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School Principals and Education Law: What do they know, what do they need to know?

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ABSTRACT: Principals now work in complex and challenging environments where uncertain change are the hallmarks of their roles and responsibilities. As such, the knowledge and capability demands on principals have expanded, including those related to education law. While these matters attracted some research interest a number of years ago, there has been little recent work in the area of principals and education law. This article reports on an exploratory study into the legal knowledge held by Tasmanian government school principals, particularly concerning non-sexual physical contact between teachers and students. The research was undertaken using a small-scale, mixed-methods research design, which required principals to respond to various legal scenarios. Three key findings emerged from the study. First, principals used two different levels of working knowledge about education law – one related to legal problems, and the other to legally-related routine activities. Second, on the particular topic of physical contact, some knowledge held by principals was not legally accurate. Third, for major legal issues, participants indicated that they acquired access to information from legal experts. The situation for routine legal matters was less clear, although in-service training and practical experience were identified as potential sources of knowledge. Participants recognised the importance of a sound knowledge of education law, especially for dealing with security and safety issues and preferred to access further information through in-service training. Notably, the findings of the study are broadly consistent with those from earlier Australian and international research, suggesting that much remains to be done in the area of principals’ education law knowledge.

Preamble

The genesis of this study was a playground conversation between the first author and a primary school principal who advised her that physical contact between teachers and students was banned because ‘touching a child was against the law’. The principal’s misunderstanding of the law on non-sexual physical contact between teachers and students raised questions about the impact of the law on the work of school principals, the legal issues they dealt with, and their understandings about legal matters. As a qualified lawyer, the author’s interest in examining principals’ education law knowledge was triggered.

Introduction and Background

There is little doubt that in recent years the roles and responsibilities of school leaders have become more complex and challenging (Cranston & Ehrich, 2000). Indeed, the recently released National Professional Standard for Principals in Australia which ‘sets out what principals are expected to know, understand and do’ noted that principals needed to ‘embrace uncertain, complex and challenging contexts and work with others to seek creative and innovative solutions’ (Ministerial Council for Education, Early Childhood Development and Youth Affairs, 2011, p. 2). However, what is noticeably absent in the writing and research about ‘the new’ principalship, is a focus on the need for consideration of the legal aspects evident in the role. Indeed, the review of the literature (p. 6). While there is no expectation that principals need to be legal ‘experts’, matters of education law certainly arise on a regular basis in their work. At one level, this is acknowledged by the national professional association for school leaders in Australia, the Australian Council for Educational Leaders, whose quarterly publication (The Australian Educational Leader) contains a regular feature on ‘Schools and the Law’, contributed by Dr Keith Tronc for some decades. This series of articles is one of the few national sources of legal knowledge available for principals. While some principals, as noted in the study reported here, have had some (mainly ad hoc) support in developing their education law knowledge, in an increasingly litigious world, the lack of attention by school systems and schools to the legal knowledge (or access to legal knowledge) required by principals is potentially problematic. The findings of this study certainly support this contention.

Despite the potential importance for principals to have an accurate understanding of school law (termed education law in Australia) the available research to date suggests that such knowledge held by principals is generally poor. Notably, most of the available research has been undertaken in the United States and Canada. While there have been two major studies in Australia into the education law knowledge of school principals, both these studies were conducted some years ago. The first of these by Stewart (1996) examined the legal knowledge held by government school principals in Queensland, the sources of such knowledge and its implications for legal risk management in schools. Building on Stewart’s work, a later study by McCann (2006) examined the education law understandings of Catholic school principals in Queensland. Both Stewart and...
McCann concluded that the school principals they studied had low education law knowledge. It might well be expected that the complexities of the roles and responsibilities of principals have compounded, certainly since the time of Stewart’s study a decade and a half ago, suggesting the education law knowledge of principals warrants a contemporary investigation.

The study reported here, located in Tasmanian government schools’, begins to address this lack of recent research in the area by exploring aspects of the legal knowledge held by Tasmanian government school principals, particularly concerning non-sexual physical contact between teachers and students. It is framed around the following research questions:

- What working knowledge of education law is held by principals?
- From which sources have principals obtained their knowledge of education law?
- What implications does education law have for the professional practice of principals?

Notwithstanding its small-scale exploratory nature, this is the first study on the topic of education law to be undertaken in Tasmania. While it is potentially problematic to extrapolate from the study beyond the Tasmanian schooling context, it is likely that the findings do have wider currency. The study highlights legal issues which impact on the work of principals, thereby raising awareness of the extent of school leaders’ involvement in legal matters, emphasises the increasing legalisation of the school environment, and identifies the support which principals require to manage their schools in accordance with the law.

Before examining some of the available research in this area, it is important to note that the legalisation of the Australian school environment represents the sum of several factors, emphasising the changing scope and complexity of education law for principals. Firstly, the scope of education law is increasing. For many years the main legal problem facing Australian schools was the physical safety of students (Stewart, 1998). Now a raft of legal requirements impact on students and teachers, and suggested that legally literate principals may be less intimidated by unfounded threats of lawsuits. They also recommended that principals should become conscious, informed and effective school law teachers of their staffs. To that end, they advised:

School principals do not need to attend law school to practice preventative law. Instead, every principal needs a comprehensive pre-service school law course, regular professional development legal updates, user-friendly resources, and access to the district’s legal counsel. (Militello, Schimmel & Eberwein, 2009, p. 42)

A number of issues raised in the study conducted by Militello, Schimmel and Eberwein were also noted in Canadian schools by Findlay (2007) a few years earlier. From her study of 193 elementary and high school principals, she concluded that most lacked knowledge of education law. Findlay also noted that principals might not be the best source of legal information for their staff as the majority felt an unwarranted level of confidence in their own legal knowledge, which was often based upon intuition and past experience.

The legalisation of education requires school principals not only to have enhanced knowledge of education law (or at least access to such knowledge).

Research from Canada and the USA is examined first, as it is here that much of the recent relevant work in the area has been done. The limited, albeit highly relevant, Australian research is then examined to provide the conceptual framework for this exploratory study.

USA and Canadian research

Early research on the impact of educational legalisation on principals was undertaken in the United States in the late 1970s, with the topic taken up in Canadian research after the enactment of the Charter of Rights and Freedoms 1982 (see for example, Findlay, 2007; Kalafatis, 1999; Militello, Schimmel & Eberwein, 2009). The Kalafatis study (1999) was a major research project in the United States concerning the education law knowledge of school principals. The study adopted a narrow topical focus on the principals’ legal knowledge through a survey of 91 public school principals. Almost 65% of the respondents, representing elementary, middle school and high school principals, failed to meet the level of minimum competency in terms of their legal knowledge. Kalafatis (1999) concluded that more training and ongoing support are necessary to help principals become aware of the legal requirements in their schools. Kalafatis (1999) also noted in Canadian schools by Findlay (2007) a few years earlier. From her study of 193 elementary and high school principals, she concluded that most lacked knowledge of education law. Findlay also noted that principals might not be the best source of legal information for their staff as the majority felt an unwarranted level of confidence in their own legal knowledge, which was often based upon intuition and past experience.

3 Tasmania is one of 6 states and 2 territories in Australia. The Tasmanian government education system where this research was conducted comprises approximately 200 schools and colleges across the state.
The North American studies demonstrated two important areas of movement. Firstly, there has been an enlargement of focus in terms of the target population to include supervisors, teachers, pre-service teachers, and parents, all having had some experience with education law. This widening of the investigative aperture is a matter which might be usefully considered further along the research chain from the present study. The other movement was a narrowing of interest from assessing education law knowledge across the board to an examination of particular issues.

While it is acknowledged that there are obvious differences between the systems of education law which operate in the studies noted above in Canada, the USA and Australia, there are clearly many similarities across the contexts, including the shared English common law tradition, the development of education law as a separate field of legal endeavour, and 'the seemingly inexorable press to standardise education through federalisation' (Mawdsley & Cumming, 2008, p. 16). As such, it is likely that the findings noted would not be inconsistent, at least in a general sense, with the situation regarding Australian school leaders. This is now examined by considering the available literature in relation to Australian principals.

**Australian research**

As noted earlier, seminal work in the area was undertaken by Stewart (1996) with government school principals in Queensland a decade and a half ago. In brief, and consistent with the Canadian and USA findings, his research revealed that principals generally lacked knowledge of the law that was critical in their work as school leaders. Of interest is the fact that, based on this work and later research, it is evident that much of the existing knowledge of education law held by some principals is either poor or incorrect; and,

suggestions to address the law knowledge needs of principals (offered by principals) include pre-service learning, on-going professional learning, access to outside expert legal officers.

These key themes framed the three research questions for this exploratory study, viz:

- What working knowledge of education law is held by principals?
- From which sources have principals obtained their knowledge of education law?
- What implications does education law have for the professional practice of principals?

The research methodology to examine these questions is now discussed.

**Methodology**

The research employed a mixed-method design involving a questionnaire which included education law scenarios, and follow-up principal interviews. Stobbins (2001), Onwuegbuzie and Johnson (2006) and Teddlie and Tashakkori (2009) support the use of a mixed-method approach for exploratory research of this type, where the aim is both to examine broader issues across a larger group of research participants (e.g. by way of the questionnaire) as well as interrogate a smaller group of research participants (e.g. through interviews). The previous research chain from the present study. The other movement was a narrowing of interest from assessing education law knowledge across the board to an examination of particular issues.

The second phase of data collection involved semi-structured in-depth interviews. To obtain the consent of each participant, a questionnaire comprising a mix of closed items with predetermined response categories, and open-ended question items that sought narrative responses. It was drawn in part on the survey used by McCann (2006). The questionnaire contained four different short scenarios which were based on legislation, case law and legal principles. Each scenario was accompanied by only one statement which was correctly correct, along with four incorrect statements. Participants were requested to nominate the statement they believed to be the correct statement of the law. Copies of the questionnaire were distributed to the principals of 36 northern Tasmanian government primary schools by post. Participants were requested to respond by returning the completed survey form within two weeks. At the end of that time a reminder e-mail was sent to each principal who had not responded. The researcher then contacted the remaining principals by telephone. Fifteen completed questionnaires were received.

The three research questions for this exploratory study, viz:

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- What implications does education law have for the professional practice of principals?
interview phase. Although the principals who participated in the interview phase of the study were self-selected, their demographic profiles reflected substantially diverse characteristics in terms of age and years of experience, as well as school size and setting.

The closed-item responses to the questionnaire were analysed using descriptive statistics and graphical computer tools. The qualitative analysis (open-ended questionnaire responses as well as the transcribed interviews) drew on suggestions offered by O'Leary (2010) and Kumar (2011) and involved sifting the raw data to build up exhaustive and overlapping categories of understanding based on an iterative exploration of words, concepts, and linguistic devices, which were then examined for patterns and interconnectivities, and built into themes. Main themes were assigned codes or keywords and responses collected under those themes.

Results and Discussion

This section discusses the main findings from the study.

For the purposes of this study, working knowledge held by a school principal was considered to encompass both study and training, knowledge gained through personal action in the field of endeavour and in the local context, and pragmatic problem-solving abilities (Apte, 2003). Participants in both phases of the study drew a distinction between different levels of education law knowledge which principals apply to their professional practice: that is, between knowledge used to resolve non-routine legal problems which arise from time to time, and knowledge needed for routine, legally-related matters.

Although the research undertaken by Stewart (1996) identified different aspects of professional knowledge needed by principals, including the specialist knowledge of education law, it did not explicitly recognise the distinction highlighted by the participants in this study between education law knowledge used to resolve non-routine legal problems and such knowledge used for routine, legally-related activities. Canadian studies have, however, recognised a similar distinction, when they referred urgent and non-urgent requirements for legal advice.

FIGURE 1: THE TWO LEVELS CONSTITUTING A PRINCIPAL'S WORKING KNOWLEDGE OF EDUCATION LAW

This list is largely consistent with the findings of Stewart (1996) and McCann (2006) regarding the involvement of Queensland principals with legislation and common law. The identified areas of legal involvement are also consistent with studies undertaken in the United States and Canada.
might not be of a very high standard. This emerges as an issue warranting further investigation. Knowledge, it may be considered an indication that the working knowledge of some principals could not be generalised across all areas of their education law knowledge. The legal knowledge of this legal topic was not of a high standard. Although the accuracy of the answers to the item based on case law in relation to non-sexual physical contact between teachers and students, to this end, the questionnaire contained four different short scenarios which were based on legislation, case law and legal principles. Each scenario was accompanied by five statements about the legal aspects of the scenario: one of these statements was legally correct with the other four incorrect. Participants were asked to nominate the statement they believed to be a correct statement of the law. Taking the scenarios as a group, only one principal out of the 15 provided all correct responses. The median and mode scores were 2 answers correct, with a mean average of 1.5. The percentages of participants who answered correctly are summarised in Figure 2.

**FIGURE 2: CORRECT ANSWERS BY PRINCIPALS REGARDING EDUCATION LAW**

<table>
<thead>
<tr>
<th>Numbered participants</th>
<th>4 correct</th>
<th>3 correct</th>
<th>2 correct</th>
<th>1 correct</th>
<th>0 correct</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>2</td>
</tr>
</tbody>
</table>

When the scenarios are examined individually, the questions based on legislation were answered correctly by about half of the participants, in contrast to the item based on case law which was answered correctly by only 13%. Overall, the data indicated that the participants' knowledge of this legal topic was not of a high standard. Although the accuracy of the participants' knowledge on this topic cannot be generalised across all areas of their education law knowledge, it may be considered an indication that the working knowledge of some principals might not be of a very high standard. This emerges as an issue warranting further investigation.

Studies of the education law knowledge of school principals in Queensland (McCann, 2006; Stewart, 1996) assessed the accuracy of principals' education law knowledge across a wide range of areas, in contrast to the topical focus adopted in this research. Nevertheless, those studies produced similar results (i.e. low rates of correct responses) to those found in this research. The results echo research by Eberwein (2008) in the United States who similarly found that school principals had less than what was considered to be acceptable knowledge of the law.

The responses provided by participants concerning their education law knowledge disclosed a noticeable difference between the levels of correct answers based on legislation and on case law, indicating that these different forms of legal information/knowledge may be subject to some differential levels of access by the participants. Potentially, principals' access to legal information may have been subject to an informal, unconscious filter which may have screened out case law decisions, which are often lengthy, written for lawyers rather than lay people, and difficult to locate. Such a filter may also have facilitated access to legislation which is written in 'plain English', is easily accessible through government websites, and often has its key provisions summarised and interpreted.

Differences in knowledge among principals concerning legislation and case law were also reported by Stewart (1996) and McCann (2006). Stewart considered that legislation imposed statutory obligations on the principals which necessitated their familiarity with the provisions. McCann (2006) also observed the legislation versus case law distinction but did not offer an explanation for the discrepancy. This is an aspect which warrants further investigation as it is of interest to the principals interviewed, the sources of education law information to resolve legal problems were primarily the LSU or an experienced colleague. To illustrate, one principal noted:

1. Easiest with our (Departmental) legal team ... whenever there is an issue, and we liaise among colleagues. As a principal group we draw on the experiences of others fairly frequently.

**Non-routine legal matters**

For *non-routine* matters, principals identified two groupings of sources for education law information. One grouping involved legal experts, such as the Department of Education Legal Services Unit (LSU), Departmental Guidelines, Departmental regional staff, experienced colleagues and the Australian Education Union legal advisor. Sources in this grouping were consulted by the majority of participants. The second grouping, which tended to be accessed by fewer participants, comprised various sources, including professional development programs, the local Principals' Association and education law journals.

Importantly, for the principals interviewed, the sources of education law information to resolve legal problems were primarily the LSU or an experienced colleague. To illustrate, one principal noted:

1. Easy with our (Departmental) legal team ... whenever there is an issue, and we liaise among colleagues. As a principal group we draw on the experiences of others fairly frequently.

**Routine legally-related matters**

As noted earlier, expert advice was usually sought for the resolution of *non-routine* legal problems. However, the situation concerning the sources of principals' legal knowledge required
for routine legally-related matters is less clear. All that can be drawn from the questionnaire data is that the sources of education law knowledge were somewhat wide-ranging and variable. For example, one principal in interview indicated that his legal knowledge for routine legally-related activities rested on resources provided in his formal induction into the principalship, whilst another principal commented that he relied upon his long experience in dealing with such matters. These matters are summarised graphically in Figure 3.

FIGURE 3: SOURCES OF PRINCIPALS’ WORKING KNOWLEDGE OF EDUCATION LAW

The previous Australian studies (McCann, 2006; Stewart, 1996) did not distinguish between principals’ legal knowledge at the non-routine and routine levels; their findings were much like those on the right-hand side of the diagram in Figure 3. There is, however, some degree of contrast between the findings of this study and those of the earlier research which may highlight important differences between the research settings. In particular, the participants in this study reported information on the more significant legal problems, and were very positive about the timely advice they received. By contrast, Stewart’s (1996) survey of Queensland school principals noted that: ‘It was felt by some of the respondents that the Department had abandoned them and that the Law and Litigation Unit took too long to respond to problems which needed immediate resolution’ (p. 163).

Some specific sources of legal advice and information are now discussed briefly.

Overall, the findings from this study suggested that tertiary study has had little, if any, impact on principals’ knowledge of education law. It was not specifically identified as a source of such knowledge, and none of the participants had undertaken postgraduate qualifications in education law. A similar finding was made by Stewart (1996). A somewhat different conclusion was drawn by McCann (2006) who reported that almost half the participants in his study had undertaken education law-related university courses, and a third of participants rated such courses as useful sources of education law knowledge. This situation may be explained by linkages between the Catholic school system and the Australian Catholic University which, at the time, offered study opportunities in education law. Nevertheless, it should be noted that the participants in McCann’s research did not demonstrate any higher standard of education law knowledge than did the participants in the present study, suggesting that tertiary study, of itself, might not be the answer to improving the education law knowledge of school principals.

The Canadian and USA experiences of principals’ study of education law showed levels of tertiary study which are higher again. However, research from those contexts (for example, Braband, 2003; Findlay, 2007; Kalafatis, 1999; Leschied, Dickinson & Lewis, 2000; Militello, 2003) indicated that they had received some in-service training on education law issues, and 40% viewed in-service training as a useful source of legal information. McCann’s (2006) research revealed a considerably higher level of attendance at in-service training (60%) than in the present study or in Stewart’s (1996) work (39%), with in-service courses being ranked as moderately useful in providing education law information. These variations may reflect differences in context, the different time periods or systemic priorities and policies applying to the schools involved. All of the Canadian, USA and Australian studies advocate the use of in-service training as part of a coordinated system to inform principals about education law and keep their knowledge up-to-date.

Interviewees here highlighted three reasons as to why school principals needed a sound working knowledge of education law. These reasons reflect themes within the wider education law literature (see for example, Schimmel & Militello, 2007; Wagner, 2007). The first involved risk: participants suggested that a principal needs a sound working knowledge of education law so that he or she could determine, and thus minimise, the legal risks of certain activities. One participant’s comments illustrate:

The biggest risk I think a principal can take is not to take any risk. To not allow kids to experience new things, new challenges, you’re taking their childhood away from them. You’ve got to make sure they do it in a nice safe framework, as much as you can.

Participants also suggested that principals required a sound knowledge of education law to clarify misconceptions. They pointed out that people connected with their schools, for example,
teachers, ancillary staff, pre-service teachers, families of students, often held inaccurate views of their own and others' legal rights and responsibilities, and considered it the principal's responsibility to ensure that accurate information is disseminated and misconceptions clarified.

The third reason involved the principal protecting the interests of the school against inaccurate legal understandings held by external stakeholders. In response to a question about legal problems which arise during the school day, one principal noted:

You run the risk of having people push you around, in a way, when they're claiming legal rights but the legal rights don't exist.

As indicated earlier, participants reported feeling well-served by the expert legal advisors they consulted about non-routine legal problems, particularly the Departmental LSU. It is likely to be in relation to the other level of principals' legal endeavour — the routine, legally-related activities where the principal relies upon his or her own legal knowledge and experience — that difficulties might arise from inaccuracies in that knowledge. This study revealed that, in relation to the specific issue of physical contact between teachers and students, the legal knowledge held by many of the participants was not accurate. To be noted is that if a principal's understanding of the law is incorrect, then that principal might unknowingly contravene the legal rights of students or staff, subject the education system to the risk of litigation, and compromise students' learning experiences unnecessarily. In light of these findings, it appears that any intervention to improve the education law knowledge of principals should be directed toward this level of working knowledge concerning routine, legally-related matters. This approach is supported by Findlay's (2007) findings.

With regard to the second question — From which sources do principals gain their knowledge of education law? — the study identified two levels of working knowledge of education law. The first involved non-routine legal problems which arise from time to time. The second related to routine, legally-related matters which occur frequently and regularly in a school. This distinction between levels was not expressly acknowledged in the earlier literature. Overall, the findings produced an extensive list of areas of law with which participants had to deal, supporting the notion that schools are subject to a process of legalisation, a situation acknowledged in other education systems. When participants' knowledge of a particular aspect of education law was examined, the responses indicated that this tended to be limited. These results were consistent with the findings of other research conducted in Australia and elsewhere. It was also apparent from the findings, that whilst participants may have reached a level of working knowledge concerning routine, legally-related matters, their personal knowledge to competently deal with such a long list of topics as noted earlier. Rather the argument is for principals to have a sound basic knowledge of the main areas of law they deal with, together with access to relevant legal information as they require it. The participants' responses suggested that the greatest priority for improving legal knowledge would be in areas impacting on the safety of students and staff, such as negligence, occupational health and safety, and child welfare. This form of measured approach is consistent with the views expressed by Stewart and McCann (1999) about the importance of legal risk prevention, as safety issues involve substantial legal risk.

When asked their preferred means to access education law information, the majority of participants in this study nominated targeted in-service training courses which could build on the basic orientation information elements provided to newly appointed principals, and up-date the experiential knowledge held by principals of longer standing. The in-service model was also proposed by Stewart (1996) and has also received support in Canada and the USA (Davies, 2009; Wagner, 2007).

Summary Discussion and Conclusions

While this was a small-scale exploratory study, it does identify a number of important issues for school leaders. It has highlighted aspects of the education law arrangements in Tasmania which the participants in the study considered to be working well, such as the advice and support provided by the Department of Education Legal Services Unit. These issues have wider implications as access to an expert source of legal knowledge seems critical to the work of principals today. The study has also identified issues which warrant more comprehensive investigation, such as the accuracy of the routine-level legal knowledge held by principals, which, according to the findings in this study, is an area of potential concern.

With regard to the question — What knowledge of education law is held by principals? — the study identified two levels of working knowledge of education law. The first involved non-routine legal problems which arise from time to time. The second related to routine, legally-related matters which occur frequently and regularly in a school. This distinction between levels was not expressly acknowledged in the earlier literature. Overall, the findings produced an extensive list of areas of law with which participants had to deal, supporting the notion that schools are subject to a process of legalisation, a situation acknowledged in other education systems. When participants' knowledge of a particular aspect of education law was examined, the responses indicated that this tended to be limited. These results were consistent with the findings of other research conducted in Australia and elsewhere. It was also apparent from the findings, that whilst participants may have reached a level of working knowledge concerning routine, legally-related matters, their personal knowledge to competently deal with such a long list of topics as noted earlier. Rather the argument is for principals to have a sound basic knowledge of the main areas of law they deal with, together with access to relevant legal information as they require it. The participants' responses suggested that the greatest priority for improving legal knowledge would be in areas impacting on the safety of students and staff, such as negligence, occupational health and safety, and child welfare. This form of measured approach is consistent with the views expressed by Stewart and McCann (1999) about the importance of legal risk prevention, as safety issues involve substantial legal risk.

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environment may result in problematic outcomes. To avoid such risks and in the interests of general good governance, it may be prudent for principals to confirm their existing legal understandings prior to relying on that knowledge to the possible detriment of students, staff and the school.

There is little doubt that the contexts within which schools operate now have never been more challenging and complex. As such, the impact on principals to lead and manage their schools has increased in the complexities in this regard and point to some constructive ways forward to support principals to meet the legal demands now evident in their roles and responsibilities. One principal in this study sums up the legal challenges facing school leaders today:

I think that, as a principal, I’m involved in legal-related work all the time – whether it’s child protection or financial decisions, they are all legal-related. And I’m all the time aware of problems that could arise.

It is clear that principals need professional learning and support in this regard and that further work needs to be done in the area.

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