BC Supreme Court Finds Liability Can Follow Unreasonably Low Certification Standards

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Earlier this week the BC Supreme Court, Victoria Registry, released reasons for judgement dismissing a lawsuit for compensation as a result of a traumatic brain injury sustained during a hockey game (More v. Bauer Nike Hockey Inc).

The incident occurred in 2004 when the Plaintiff was 17 years old. He was playing an organized game of hockey. He was wearing a helmet which was certified by the Canadian Standards Association (the "CSA") and met all CSA standards. During the game the Plaintiff fell into the boards and suffered a subdural hematoma. This was apparently the only reported incident of a helmeted player sustaining a subdural hematoma while playing organized hockey in Canadian history.

The effects of the injury caused severe and profound disability in the Plaintiff. The Plaintiff sued various Defendants including the manufacturer of the helmet and the CSA. The Plaintiff alleged that the helmet was negligently manufactured and that the CSA was negligent in failing to adopt proper standards for helmet certification. The Plaintiff's claims were ultimately dismissed with the Court finding that the helmet was not defectively manufactured and that the standards set by the CSA were appropriate.

This case has received considerable press in Canada and abroad even gaining mention in the New York Times sports blog. What interests me most about this case is not the ultimate result rather it was the Court's discussion of the potential liability of institutions which set inadequate safety standards.

In the course of the lawsuit the CSA argued that even if their standards were unreasonably low they could not be sued because they did not owe the Plaintiff a duty of care. Mr. Justice Macaulay disagreed and held that institutions that set certification standards for safety equipment can be sued in negligence if they set their standards too low. Specifically the court held as follows:

212] I am satisfied that it was reasonably foreseeable that a hockey player and wearer of a mandatory certified hockey helmet might suffer harm if the CSA set the certification standard unreasonably low in the circumstances. On the question of proximity, I extrapolate from Cooper at paras. 32–34. Is the player, who must obtain and wear a certified helmet in order to participate in organized hockey, so closely and directly affected by the CSA decision respecting the adequacy of the certification standard that the latter ought reasonably to have the player's legitimate interest in safety in mind? In my respectful view, the answer must be yes.

[213] By legislative definition, any hockey helmet that is not certified is a hazardous product and cannot be sold in Canada. No matter how well designed the helmet may, in fact, be, no manufacturer can offer it for sale unless it is certified. The consumer hockey player has no choice and buys, or otherwise obtains, the helmet for the purpose of self-protection in a game that has inherent dangers. Nonetheless, there is some reliance by the consumer on the fact of certification and an expectation that the risk of at least some injuries is reasonably reduced. Otherwise, there would be no need for any helmet at all.

[214] With the greatest of deference to the possibility that Hughes stands for a different outcome, I am satisfied that there is sufficient proximity in the present case for a prima facie duty of care.

In short, this decision means that if an institution sets certification standards for products to be sold in British Columbia that institution may be liable if their standards are set at an unreasonably low level.