

## Schools, negligence, and liability for psychiatric injury: the Doulis case

On September 5 2014, the Victorian Supreme Court ordered the State of Victoria to pay damages in excess of \$1.2 million to a former teacher at Werribee Secondary College, after he sued in negligence for the school's failure to prevent what became a debilitating psychiatric injury.<sup>1</sup>

### Facts

Peter Doulis was employed as a teacher at the college from 1998.

The college underwent curriculum reform in 1999 whereby a system of "homogenous classes" was developed. The system grouped students according to their achievement levels, ranging from "foundation" to "accelerated". The college believed that the homogenous class system was beneficial, given that it recorded dramatic increases in its ATAR and NAPLAN scores since implementation.

Mr Doulis was assigned a load of multiple "foundation" and "low" classes in his first years. Initially, he was enthusiastically involved in the teaching of these classes. His allotment of these classes became one of the highest of any of the around 100 teachers in the college. Teachers were not provided with any special training in how to handle these classes.

Over time, the heavy load of "foundation" and "low" classes became too much. Mr Doulis described the students in those classes as "feral". On 8 September 2003, after an incident involving a student making a throat-slitting gesture in Mr Doulis' direction, Mr Doulis met with the school's principal and two of the assistant principals. Mr Doulis was distraught and broke down. He conveyed to his superiors that he was not coping and could no longer teach "foundation" or "low" classes. Mr Doulis claimed that one of the assistant principals questioned his teaching abilities in the meeting, which he found surprising as that had never before been brought up as an issue. Mr Doulis left the meeting feeling disappointed and distressed.

On 11 September 2003, Mr Doulis provided a letter to the college which referenced the high levels of stress Mr Doulis was experiencing, a request for a more equitable spread of "foundation" and "low" classes, problems in the classes and the lack of support provided to teachers, expressed a wish for Mr Doulis' load of non-classroom school activities to be lightened, and identified Mr Doulis' education goals.

The following year Mr Doulis was allocated more "foundation" and "low" classes, despite his requests. This was very distressing to Mr Doulis.

Mr Doulis left the school in May 2004 after a fire prompted an asbestos scare, which Mr Doulis described as "the last straw".

Mr Doulis saw a number of psychologists and psychiatrists after leaving the college. He was diagnosed with a chronic depressive illness. He unsuccessfully attempted to return to work at two other high schools since May 2004. He has attempted suicide several times. He has not worked since 2007.

Mr Doulis sued the State of Victoria in negligence. He claimed that the combination of the nature and number of the "foundation" and "low" classes he was required to teach, the visible signs that he was stressed about these classes, and the formal complaints made in the meeting and the letter of September 2003 were enough to impose on the state a duty to prevent or reduce the risk of recognisable psychiatric injury.

<sup>1</sup> *Doulis v State of Victoria* [2014] VSC 95

### Court findings

The court held that the state owed a duty of care to Mr Doulis and that it breached its duty.

Although there was some doubt about the credibility of Mr Doulis as a witness, and whether some of the other allegations he made in the course of the trial (mostly in relation to workplace bullying) were true or relevant, the court considered the evidence and concluded that a reasonable person in the position of the principal or assistant principals would have recognised Mr Doulis was at risk of psychiatric injury after the September meeting and letter.

The court accepted the testimony of a psychiatric expert that if Mr Doulis' condition had been addressed in September 2003 his condition may not have worsened to such a drastic extent. With the knowledge available to them, the principal and assistant principals should have worked to modify Mr Doulis' duties, by lessening or removing his "foundation" and "low" classes load, and by providing him with support and the opportunity to take time off to recover.

It was noted that the College had given Mr Doulis a few days off around September 2003 as he was having trouble sleeping. The court found that this was not enough to discharge the College's duty of care, as it was not combined with the timetabling changes or other support.

The court considered the scope of the duty of care owed by a school to its employees in relation to psychiatric injuries. It confirmed that the following factors are relevant in determining the nature of the duty:

- the contract of employment;
- the nature and extent of the employee's work;
- any signs from the employee concerned (for example, in the form of express warnings or the implicit warning that may come from frequent or prolonged absences that are uncharacteristic); and
- an assumption that the employee taking on the employment is capable of doing the job.

The central question was whether, in all the circumstances, the risk of a teacher sustaining a recognisable psychiatric illness was reasonably foreseeable, in the sense that the risk was not far-fetched or fanciful. In this case, the court said that the risk was foreseeable and was not far-fetched or fanciful.

Mr Doulis was awarded a significant sum of damages, including:

- Pain and suffering – damages for loss of enjoyment of life - \$300,000
- Economic loss – damages for lost earnings and superannuation – agreed to be \$446,433
- Future economic loss – \$550,000 was awarded, which was the total sum of future economic loss damages minus a 35% discount due to the "vicissitudes of life".

### Where Werribee Secondary College went wrong

The school's undoing in this case was its failure to adequately respond to the concerns raised by Mr Doulis in his meeting with the principal and assistant principals in September 2003, and a follow up letter Mr Doulis sent after the meeting.

The judgment makes it clear that had the school taken more proactive steps to assist Mr Doulis at that time, by lessening his class load and giving him time to properly recover from his obvious stress and anxiety, then it may have avoided, or at least mitigated, the damages that are now payable.

### Lessons for Schools

This decision stresses the need for schools to take active steps if they are given notice of, or can otherwise foresee, potential for an employee to suffer a psychiatric injury.

Schools need to consider flexibility if a situation arises where an employee is suffering from a mental illness. Extra leave, the implementation of further training, or other changes to the working environment might need to be considered, depending on the circumstances.

If a school grants an employee teacher sick leave because they are concerned about the effects of mental illness, then that employee should be monitored carefully, and assisted upon returning to work.

The case also underlines the need to take the mental health of employees seriously, and that care needs to be taken to avoid triggers for both psychiatric and physical injury in the workplace.

For more information about this case or any school related issues, please contact:

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