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EDITOR: TERRANCE S. CARTER

LAWSUIT AGAINST CORPORATE SPONSORS DISMISSED

By Barry W. Kwasniewski[*]

A. INTRODUCTION

Corporate sponsorship of charitable fundraising events is one of the keys to a successful campaign. However, if a participant in an event is injured, that participant may claim damages not only against the charity, but from the sponsor as well. In the recent Ontario Superior Court of Justice decision in *Boudreau v. Bank of Montreal*,[1] the court dismissed, on a pre-trial motion, a claim for damages against corporate sponsors of a recreational soccer league. This Bulletin will discuss this decision, and analyze how charities and not-for-profits may seek to limit their potential liability when organizing fundraising events.

B. THE FACTS

The plaintiff, Joey Boudreau, brought an action for personal injuries suffered during an indoor soccer game at a facility operated by HoJO Enterprises Inc. o/a Soccerworld Hamilton ("Soccerworld") in Hamilton, Ontario on February 26th, 2008. Unfortunately, as a result of the accident, Mr. Boudreau was rendered a paraplegic. The league that Mr. Boudreau participated in was operated by the Ontario Soccer Association ("OSA"), whose financial sponsors included the Bank of Montreal, Rogers Communications Inc. and Umbro Inc. ("Sponsors"). Mr. Boudreau alleged that given the potential dangers involved in the sport, the financial sponsors each had a legal duty to inquire and ensure, in case of an accident, that the OSA and Soccerworld maintained an adequate amount of insurance to cover his healthcare and rehabilitation expenses. Mr.

[*] Barry W. Kwasniewski, B.B.A., LL.B., practices employment and risk management law with Carters' Ottawa office and would like to thank Tanya L. Carlton, OCT, B.Sc. (Hons.), B.Ed., J.D., Student-At-Law, for her assistance in the preparation of this *Bulletin.*

[1] *Boudreau v Bank of Montreal*, 2012 ONSC 3965, available online at http://canlii.ca/en/on/onsc/doc/2012/2012onsc3965/2012onsc3965.html.

Boudreau claimed that the Sponsors breached their alleged duty of care, in that OSA had only purchased an insurance policy with a $40,000 coverage limit for healthcare and rehabilitation for a paraplegic injury. Mr. Boudreau was seeking $4,500,000 in general damages against the Sponsors, for the expected costs of his medical care.

C. WHEN DO SPONSORS OWE A LEGAL DUTY TO INQUIRE ABOUT AN ORGANIZATION'S INSURANCE COVERAGE?

Sponsors are important to registered charities and Canadian registered athletic associations. Without them, many activities and events would not be held. The issue, however, is how much legal responsibility do sponsors bear if an accident or unforeseen event occurs at a sponsored activity?

Canadian courts have been quite firm in their stance on a sponsor's duty of care to accident victims. In *Milina v Bartsch*,[2] the Supreme Court of British Columbia held that Labatt Brewing Inc. did not owe a duty of care to a participant in a ski exhibition, as there was no contract between the company and the victim and no "room for imputation of vicarious liability."[3] Labatt's had purchases the right to display its logo and name on the participant's equipment, an act equivalent to buying advertising space in a magazine or on television. The court held that no legal foundation existed to suggest that buying those types of advertising rights made a company or individual legally responsible for any consequences of the sponsored activity.

In *Gaudet v. Sullivan*,[4] the Court of Queen's Bench of New Brunswick examined the vicarious liability of a car dealership for an injury incurred during a hockey game. In this case, the plaintiff alleged that the car dealership and its owner were vicariously liable for a tort committed by a player on their sponsored hockey team (the "Defendant"). The court held that the car dealership was neither an agent nor a servant of the Defendant, and that their only involvement with the team was the purchase of the hockey sweaters. The limited involvement the car dealership had with the team could not result in vicarious liability, as it would be "unacceptable and improper." Allowing the dealership and the owner to be held vicariously liable would make it "very difficult for many such teams to obtain a sponsor."[5]

[2] *Milina v Bartsch* 1985, 49 BCLR (2d) 33, available online at http://canlii.ca/t/1pd4p.
[3] *Ibid.*
[4] *Gaudet v Sullivan*, 128 NBR (2d) 409, available online at http://canlii.ca/t/1mwnl.
[5] *Ibid.* at p. 15.

Even so, charities and not-for-profits should be aware that these legal principles exculpating sponsors from liability may change in situations where sponsors directly involve themselves in an activity (i.e. more than just placing their name on a billboard or sweater). In *Chen (Guardian ad Litem) v. Jose Navarez (the)*,[6] the Supreme Court of British Columbia found that Rothmans and Benson & Hedges Inc. ("Benson") were significantly involved in the organization of a fireworks display in Vancouver Harbour. Following a tragic boating accident which resulted in the death of four people, a third party claim was brought against Benson for being negligent in organizing the event. Because of its direct participation in organizing the fireworks display, the court held that Benson had assumed a duty of care in their sponsorship of the event. However, the court found that Benson, along with the other sponsors and organizers, were not negligent in their actions. In the result, the lawsuit against them was dismissed.

D. CONCLUSION

While courts have been reluctant to affix liability to sponsors in the event of injury to persons or damage to property, the risk of such liability increases if sponsorship involves direct participation in organizing or operating an event. For charities and not-for-profits, there is always the risk of liability for injuries when fundraising events involving a risk of injury take place. However, such risks can be reduced by the proper use of liability waivers, by taking appropriate safety precautions, and by obtaining adequate liability insurance. Because of liability risks, a sponsor may also require that it be named as a party in any event waiver. A sponsor may also require that it be covered by the charity's insurance policy for the event, and/or be indemnified by the charity should a claim be made. Before agreeing to these obligations, charities and not-for-profits should review them with their legal counsel and insurance broker. An important part of a charity or not-for-profit's risk management strategy is to ensure that fundraising events do not result in legal liability.

[6] *Chen (Guardian ad Litem) v Jose Navarez (the)*, 2003 BCSC 996, available online at http://canlii.ca/t/5870.