

YOU AND THE LAW

Canadian Court Rules Physical Education Teacher Negligent

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Hussack v. Board of School Trustees of School District No. 33 (Chilliwack), November 18, 2010 (2011) 306 BCAC 289 (CA); 2011 BCCA 258

According to the court records, the Plaintiff (Devon Hussak), a 13-year-old boy in the seventh grade, was hit in the face with a field hockey stick while playing a field hockey game in a physical education (PE) class. He suffered a concussion, which developed into a serious somatoform disorder. The Plaintiff sued the school board, alleging negligence on the part of the PE teacher for allowing him to participate in the field hockey game without previous experience or basic instruction regarding the necessary skills of the game.

Judicial History

The British Columbia Supreme Court (BCSC), in a decision reported (*Devon Hussack v. School District No. 33, 2009*), allowed the action. The court held the PE teacher breached his duty of care by permitting the Plaintiff to play field hockey without having progressively attained the necessary skills. The court found that the somatoform disorder was caused by the accident. Damages of \$1,365,000 were awarded. The school board appealed. The Plaintiff cross-appealed the court's ruling.

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The British Columbia Court of Appeal (BCCA) allowed the appeal in part. The court reduced the past wage loss award to \$150,000 and the future income-earning capacity award to \$785,000. The court dismissed the cross-appeal.

Complaint

The trial transcript indicated that the Plaintiff sued the school district for negligence because the PE teacher failed to progressively teach and coach the Plaintiff in the necessary skills to play field hockey. In doing so, the Plaintiff argued that the school exposed him to being struck in the face by another student's stick during the course of a game.

The school district argued that it had met the necessary standard of care in instructing and supervising the student in PE class. In addition, the school district argued that even if the PE teacher did fall below the standard of care, the student's level of dysfunction and somatoform illness were not caused by the accident, but were a combination of preexisting conditions.

Background

According to court records, the Plaintiff had a history of chronic absenteeism. He had missed over one third of the school year at the time of the accident. In particular, the Plaintiff had missed the entire 3-week long field hockey unit when he was allowed to play in the "Round Robin" game on the last day of the unit. The unit was designed to take 3 weeks of the school term comprised of six to seven classes. The classes were 68 min in length and included approximately 40 minutes for instruction and practice of field hockey skills.

The PE teacher testified that on April 17, 1998, he encouraged the Plaintiff to join the class. He thought this would be a good opportunity for the Plaintiff to participate in the PE class and would help the Plaintiff obtain a passing grade for the school year. Court records indicated a passing grade in PE was a mandatory requirement for the Plaintiff to be promoted to the next grade level.

The trial transcript indicated that prior to the accident the Plaintiff had no field hockey experience. The Plaintiff did, however, have a background in ice and floor hockey. At trial, two competing

field hockey experts put forward evidence about whether having a background in other types of hockey sports would be an advantage or disadvantage in being able to have a basic set of skills to play field hockey. The court found, based on the testimony of the experts, that the Plaintiff did not have the basic requisite skills to play field hockey.

The testimony at trial revealed that the PE teacher divided the students into four relatively equal teams. Prior to the class, the teacher reminded the students about the four basic rules of the game: (1) not using the back of the stick, (2) not using their feet, (3) not lifting the sticks about their knees, and (4) not checking from behind. When the games commenced, the teacher assumed a position in the middle of the field to supervise the two games. At the midpoint of the class, one student had a break-a-way toward the goal. Devon chased her down and attempted to check her from behind. The student swung her stick and struck Devon in the nose. He was taken to the hospital emergency room.

The court record indicates a few weeks after the injury, Devon complained of weakness, tiredness, altered concentration, sleep disruption, and mild photophobia. However, the injury did not result in a brain injury. As the weeks went on, Devon complained of new and worsening symptoms. On his father's insistence, Devon did not undertake any counseling, psychiatric, or psychological treatment despite his doctor's recommendations.

Court Analysis of the Case

In this case, the court ruled that the standard of care to be exercised by school authorities is that of a "careful or prudent teacher." The test, as outlined by the court, contains four main factors to consider:

- "Whether the activity was suitable to the age and mental and physical condition of the student;
- Whether the student was progressively trained and coached to do the activity properly and to avoid the danger;
- Whether the equipment was adequately and suitably arranged; and
- Whether the performance, having regard to its inherently dangerous nature, was properly supervised." (p. 263)

In applying this test, the court noted,

Canadian courts have generally ruled that the standard of care is case specific and cannot be applied in the same manner and to the same extent in every case. Further, the court stated its application will vary from case to case and will depend upon the number of students being supervised at any given time, the nature of the exercise or activity in progress, the age and the degree of skill and training which the student may have received in connection with such activity, the nature and condition of the equipment in use at the time, the competency and capacity of the students involved, and a host of other matters which may be widely varied but which, in a given case, may affect the application of the prudent parent-standard to the conduct of the school authority in the circumstances. (pp. 263–264)

According to the court, essentially, the simple question to be answered in this case was whether it was reasonable for the PE teacher to allow Devon to participate in the field hockey class, knowing Devon had no exposure to the sport despite having considerable hockey experience. The court answered this question by finding that the actions of the PE teacher were unreasonable in that the PE teacher failed to “progressively train and coach” the student in field hockey. The school district was held liable. The court ruled that Devon lacked the necessary “skills building blocks” that were put in place during his absences from all the previous classes. Thus, the PE teacher breached his duty of care to Devon. The court rejected the assumptions made by the teacher. The PE teacher testified that he was not concerned with Devon participating on the final day of the field hockey unit after having been absent for the previous three weeks. He stressed that almost all the students were beginners at field hockey. In his view, there was no need for any special skills to be progressively taught that Devon needed to participate safely in the game that day.

Devon was awarded \$1,365,000 in damages. This included \$125,000 for nonpecuniary damages; \$200,000 for past loss of income; \$1,000,000 for future loss of income earning capacity; and \$40,000 in future care costs.

Risk Management Discussion

The decision in this case demonstrates the significance and importance of safety when students are engaged in a PE class participating in a contact physical activity, such as field hockey in this case. However, it could have been floor hockey, lacrosse, or ice hockey. When preparing future physical educators, it is imperative that teachers emphasize the significance and importance of safety. Therefore, the following points are important for teachers to teach skill and methods classes:

- The teacher lesson plans must outline clearly the progression for each skill to be taught, the skills to be learned before participation is allowed in a game situation, and the evaluation method for acceptable skill levels.
- Students must demonstrate acceptable proficiency in each skill area before being allowed to participate in a game situation.
- Students who have not been through all of the preliminary classes teaching the basic skills and progressions for each skill should not be allowed to participate in a game situation in class and must demonstrate acceptable skill proficiency.

If a student is in danger of failing a class because absences, excused or not, exceed the minimum number required to pass, then the PE teacher should work with the administration and student to work out a plan for the student to make up the absences to complete the class successfully.

References

Devon Hussack v. School District No. 33 [Chilliwack] Supreme Court of British Columbia, June 26, 2009, 2009 BCSC 852, Docket L023833.

Hussack v. Board of School Trustees of School District No. 33 (Chilliwack), November 18, 2010 (2011) 306 BCAC 289 (CA); 2011 BCCA 258.