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SCHOOL BOARD LIABLE FOR STUDENT'S FALL FROM ROOF

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A. INTRODUCTION

In a unanimous decision released on November 14, 2014, the British Columbia Court of Appeal ("BCCA")[1] upheld the British Columbia Supreme Court's[2] ruling that a twelve year-old boy was only 25 percent at fault for serious injuries he sustained after falling off a school roof. The defendant Board of School Trustees (the "School Board") was found 75 percent liable because it did not trim a tree near the building that the boy had climbed to reach the roof. The BCCA's decision in *Paquette v School District No 36 (Surrey)* is illustrative of the general trend of courts being hesitant to find children contributorily negligent for the injuries they may suffer. This *Charity Law Bulletin* reviews this decision and discusses the implications for charities and not-for-profits that provide services and activities for children.

B. FACTS

At the time of the incident, Owen Paquette was a twelve year-old student in grade seven at Peach Arch Elementary School in Surrey, British Columbia. On March 4, 2008, he and another student climbed a cherry tree to reach the roof of the school. The top branches of the tree reached close to the edge of the roof. After the Vice-Principal of the school yelled at the boys, Paquette tried to get off of the roof to avoid apprehension. While doing so, he slipped and fell approximately twenty feet onto a cement surface at the bottom of a stairwell, which caused him to sustain significant injuries.

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[1] *Paquette v School District No 36 (Surrey)*, 2014 BCCA 456.
[2] *Paquette v School District No 36 (Surrey)*, 2014 BCSC 205.

At trial, the Principal of the school testified about other occasions when he either saw other people on the school roof or was told that people had been on the roof. In response to these incidents, the School Board trimmed and removed some of the trees near to the roof and also erected a barricade in one spot to make the roof less accessible. However, the cherry tree that Paquette used to climb onto the roof was not trimmed because it was “flimsy” and school officials thought that students would not attempt to access the roof by climbing that tree.[3]

C. JUDICIAL HISTORY

At trial, Paquette acknowledged partial responsibility for his injuries, but submitted that the defendant should be 60–75 percent liable because the School Board was negligent and breached its duties under the British Columbia *Occupiers Liability Act* (“OLA”).[4] In response, the defendant School Board denied any liability. At trial, Justice Sharma concluded that the School Board had not satisfied its duties under the OLA and was 75 percent liable for Paquette’s injuries.

On appeal, the School Board submitted that the trial judge erred in apportioning 75 percent fault, in applying a standard of care amounting to perfection, and in finding that the School Board breached its duty of care by not fully preventing access to the roof.

D. RELEVANT LEGISLATION

At trial, the court was asked to consider whether the School Board had discharged its duties under section 3(1) of the OLA, which states that:

> An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person’s property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.[5]

Section 3(1) of the Ontario *Occupier’s Liability Act* is very similar to the British Columbia legislation. Although the decisions being discussed are specific to British Columbia, it is important to note the similarities between the parallel legislation. The Ontario legislation states:

[3] *Ibid* at para 42.
[4] *Ibid* at para 1.
[5] [RSBC 1996] CHAPTER 337.

> An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.[6]

E. REASONS AT TRIAL

Decisions made regarding section 3(1) of the OLA are fact specific. At trial, Justice Sharma considered potential liability stemming from both the cherry tree and the Vice-Principal's actions.

Regarding the cherry tree, the defendant School Board claimed that it could not anticipate that someone would access the roof from the tree because there was no evidence that this had occurred in the past, and because it was satisfied that the regular monitoring at the school was satisfactory. Justice Sharma disagreed. She stated that "a tree close to the school will tempt kids to climb it and get onto the roof" and that "it is common sense that if a child can get onto a roof, it is reasonably foreseeable that the child might fall off that roof and get badly injured."[7] She also found that any actions taken by the School Board in response to knowing youth climbed onto the school roof was "only reactive and ad hoc."[8] She emphasized that after considering all of the circumstances it was unreasonable for the School Board to let the tree grow so close to the roof.[9] She concluded by stating that "reasonable people foresee that children can and often do stupid things that are dangerous even when they know they shouldn't."[10]

Regarding the Vice-Principal's action, Justice Sharma concluded that children who are doing something wrong are likely to flee regardless of what is said to them. Consequently, despite the fact that the Vice-Principal yelled at the children to get off the roof, the court ruled that this did not contribute to the injuries.[11]

[6] RSO 1990, CHAPTER O.2.
[7] *Supra* note **Error! Bookmark not defined.** at para 35.
[8] *Ibid* at para 36.
[9] *Ibid* at para 39.
[10] *Ibid* at para 42.
[11] *Ibid* at para 46.

Justice Sharma then considered apportionment of liability. She stated that the critical factor is fault or blameworthiness, rather than the degree to which the plaintiff caused his or her misfortune.[12] To conclude, Justice Sharma ruled that the School District was 75 percent liable for the injuries.

F. REASONS ON APPEAL

The School Board appealed the trial decision. Writing for a unanimous court, Justice Willcock of the BCCA upheld and expanded on the trial decision.

Justice Willcock first noted that the standard of review for judgments turning on assessments of the facts is whether the lower court's conclusions "represent a reasonable inference from the facts."[13] Justice Willcock did not think that the trial judge misapprehended the evidence or imposed a standard of perfection. He commented that the School Board was aware of the risk of youth going onto the school roof and took some steps to avoid this problem. It was therefore open to the trial judge to conclude that the School Board could have chosen to minimize the risk posed by the cherry tree in question.[14]

The BCCA further stated that the plaintiff's error was the "an error made by a 12-year old boy" and was caused by "precisely the type of misjudgement to be expected of a boy of this age."[15] Justice Willcock emphasized that it was appropriate for the trial judge to consider that an institution charged with the care of children should have taken reasonable steps to ensure safety and "ought to have brought a greater degree of thought and care to the risk posed by children getting onto the roof than did the children doing the climbing."[16] In conclusion, the BCCA emphasized that "particularly in the case of a young child, the weight of fault may well be less."[17]

In the result, the case will return to the trial court to assess the damages to be awarded to the plaintiffs.

[12] *Ibid* at para 49.
[13] *HL v Canada (Attorney General)*, 2005 SCC 25, [2005] 1 SCR 401 at para 57.
[14] *Supra* note **Error! Bookmark not defined.** at para 18.
[15] *Ibid* at para 24.
[16] *Ibid*.
[17] *Ibid* at para 26 quoting *Ottosen v Kasper* (1986), 37 CCLT 270 at 277.

G. CONCLUSION

The trial and appellate decisions involving these facts demonstrate that courts are hesitant to apportion significant liability on children or youth despite their involvement or blameworthiness in an incident leading to injuries. Charities and not-for-profits working with children and youth, such as children's camps or after school programs, should be particularly cognizant of this trend and take steps to ensure the safety of young people on their premises. In fact, any charity or not-for-profit with premises that are generally open to the public should be aware that an incident involving children or youth may well attract liability in the event of injury or death. Proactive and consistent safety considerations are imperative. To a significant degree, children must be protected from themselves. Finally, obtaining adequate insurance coverage is an important component of risk management for charities and not-for-profits, in the event of a serious injury leading to legal claims.

The British Columbia Supreme Court decision is available online at: http://canlii.ca/t/g307t.

The British Columbia Court of Appeal decision is available online at: http://canlii.ca/t/gfg1p.

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