

Insurance Insights

Keeping an eye out: taking reasonable precautions to prevent a risk of harm materialising

[*Sidhoum v Minister for Education* \[2022\] WADC 35](#)

Key takeaways

- **A school's non-delegable duty of care extends to prevent students from engaging in risky behaviour in circumstances where the students should know better.**
- **The context of a situation is important when considering reasonable action to be taken in response to a risk.**

Background

Mr Sidhoum (**plaintiff**) was a 16-year-old student at Shenton College. On 26 February 2013, the plaintiff and his classmates were misbehaving and throwing computer monitor stands at each other.

The teacher confiscated the stands by putting them on her desk, then left the classroom to speak to a student she had sent outside. At this stage, one of the students who remained inside the classroom, went to the teachers desk and threw one of the stands at the plaintiff. The point on the stand penetrated the plaintiff's left eye causing significant injury with lasting consequences.

The defendant is the Minister of Education. The defendant accepted that there was a non-delegable duty of a school, or school authority, to take reasonable care for the safety of students. While performance of the duty to ensure that reasonable steps are taken may be delegated to teachers and others, delegating the performance does not discharge the school's duty. It was also accepted where the school, or school authority, delegates the performance of the duty to a teacher, it is liable if the teacher fails to take reasonable care to prevent harm to the student.

Decision

Sadly, before the matter got to trial the teacher involved in the incident passed away. This meant that a key aspect of the case related to the admissibility of evidence.

The defendant sought to tender a review document. Ultimately, after lengthy debate, they were not granted leave to do so.

The Court was required to consider if 10 minutes had passed between the monitor stands being confiscated and the teacher leaving the classroom and whether the class had settled down by the time the teacher left the room. The Court found the class had not settled.

The Court did find that the risk of injury was obvious and no duty was owed to the plaintiff to warn him of that obvious risk.

However, it was a considered foreseeable risk that when left unsupervised and with access to the computer stands, students would resume throwing them and cause injury.

The Court took the view the teacher should not have left the computer stands in a visible and accessible location while the students were unsupervised, immediately after the students had been throwing the computer stands at one another. She should not have left the room, when she knew that the students had been throwing the stands at one another and when she knew that they could retrieve the stands. A reasonable person in the teacher's position would either have taken the stands out of harm's way before leaving the room or simply not left the room.

It was considered reasonably foreseeable to a person in the plaintiff's position that resuming the prohibited activity might cause injury and a 35% deduction for contributory negligence was appropriate.

The plaintiff found in favour of the plaintiff, awarding him \$362,712.50 after a 35% deduction for contributory negligence (total award of \$558,019.14). Notably, the full awarded amount included \$225,000 for general damages and \$200,000 for future loss of earning capacity.

Implications

A duty of care extends to not only warning of risks but also taking precautions against those risks, as the Court found that the plaintiff was knowingly engaging in risky activity when there is no duty to warn of that obvious risk.

For schools, teachers and their insurers, it is imperative to note that although students, particularly 16-year-old boys do not need to be kept under supervision, the non-delegable duty of care owed to students extends to take steps to prevent them from engaging in risky behaviour.

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