

Preparing for court – however reluctantly

Dennis Sleigh advises teachers to seek legal representation when faced with an appearance in court

Most people think they are familiar with the law and the courts – after all, we’ve all watched our share of courtroom battles on television – but how much do we really know? Talk to friends who have been to court – even as observers – and they will often insist that reality is very different and that court is a good place to avoid. This is reason enough to avoid those situations that might bring you in front of a magistrate.

If, however, you do find yourself in court – an all-too-common occurrence in these litigious days – you really need to recognise that you must take the situation seriously. Whether you are there as a defendant, a plaintiff, or as a witness, it is essential that you prepare well for the encounter.

Courts can certainly be intimidating places, and they can also be confusing. Let’s explore three salient points to reduce the confusion.

As graduates, we are aware of many legal terms, but this awareness is not expert knowledge; it makes sense, then, to call for expert help if we have to appear in court. Further, it makes sense to seek information if we don’t understand something and finally we should abide by the advice given by our legal adviser. Let’s consider all three points.

In general, we have two types of lawyers: solicitors and barristers. The title signals their different functions. In some States (NSW, Victoria, Queensland) a lawyer may be a solicitor or a barrister; in other states and in the two Territories, the roles often combine with people describing themselves as Barrister and Solicitor. When the roles are divided, you will usually seek the services of a solicitor, who, if appropriate, might advise that you need the specialist skills of a barrister. Because this will involve higher costs, make sure this suggestion really is necessary.

Not every court appearance requires the presence of a lawyer (in some legal situations, you cannot actually have a lawyer) but because of the complexity of the law, it makes sense that you be represented by someone who knows what they are doing. The old adage, *the man who acts as his own lawyer has a fool for a client*, is probably more accurate today than ever before. However, if you do represent yourself, the comments that follow are important.

Like every profession, the law is a complex field and its complexity is increasing. As a layman with an interest in legal matters, I have learned



that there is no substitute for expert advice. Just as I would expect you not to perform your own appendectomy, or extract your own wisdom teeth, I suggest you don’t try to solve your own legal problems. On the other hand, to help you get the maximum benefit from consulting a lawyer, I suggest you develop a general awareness of the way the law works. That means learning about the differences between civil and criminal law; the roles of defendant, plaintiff and witness; the hierarchy of courts; and the outcomes one can expect from any legal action. Because these matters often differ, at least a little, from one jurisdiction (State or Territory) to the next, it is probably best to become familiar with your own region. The internet is a useful course here, and a Google search for relevant terms (on Australian sites) might be useful.

The best idea is to get your solicitor to explain it to you and also explain the implications of various concepts. While I suggest using the internet to help get your head around some legal terms, I certainly do not suggest you try to solve your own legal problems by going on the web. We are education experts; lawyers are legal experts – so follow the advice of management guru Tom Peters and ‘stick to your knitting’.

As teachers, we may have experienced the situation where parents seek our advice on how to deal with a particular problem and then seem to ignore everything we tell them. Their failure to heed our counsel might be legitimate (we might have misunderstood important points of the issues raised) but it is also annoying. Let that be a lesson to us. If we seek advice from a lawyer, we should

usually follow it. After all, they are the experts.

Sometimes we might not want to hear their advice – they might tell us, for example, that we have no chance of winning a case – but beware of writing off the advice just because it is unpleasant.

A circuit breaker

In a previous article (ET August 2008 Term 3), I lamented the litigious nature of our society and suggested we needed a circuit breaker to stop the current spate of legal actions against teachers and schools. This circuit breaker will need at least three features – an increased awareness by society of the difference between rights and responsibilities; a clear recognition that greed is a poor lubricant for our daily lives (a lesson being learned the hard way on international money markets today) and an increased awareness of the purpose and nature of the legal system.

As educators, we must spread the word that the law exists to keep us safe, not to make us rich at someone else’s expense. If we can master the basics of the legal system and then share this knowledge with those we teach, our society will be better for it.



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