accountability for their mismanagement, failure to act, or failure to report misconduct. When a school administrator fails to act in the face of misconduct or wrongdoing of a person they are required to oversee, their inaction may also be investigated and acted upon by the Teacher Regulation Branch (the “TRB”). Their board of education may also be vicariously liable for the Principal’s or Vice-Principal’s negligence. In such cases, even if the school administrator did not commit the harmful act themselves, their failure to act, report, or intervene may potentially trigger personal and/or organizational liability.

Administrator Mismanagement

Vicarious liability will ordinarily not apply to Principals or Vice-Principals, and will usually apply to a board of education. When school administrators fail to properly supervise, train, or manage employees, or when they ignore or permit breaches of district policy or reasonable safety expectations, this does not make them vicariously liable. Instead, these exposures may create negligence exposure for the board of education, which owes a duty of care that includes adequate supervision and safety oversight.

It is important to note that Principals or Vice-Principals are afforded liability coverage for acts performed within the scope of their employment through the Schools Protection Program (SPP), the provincial insurer for school districts, administered and delivered by the Risk Management Branch of the Ministry of Finance,

in conjunction with the Ministry of Education and Child Care. It is equally important to note that where there is gross negligence, SPP coverage may not be available.

Career Consequences for Mismanagement

Serious lapses in judgment or failure to act in accordance with professional expectations may have broad employment implications, including termination of the employment contract. If the Principal’s or Vice-Principal’s inaction is found to constitute misconduct, it may also result in a report to the TRB. This underscores the importance of maintaining high standards of professional practice, not only to support safe and ethical school environments, but also to protect one’s professional status and career opportunities within the education system. As leaders in education, it is not enough to react to issues as they arise. Rather, it is important to be diligent in putting supervision practices and training in place, as it demonstrates that you know and follow key board of education and Ministry policies and procedures to mitigate risk, and foster safe and respectful learning environments. The key is to be proactive and have a mindset of preventative risk management at all times.

Insights Through Case Studies

Three Canadian case studies follow, and each highlight aspects of vicarious liability and negligence.

Case Overview: Bain v. Calgary Board of Education (1993, Alberta QB)

In *Bain v. Calgary Board of Education*, a school district was found vicariously liable for a student accident that occurred during an outdoor education field trip near Vernon, BC. The court found that the decision to allow students to separate and ascend a steep area without appropriate adult oversight constituted a breach of the school board’s duty of care.

Legal Proceedings

In this case, the court found the Calgary Board of Education (CBE) liable for negligence after Kevin Bain, a Grade 11 student with known cognitive and physical limitations, suffered a traumatic brain injury after falling

from a rocky slope during the portion of the excursion where the teacher allowed a small unsupervised group of students to proceed ahead of the main group.

The central issue in the case was whether the school board and its staff met the legal standard of a “reasonable and prudent parent”. The court held that they did not. Given the known risks of the terrain and the student’s limitations, the lack of direct supervision and failure to enforce safety protocols amounted to negligence.

The court held that the CBE was directly liable, as the teacher was acting within the scope of their employment and the board was responsible for ensuring that reasonable precautions were taken to protect students on school-sanctioned trips. The decision emphasizes that school boards must foresee potential hazards and take proactive steps to prevent harm when organizing off-site educational activities.

This case is an important precedent in Canadian tort law concerning student safety, duty of care, and liability during extracurricular activities.

Case Overview: Ratt v. Tournier (2014, Saskatchewan QB)

“The plaintiff student engaged in text messaging in class in violation of the school policy which prohibited cell phone use during school hours. When the teacher asked him to hand the phone over, he turned his back to her, attempting to shield the phone from her view while continuing to text. After being asked again, he reluctantly handed the cell phone to the teacher. The teacher delivered the cell phone to Tournier, the Vice-Principal. Tournier asked the plaintiff about the incident and received an inconclusive response.

Tournier checked the cell phone, and saw the words, “we stole a car,” on the first screen, being the subject line of the text. He opened the text, and only that text, but there was no further comment. The plaintiff stated, and Tournier accepted, that he was not personally involved in the theft. Tournier contacted the police. The police officer asked the plaintiff to send a text message to Lloyd, the individual who sent the original text to him, to elicit more information about the crime, and Lloyd replied as to the location of the car. The police officer took the plaintiff

with him to find the car, and then brought him back to school (a deviation from police policy). The plaintiff sued Tournier and the Saskatchewan Rivers School Division for breach of privacy or negligence.

The court dismissed the action. In circumstances where the student was using the cell phone and texting messages in clear violation of school policy, the student could anticipate a reduced expectation of privacy.

Where the student’s behaviour was extremely out of the norm, as in this case, and the Vice-Principal established a reasonable basis for his concern for violence or threats to personal safety of a student or the general student body, an individual student’s right to privacy was lessened in order to allow the teachers and school administration to exercise their responsibilities for providing a safe environment and maintaining order and discipline in the school. The plaintiff’s claims failed.”

Privacy and Duty of Care

The circumstances of this case raise questions about whether the Vice-Principal’s review of the text messages constituted an unreasonable search or breach of privacy. School administrators will usually have authority to act when student safety is compromised. However, the necessity of accessing private messages may result in heightened scrutiny. In cases such as this, it is relevant to consider whether or not there was a duty of care owed, and if reasonable steps to protect students and the broader school community from potential harm were factors in the decision-making process.

Ultimately, the court concluded that no breach of privacy occurred under either the Education Act or The Privacy Act, finding that while students have some expectation of privacy in their cell phones, that expectation is diminished when they are in violation of clearly established school rules and/or codes of conduct. The Vice-Principal’s limited view of the message and phone contents was justified by legitimate safety concerns, and it was deemed that the school’s no-cell-phone policy was applied reasonably. Overall, the decision to protect student safety outweighed the privacy interests outlined in this case. This case highlights the significance of claims that can be made against school boards when administrators engage in activities that appear to go beyond the scope of their duties.

**Case Overview: H.N. v. School District No. 61
(Greater Victoria)
(2025, British Columbia Court of Appeal)**

A Grade 6 student was introduced to a volunteer tutor who met with him once a week at school. Early signs of grooming began during those school-based sessions, but the sexual abuse occurred later at the tutor's home during visits that were not arranged, authorized, or supervised by the school. The Court confirmed that these home visits were created entirely by the tutor, the child, and the child's parents, and not through any school-directed relationship.

The Court held that vicarious liability did not apply because the school's tutorial arrangements created only a limited opportunity, not a meaningful enhancement of risk. Vicarious liability requires a strong connection between the duties the employer assigns and the

wrongful act. The Court emphasized that the tutor's authorized role was narrow and did not involve parental-like authority, intimate caregiving, or control that could significantly increase the risk of abuse. Simply providing the tutor with an opportunity to interact with a student during short, supervised sessions was not enough to meet the strong-connection test required by the jurisprudence of the Supreme Court of Canada, discussed above.

This ruling is important for school administrators because it confirms that vicarious liability is not automatic, even when something as serious as grooming begins in a school setting. Liability arises only when a school's enterprise and expectations materially contribute to the harm. If an employee or volunteer exploits a situation in ways that fall outside of their authorized duties, the school board may not be responsible under vicarious liability. For administrators and school leaders, this

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Ignorance of policy is not a defence.”**



decision highlights the importance of clearly defining roles and boundaries, because courts will assess whether the employer truly created or intensified the risk that allowed the wrongful conduct to occur.

Takeaways from Case Studies

Negligence occurs when a school authority fails to meet the standard of care expected of a prudent and reasonable parent, resulting in foreseeable harm to a student.

Vicarious liability, by contrast, may result in a board of education being responsible for the negligent acts of its employees committed in the course of their duties, even when the board of education itself did not directly cause the harm.

Even when personal exposure to damages is remote, Principals and Vice-Principals may be named in claims or complaints of professional misconduct. The indemnification and insurance provisions may ensure defense and cost coverage of civil claims, absent gross negligence or other applicable exceptions, but being named still entails time, stress, and reputational harm. That reality makes documentation, early escalation of resourcing constraints, and consistent adherence to policy important risk controls.

These case studies highlight the critical need for proactive planning, strict adherence to safety protocols, and institutional accountability. Key takeaways include:

- **Risk Assessment:** Carefully assess high-risk activities. Factors such as weather, student ability, supervision levels, and emergency preparedness should be carefully reviewed.
- **Policy Compliance:** Enforce clearly written policies and ensure all staff understand and apply them consistently. Ignorance of a policy will not be a defence.
- **Supervision and Resources:** Ensure adequate staffing, training, and resources are appropriate to the activity's risk level.
- **Professional Judgment:** Understand boundaries within your duties and act in alignment with policies and administrative procedures. Seek

guidance when uncertain and escalate concerns to a supervisor when needed.

- **Balance Safety and Rights:** Weigh rights of students (such as privacy rights) against obligations to maintain a safe, orderly learning environment. Make informed decisions, while acting responsibly when concerns arise. Always seek support and guidance from your supervisor when unsure.

For Principals and Vice-Principals, this emphasizes the importance of strong oversight, informed decision-making, and continual review of risk management practices to protect students from harm.

Going Further: Additional Actions Educational Leaders Can Take

By taking some additional proactive measures, educational leaders can place themselves in the best possible position to mitigate risks related to vicarious liability, including:

1. **Know your Legal Rights and Responsibilities:** Familiarize yourself with any indemnity clauses in your contract of employment, and refer to sections 94 and 95 of the School Act, R.S.B.C. 1996, c. 412, for more information on indemnity and liability.
2. **Ongoing Training:** Keep yourself and staff up to date on developments in educational law, including administrative procedures relating to safety and discrimination/harassment. Seek advice when needed.
3. **Review Insurance Coverage:** Make sure you understand what is covered under the Schools Protection Program (SPP), and what is not covered, and seek advice if needed.
4. **Cultivate a Culture of Accountability:** Ensure clear expectations for staff and regularly review practices to ensure they align with educational standards.

By enlisting proactive measures to educate yourself, educational leaders can significantly reduce the likelihood of claims against themselves or their employers.

Seeking Support

BCPVPA offers professional guidance for all active members, and can help with employment-related questions. For information, please contact mssinfo@bcvpva.bc.ca, and ask to speak to a Director, Member Support Services.

Disclaimer

The BCPVPA strives to provide helpful and timely information, guidance and support to its members. The information in this article is general information, is not legal advice, and is not intended to be a substitute for independent legal advice specifically tailored to a member's circumstances.

Definitions

Duty of Care as defined by *Thomson Reuters Practical Law Canada*

"A duty recognized by law to take reasonable care to avoid conduct that poses an unreasonable risk of harm to others."

Negligence as defined by *Black's Law Dictionary*

"The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights; the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances."

Standard of Care (*In Tort Law*) as defined by *Black's Law Dictionary*

"In the law of negligence, the degree of care that a reasonable person should exercise."

Tort as defined by *Black's Law Dictionary*

"A civil wrong, other than breach of contract, for which a remedy may be obtained, usu[ally] in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another."

Vicarious Liability as defined by *Black's Law Dictionary*

"Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties.."

Sources Reviewed

1. British Columbia Schools Protection Program (SPP)

A self-insured program, that is delivered by the Risk Management Brand of the Ministry of Finance in conjunction with the Ministry of Education and Child Care. Their mandate "is to provide professional risk management services for all BC public Schools (K-12)".

2. Manual of School Law

The BC School Act is a provincial statute governing primary and secondary education in B.C. The Act outlines important roles, rights, and responsibilities for parents, students, board of education, and the education system.

3. Professional Standards for BC Educators (Commissioner for Teacher Regulation)

The Professional Standards, formerly the Standards for Education, Competence and Professional Conduct for Educators in BC, set out the conduct and competence requirements for an individual to be issued and maintain a BC teaching certificate of qualification.

4. Teacher Regulation Branch

The BC Teacher Regulation branch is a body that regulates the actions and omissions of certificate holders in British Columbia.

Bibliography

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Bain v. Calgary Board of Education, 1993 CanLII 7301 (AB KB)

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