

BRIEFING NOTE

Court Dismisses Vicarious Liability Claims against School District in Child Sexual Abuse Case Involving Volunteer Tutor

In *H.N. v School District No. 61 Greater Victoria*, 2024 BCSC 128, the British Columbia Supreme Court assessed damages for the child sexual abuse suffered by the plaintiff, H.N. H.N., now 35 years old, brought a claim for the child sexual abuse perpetrated against him by Gary Redgate, a volunteer tutor at H.N.'s elementary school in 1999-2000 when he was 11 years old and in Grade 6. Redgate died in 2023 before the trial commenced and his Estate did not contest its liability for Redgate's actions.

H.N. claimed against the School District in vicarious liability, for Redgate's abuse and for the alleged negligence and breach of fiduciary duty of Haisell. Haisell was H.N.'s grade six teacher who arranged his tutorials between H.N. and Redgate.

The Court accepted H.N.'s evidence about the material issues in the case. The action for damages against Redgate's estate succeeded **however**, the School District successfully defend the clam that it was vicariously liable and the Court held the School District **was not** vicariously liable for Redgate's abuse or Haisell's conduct. Essentially, this was because the location of the abuse was outside School activities but was during visits at Redgate's home, which were arranged outside of the School.

The Court in *H.N. v School District No. 61 Greater Victoria* reaffirmed the analysis set out by the SCC in *Jacobi* and explicitly rejects the findings of a newer case, *Williamson*, that found vicarious liability of a school board for the conduct of a high school music teacher and band leader.

Vicarious liability for Gary Redgate

The Court found the abuse to be insufficiently connected to any risk created by the School or its representatives. The Court found Redgate's abuse occurred, not during the tutorials organized by the school but at Redgate's home in visits arranged between Redgate, H.N., and H.N.'s family. He also found that it was the visits to Redgate's home that seriously increased the risk of sexual abuse that materialized.

From late 1999, or early 2000, until the end of the school year in June 2000, H.N. and Redgate met once a week during English class to work on H.N.'s novel. They went to an empty classroom for around 40 minutes to review drafts, with Redgate assisting with editing, grammar, and structure. Beginning in March 2000, H.N.

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began to also go to Redgate's house. These visits were arranged between Redgate, H.N., and his parents. From March 2000 until March 2005, there was evidence of approximately 50 visits. Only two of the visits - in March and April 2000 - occurred while H.N. was still in grade six and attending the tutorials at school with Redgate. The rest occurred after grade six when the tutorials had ended. In cross-examination, H.N. agreed that the physical abuse at Redgate's house began sometime after his grade six year was over.

The Court found that *Jacobi v. Griffiths* [1999] 2 S.C.R. 570 addressed circumstances similar enough to this case to be a governing precedent, establishing that vicarious liability **was not made out** against the School District **because there was insufficient connection between any risk created by the School's tutorials and Redgate's abuse of H.N.**

The Court followed the approach articulated by the Supreme Court of Canada in *Jacobi*, finding the progression from the School's program to the sexual assaults "was a chain with multiple links", **none of which could be characterized as inevitable or natural**. The arm-touching and single hug that happened in the School were found to be "a minor and incidental part" of Redgate's sexual predation outside of school facilitates and hours. *A.B. v. C.D.* 2011 BCSC 775 was referred to as a similar application of *Jacobi*.

Vicarious liability for William Haisell

Haisell was H.N.'s grade six teacher who arranged his tutorials with Redgate. The judge found that Mr. Haisell did not breach his duty of care or his fiduciary duty to H.N. at any point, including when selecting, organizing and overseeing Redgate as a tutor for H.N. Haisell was found to have arranged the tutorials for H.N. at the School in good faith, with H.N.'s best interests in mind, and in consultation with H.N.'s parents. He and other teachers also knew of Redgate over many years as a good teacher with a long, unblemished career. Neither Haisell nor anyone else at the School had reason to suspect that Redgate posed any threat to H.N.

H.N. had begun writing a novel and his mother and Haisell began discussions about their mutual impression that the grade six classes were not challenging enough for H.N. Given his academic strength, they both thought a tutor to help with the book was a good opportunity for H.N. to benefit from an enriched learning environment. The School did not have the resources for a tutor and Haisell and H.N.'s mother thought of Redgate as a good candidate to be the tutor.

The Court rejected H.N.'s argument that Haisell breached his duties by allowing the tutorials to be one-on-one in an empty classroom. The Court found that this was not a breach of the duty of care for the same reason that it was not a breach to select Redgate as a tutor in the first place - namely his long, unblemished teaching career and Haisell having known him as a solid teacher and friend for many years. Haisell's evidence was also accepted that he checked in on the two of them a few times and that he never saw anything untoward. Furthermore, there was no evidence indicating that a retired teacher, like Redgate, meeting a grade six student in a classroom for one-on-one tutorials during school hours was against school

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policy or was generally avoided by reasonable administrators or teachers in British Columbia. Nor did the evidence suggest that, at the time, a reasonable teacher in British Columbia would have further investigated such an arrangement in these circumstances.

What does this all mean?

The Court reaffirmed the analysis of *Jacobi* and explicitly rejected the analysis of a newer case, *Williamson*.

Here, the Court rejected vicarious liability for Redgate because of the findings that it was the arrangements for H.N. to visit Mr. Redgate's house for academic and social activities that gave rise to the serious risks that ultimately materialized; and H.N.'s parents did not rely on the school when establishing the out-of-school activities.

Second, the Court rejected vicarious liability for Haisell. No breach in his duty of care or fiduciary duty as a teacher to H.N. was found and the judge found nothing in the evidence that should have suggested reason for Haisell to have been concerned about the arrangement between H.N. and Mr. Redgate. All indications to Haisell at the time were of the arrangement being legitimate, safe, and giving rise to no cause for concern. There was no evidence that Haisell departed in any way from being a reasonably careful and prudent teacher who had H.N.'s best interests top of mind.

This case emphasizes the importance of reviewing the circumstances to ascertain if there is a sufficient connection between any risk created by a school and the abuse committed by an employee. Here, the Court paid attention to the location where the actual abuse occurred, the involvement of the students' parents, and the classroom interactions between the perpetrator and the student. When assessing vicarious liability for Haisell, the Court focused on the good faith of the teacher and the positive reputation of the volunteer tutor in the teaching community.

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