

The true cost of bullying

by Nathan Croot

Jacques Barzun, the French-born American historian, once said “In teaching you cannot see the fruit of a day's work. It is invisible and remains so, maybe for twenty years”. Whether it is the pride arising from a student's success or the dismay of being blamed for his or her problems, the fruit of a day's work for a teacher may not materialise until long after the student has left school. Perhaps it is unfair to make teachers responsible for their students' problems – problems which may develop more than a decade after they graduate. However, that is the situation now facing teachers, schools and governments.

In the recent case of *Gregory v State of New South Wales*, the Supreme Court of NSW found the State had breached its duty of care to David Gregory and as a result he had developed a psychiatric condition and suffered economic and non-economic loss. Although the State was the Defendant, it was the actions, or rather inaction, of a school and its teachers that should be examined.

This was not a matter of a minor incident. In fact, the Court awarded Gregory almost half a million dollars in damages 13 years after he left Farrer Memorial Agricultural High School. So what happened at Farrer between 1991 and 1996 that led the Court to award a former student \$468,736 in damages in 2009?

The short answer is that Gregory was bullied.

The Bullying

Perhaps the most alarming aspect of the case is that some of the bullying was done under the SACK system. This was a system of discipline that operated at the school and was based on a hierarchy requiring younger students to obey directions of older students. It also gave older students authority to inflict punishment for disobedience. The three most common punishments were being hit on the hands with a ruler, being hit on the backside with a broom and being forced to “stand guard” outside the Year 12 dormitory holding up a broom and rubbish bin lid.

A school must never allow, let alone implement, a system of discipline that allows students, or for that matter staff, to inflict physical punishment on others. Any system where it is possible for students to discipline others must be stringently supervised.

During the years when Gregory attended the school there were numerous incidents where he was publicly embarrassed or excluded by other students. He was also the victim of name calling, which questioned his sexuality, ridiculed his political views and demeaned his physical stature and development, often using derogatory and coarse language. He was also physically bullied. The most serious incidents involved a hockey stick being used to “hook” him between his legs hitting his genitals. The persistent bullying, in addition to the physical pain, left him feeling unwanted, embarrassed and humiliated.

Words on Paper

Gregory complained to staff about what happened to him but he felt either ignored or that nothing would change as a result of his complaints. While he was in Year 10, the school published a “Fair Discipline Code”, which stated that bullying was considered unacceptable behaviour at the school. Although this may demonstrate the school was trying to prevent bullying, Gregory dismissed the document as nothing more than words on paper. His personal experience was that staff had never done anything to address his complaints about being bullied.

A well drafted policy may look good and say the right things but unless it is supported by action it is rather meaningless. More has to be done to prevent bullying than calling it unacceptable in a document. It must not be accepted in practice.

Breach of the Duty of Care

There is no doubt Gregory was the victim of bullying. The State conceded it had breached its duty of care to Gregory in:

- failing to exercise due and proper care in relation to his general welfare;
- failing to have a system of supervision in place to prevent mistreatment;
- failing to exercise adequate control;
- allowing the SACK system to operate; and
- failing to install procedures to deal with mistreatment by other students.

Despite this, it may still be reasonable to think that \$468,736 is a considerable amount of money for something that happened in high school. Even the most empathetic among us may flinch at the thought of schools or governments having to pay almost half a million dollars to everyone who was ever called a name or embarrassed at school. If this was the case, many of us would be lining up to receive our piece of the pie.

The view that Gregory was handed a pile of cash for being picked on, however, is not accurate and the floodgates have not been opened for free handouts. The reason for the damages which were awarded is not that the bullying took place, although there would have been no case without it, but rather the effect it had on Gregory, during high school and afterwards.

Damages in Civil Claims

It may not always seem to be the case but courts do not award damages based on how “bad” the actions of a person were. Damages, as the name suggests, are based on the damage or harm suffered. To illustrate this, if a person is in a car accident caused by a drunk, speeding driver but doesn’t suffer an injury, and the car is relatively unharmed, then he or she is unlikely to be awarded much in the way of damages in a civil claim. On the other hand, if a car accident caused by a minor error of judgement of a sober driver travelling well within the speed limit results in extensive injuries and a very

expensive car being written off, then a much greater amount of damages will be awarded.

The person who causes the accident is not liable for how “bad” the behaviour was, but for how much damage was caused. This is different from criminal matters where the drunk, speeding driver would certainly be facing far more serious charges than the “safe” driver.

Causation

Damages will only be awarded if the harm is caused by the breach of a duty of care. Although it is quite simple to prove physical injuries were caused by a car accident, it might be more difficult to prove an injury to a driver’s mental health was caused by the accident. For example, if a driver became anxious or depressed a week later, could it be caused by the accident? And if so, how can it be proved?

This was the issue facing the Court. There was no doubt that Gregory was bullied and the State admitted that it had breached its duty of care. The issue was determining the damage he suffered and whether it was caused by the breach.

Harm to Mental Health

Like a car accident, the physical harm of bullying is not difficult to prove. However, if the harm is psychiatric or psychological, then causation is far more difficult to prove. Gregory suffers from agoraphobia and depression, two conditions which began during high school. These conditions led to nightmares, obsessive washing with hospital grade disinfectants and cutting himself with razor blades. He also gave evidence of entrenched feelings of fear, isolation, hopelessness and sadness while at school. These are fairly serious issues and certainly had a negative impact on Gregory. The issue facing him, and any other person making a similar claim, is proving that the psychiatric condition was caused by the bullying.

It is relatively simple to prove the causation of psychiatric condition suffered during the same period as the bullying. The greater proximity in time between the harm and the breach, the easier it is to prove the two are related. The more time which elapses, the more difficult it is to prove causation. Therefore, the more contentious issue in this case was the psychiatric condition Gregory suffered years after he had left the school and the bullying had stopped.

After leaving school, the severity of Gregory’s condition decreased and there was an improvement in his mental health. But during two periods of time after high school his condition became more severe. Each of these periods came after an event which reminded him of his experiences during high school.

The Trigger Events

The first event happened about five years after he graduated when he first saw his high school yearbook. In the yearbook several students listed him under their dislikes and made other derogatory comments about him. There were also changes to his profile which included listing his nicknames as “Lucifer, Pagan, Satan”. He gave

evidence that he felt humiliated and embarrassed and almost immediately began having nightmares and feeling “things were dirty again”, referring to his agoraphobia.

The second event occurred when he was working at a school’s outdoor education campus. While he was there, a boy suffered a panic attack and Gregory talked with him and calmed him down. After this event, he began to think about how easy it would have been for a teacher to talk and support him when he was at school. He then began to be repulsed by his own Year 9 text books, which he had in his room. His obsessive cleaning returned, which had been diagnosed as Obsessive Compulsive Disorder. He also began behaving in somewhat erratic and unconventional ways. Ultimately, his behaviour contributed to him being dismissed from the school.

Determining Causation

The question was whether the relapse of his psychiatric condition was caused by the bullying during high school. For causation to be proved, a breach of a duty of care does not need to be the only cause but it has to “materially contribute” to the damage, which means that it is not enough for the breach to be merely one of many factors. A Court will look at the facts and decide whether the link is strong enough.

Complicating this process are other unrelated circumstances that affect the way a person acts or makes decisions. For example, Gregory argued his condition prevented him from taking a teaching job in the city, which affected his earning capacity. However, it was also possible his personal preference, based on his personality, was to live and work outside major cities. These decisions can be a very complex and subjective.

Although it may seem Gregory was awarded a substantial amount of damages, he did not prove his entire psychiatric condition, and the loss he suffered as a result, was due to the bullying. In fact the damages awarded could have been far higher had Gregory been able to prove a greater causal relationship.

Learning from Gregory’s example

Teachers and schools must work to prevent similar situations in the future. There are two points that teachers and schools should remember. The first is bullying can have a serious impact on children. There is no way to predict the consequences of bullying. For some it might be an uncomfortable experience that is easily dismissed and for others it might be the cause of a serious psychiatric condition. Earlier in this article we listed various ways the Department breached its duty of care. Lawyers and judges may reduce bullying to such terms but teachers cannot. If teachers know of bullying at their school, then they have a responsibility to try to stop it. If a child complains of bullying, then teachers have a responsibility to take the complaint seriously. And teachers must in no way do anything which suggests bullying behaviour is condoned or acceptable. One of the most troubling aspects of this case was that Gregory believed his teachers did not care that he was being bullied.

The second point is it is not enough just to talk. The school had a policy clearly stating bullying was unacceptable but Gregory was still victimised and his continued complaints brought no response from staff. There were even instances where he was bullied in front of teachers and nothing was done. A policy by itself will not prevent

bullying. Teachers and schools must work to enforce the policy, prevent bullying, console the victim and discipline the bully as appropriate.

This case gives us an example of what can happen when students are allowed to bully and harass others at school. Not only may it make a student miserable at school but it can affect the rest of that student's life. Teachers are in a unique position to influence the future of dozens of children each year. The actual effects may not be known for many years to come, but with all the problems that can come with bullying, it is vital that it is not only considered unacceptable but that it is also not accepted.

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Judgment:

Gregory v State of New South Wales [2009] NSWSC 559

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