THE LEGAL LIABILITY OF CANADIAN SCHOOL TEACHERS AND SCHOOL BOARDS FOR STUDENT INJURIES

Eric K. Frank

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by

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A thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements of the degree of

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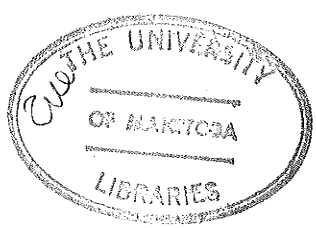

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ABSTRACT

The purpose of this study was to examine the legal liability of Canadian school teachers and school boards for injuries which had been incurred by students who were alleged to have been under their legal duty of care.

To conduct this research, four major research questions were posed. The primary research procedure employed was the examination of adjudications which involved lawsuits that had been filed against teachers and school boards on grounds of negligence. This data was compared with previous literature concerning school law in Canada.

Analysis of the data showed that most school-related accidents were incurred by male students during "specialized" classroom activities at the junior high level.

It was found that Canadian teachers are no longer solely considered by the Canadian judicial system as being "in loco parentis". There is evidence to indicate that they have also been judicially considered as reasonably prudent professionals. In addition, school boards are required to owe students a higher standard of care than that which an "invitor" owes to an "invitee" because most students are COMPELLED by law to attend school.

The major conclusion which has been drawn from this evidence is that tort law in Canada has changed--courts have higher expectations of teachers and school boards than in previous decades and have even outlined specific legal duties under particular circumstances.

ACKNOWLEDGEMENTS

I express my deepest gratitude to Dr. P. J. Husby, my advisor, for his support, patience, and guidance throughout my studies in the master's program. I also thank Dr. J. A. Riffel, whose sincere concern helped to untangle and articulate various sections of this thesis. As well, I thank Dr. H. May for the professional advice which he provided to help refine this study.

CONTENTS

Chapter I

NATURE OF THE STUDY

Throughout the course of a school year, it is not uncommon that an assortment of student injuries might be incurred during school-related activities. Concomitantly, it is not uncommon that teachers might be regarded as legally liable for injuries which might be incurred by students who are under their supervision.

Increasing complexities in education have had significant implications for teaching personnel. For example, the growth and expansion of the public school curriculum has resulted in the installation of newer, inherently dangerous equipment into the school system, thereby exposing school boards, school administrators, and teachers to a greater variety of circumstances--many of which are dangerous to students. Subsequently, the possibility that school authorities may be held liable for negligence has increased. Similar dangers have arisen from "mainstreaming", which has introduced students with various disabilities into regular classrooms. Also as a direct result of such an innovation, teachers have become burdened with additional legal responsibilities and duties which require them to supervise, caution, and instruct students in a legally reasonable manner.

Most teachers, like most people untrained in law, are oblivious to the ways in which the law surrounds their professional activities. This is not surprising! The legal profession has always been noted for its meticulous concern with the precision of language. For those not trained in law, however, legal argot may become an impenetrable barrier to a fuller understanding of the law itself.

Tort laws are not static. They are based upon legal precedents which are assumed to reflect many of the current values, attitudes, and beliefs of the judicial system of a particular society. Therefore, the laws of tort are forever in a state of evolution and change. Canadian public school teachers should not only be aware of their legal duties and responsibilities in school- related activities, but they should also be aware of any possible consequences of avoiding or shifting from these duties and responsibilities. In addition, teachers should be aware of any direction toward which these laws may have turned.

PURPOSE OF THE STUDY

The purpose of this study was to explore the legal liability of Canadian school teachers and school boards for injuries which had been incurred by students who were alleged to have been under their legal duty of care between 1968-1981. This exploration was conducted on the basis of four main, and several subordinate research questions:

1. What are the general principles of negligence law in Canada as enunciated by various authors of school law and tort law?
2. Between 1968-1981, inclusive, what were the legally significant facts and circumstances in lawsuits which had been filed against Canadian school teachers and school boards on grounds of negligence?
   a) During which school-related activities did the injuries occur?
   b) What sorts of injuries were incurred?
   c) What were the ages, sex, and class placements of the students who incurred the injuries?
   d) What major arguments were presented to the courts by the attorneys who represented the plaintiffs and the defendants?
3. Between 1968-1981, inclusive, what were the decisions of the courts in regard to lawsuits which had been filed against Canadian school teachers and school boards on grounds of negligence?
   a) What reasoning was responsible for the formulation of these judgments?
   b) If legal liability was established by the courts, what was the amount of the compensatory award?
   c) Against whom was the judgment made?
4. What relationships exist between:

a) Judicial decisions pertaining to lawsuits which have been filed against Canadian school teachers and school boards on grounds of negligence between 1968-1981, inclusive, and...

b) the general principles of negligence law in Canada as enunciated by Canadian authors of school law?

SIGNIFICANCE OF THE STUDY

Nolte and Linn,[1] Hamilton,[2] Appenzeller,[3] Kigin,[4] Brown and Brown,[5] and Drury[6] have recognized many legal effects that have been created by the growth and expansion of the public school curriculum. For example, curricular development has resulted in the installation of newer offerings into school programs. These offerings include items such as laboratory, industrial shop, and physical education equip-

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[1] M. Chester Nolte and John Philip Linn, School Law for Teachers. (Danville, Illinois: Interstate Printers and Publishers, Inc., 1963), p. vii.

[2] Robert Rolla Hamilton, Legal Rights and Liabilities of Teachers. (Laramie, Wyoming: School Law Publications, 1956), pp. 38-39.

[3] Herb Appenzeller, Phys. Ed. and the Law. (Charlottesville, Virginia: The Michie Co., 1978), p. 16.

[4] Denis J. Kigin, Teacher Liability in School Shop Accidents. (Ann Arbor, Michigan: Prakken Publications, Inc., 1976), p. 7.

[5] B. Brown and Walter Brown, Science Teaching and the Law. (Washington, D. C.: National Science Teachers Association, 1969), p. 7.

[6] R. L. Drury, Essentials of School Law. (New York, N. Y.: Meredith Publishing Co., 1967), p. 66.

ment, which have become not only more comprehensive, but also increasingly dangerous. The inherent characteristics of such types of equipment have added greatly to the duties and responsibilities of public school teachers and school boards.

It is believed that Canadian law is demanding higher standards of care from school teachers because they are being sued successfully with increasing frequency for negligence.[7] There appears to be a "shift towards a legal-bureaucratic mode of conduct."[8] Therefore, in order that Canadian educational personnel may conduct their school-related activities in a legally acceptable manner, it is important that they understand not only the general principles of negligence law in Canada, but also the manner in which these laws have been applied under certain educational circumstances. This application of the law of torts has been perceived as being "most important" in the process of achieving a fuller understanding of the law itself.[9]

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[7] Donald Rogers, "The Law Gets Tougher on Teachers and Boards," The Canadian School Executive, September, 1982, p. 12.

[8] David King, "Fundamental Issues Facing Educators," The Canadian School Executive, September, 1982, p. 9.

[9] Hugh Kindred, "Legal Education for Teachers," (paper presented at an Invitational Conference at the University of Saskatchewan. Conference Theme: Emergence of Legal Issues, Saskatoon, Saskatchewan, 1977), p. 95.

Kigin has contended that many school-related incidents which have resulted in court cases would not have occurred if teachers had understood some of the potential liabilities in their school-related activities.[10] Others, including Remmlein and Ware,[11] Loveless and Krajewski,[12] and Pepe[13] have maintained that the overall frequency of negligence lawsuits against teachers would decrease if teachers were more aware of the laws which governed their professional activities, and that such awareness may be useful in the formation of a guide which may be used to assist teachers in a more effective performance of their school- related activities.

Some of the more current literature available dealing with negligence in the context of the Canadian educational system has been written in the 1950's and 1960's. Since tort laws of negligence in Canada are based largely upon legally established precedents, they are reflective of many values, attitudes, and beliefs of the Canadian judicial system at a particular time. In sum, tort law is active.

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[10] Kigin, op. cit., p. 1.

[11] M. K. Remmlein and M. Ware, School Law. (Danville, Illinois: Interstate Printers and Publishers, Inc., 1974), p. vi.

[12] E. E. Loveless and Frank R. Krajewski, The Teacher and School Law. (Danville, Illinois: Interstate Printers and Publishers, Inc., 1974), p. vii.

[13] Thomas J. Pepe, A Guide for Understanding School Law. (Danville, Illinois: Interstate Printers and Publishers, Inc., 1976), p. 2.

It changes as society changes. Therefore, it appears that most Canadian literature regarding negligence in the public school context is not very recent. As a result, teachers may not be fully aware of contemporary standards of care which may be required of them by law, and may unknowingly expose themselves to possible legal actions.

This thesis presents the general principles of negligence law in Canada as enunciated in literature by Canadian authors. In addition, judicially considered lawsuits which have been filed against Canadian educational personnel on grounds of negligence are examined to illustrate the ways in which these principles of negligence law have been applied in the courtroom. By so doing, this thesis throws light on recent trends which have emerged from the courtroom by way of negligence lawsuits which have been filed against educational personnel in Canada. Furthermore, it yields insights into the standards of care that have been demanded by law from teachers and school boards under particular sets of circumstances.

RESEARCH METHODS AND PROCEDURES

This study is historical in nature. Some of the most recently available literature concerning the general principles of negligence law in Canada has been presented as enunciated by various authors of school law and tort law.

The lawsuits used in this study have been gathered from the inclusive period of 1968-1981.

The Dominion Report Service,[14] Canadian Abridgment,[15] and All Canada Weekly Summaries[16] were utilized to locate abstract information about lawsuits that had been filed against educational personnel in Canada on grounds of negligence. These legal documents were also used to locate summaries of legal cases in their respective provincial law reports. In addition, summaries of these adjudications have been located by means of a computer search which was run by the Faculty of Law Library at the University of Manitoba at the time this research was being conducted.

DELIMITATIONS

This study involves itself within a Canadian context.

The lawsuits utilized in this study have been drawn from the inclusive period of 1968-1981.

Summaries of adjudications which involved lawsuits that had been filed against Canadian school teachers and school boards on grounds of negligence have been selected for examination in this study.

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[14] Dominion Report Service, Canada Law Book Limited, Agincourt, Ontario: 1970-1981.

[15] Canadian Abridgment, The Carswell Co., Toronto, Ontario: 1968-1981.

[16] All Canada Weekly Summaries, Canada Law Book Limited, Agincourt, Ontario: (Second Series), 1977-81.

Any cases which may have been cited in the province of Quebec have not been included in this study for two primary reasons:

1. Civil law in Quebec is different from that in other provinces. It is based upon a code derived from the Code Napoleon. The principles of negligence law are contained in Article 1053 of the Code, which states that:

> Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect, or want of skills.[17]

Since Quebec judges are bound by this specific provision, they have less discretion than their counterparts in other Canadian provinces. On the other hand, the very general language of the article allows these judges a great deal of room for judicial interpretations and modifications. Therefore, judicial decisions regarding civil cases in Quebec are based upon a different set of fundamental legal principles from those in other provinces. As such, no cases from that province have been selected because any general inferences which might be drawn from its civil cases may be generalizable only to the province of Quebec.

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[17] S. M. Waddams, Introduction to the Study of Law. (Toronto, Ontario: The Carswell Company Limited, 1979), p. 102.

2. Many of the legal cases which have been filed in Quebec are cited in the French language. This researcher does not possess an adequate command of the French language to accurately interpret them. Consequently, none have been selected.

LIMITATIONS

Many lawsuits which have been filed against Canadian educational personnel on grounds of negligence have been settled without proceeding to a courtroom.[18] As a result, only a limited sample of legal cases were available for presentation and examination in this study. This sample may or may not be an accurate representation of the entire population which it is supposed to represent. Therefore, the generalizability of any inferences which have been drawn from this sample may be limited and may or may not affect the internal validity of this thesis.

The professional expertise of this researcher is in the field of educational administration, not law. Therefore, this is essentially an education thesis, not a legal treatise. Primary emphasis has been directed towards implications for educational personnel rather than a detailed analysis of legal innuendos.

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[18] Rogers, loc. cit.

The expected or desired outcome of this study may have distorted the intended objectivity of this researcher, causing him to have overlooked, discarded, or misconstrued pertinent material. Similarly, the interpretation of judicial decisions by this researcher may also have affected the authenticity or genuineness of the primary source data. This may or may not subject this study to some internal criticism.

DEFINITIONS

Legal terms used in this thesis have been defined in their Canadian context immediately following their initial presentation in Chapter II and Chapter III. The Canadian Law Dictionary[1] and books on school and tort law were used to define these terms.

ORGANIZATION OF THE STUDY

Chapter I has provided an introduction to this thesis by stating its purpose, significance, and the methodology used.

Chapter II of this thesis consists of a two-part presentation of the most recently available literature concerning the general principles of negligence law in Canada as enunciated by Canadian authors of school law texts. The first part is primarily concerned with the fundamental grounds of tort liability. The second deals with defences against

[1] Datinder S. Sodhi, Canadian Law Dictionary. (Toronto, Ontario: Law and Business Publications, Inc., 1980).

suits which have been filed on grounds of negligence.

Chapter III is a chronological presentation of legal cases which have involved actions against Canadian educational personnel for negligence between 1968-1981, inclusive.

Chapter IV contains an analysis of the legal cases which were presented in Chapter III. More specifically, the legal elements which were presented in Chapter II of this thesis are examined in light of the case summaries that were contained in Chapter III.

Chapter V consists of a summary, major research findings, conclusions, and recommendations for educational personnel and future researchers.

Chapter II

THE LEGAL STATUS OF CANADIAN PUBLIC SCHOOL TEACHERS AND SCHOOL BOARDS WITH RESPECT TO STUDENT INJURIES

The purpose of this chapter is to present the general principles of Canadian negligence law in an educational context. Therefore, heavy reliance has been placed upon literature by Canadian authors of school law and tort law.

There are two primary reasons for the general principles of negligence law in Canada being presented. First, these principles provide a basic guide for the analysis of the case data which has been presented in Chapter III of this thesis. Second, they help to undergird the validity of the inferences which have been drawn from the literature in Chapter II and the case data in Chapter III.

This chapter has been divided into five sections:

1. DEFINITION OF TORT - presents an explanation of the word "tort".
2. FUNDAMENTAL GROUNDS FOR TORT LIABILITY - introduces and explains the three fundamental grounds on which tort liability may be established: (a) intent to cause damage or injury, (b) negligence, and (c) strict liability. Since the first of these is not within the scope of this study, it has only been

reviewed briefly. However, the other grounds of tort liability are of major concern to this study and have been elaborated upon in an educational context. This section also presents descriptions of the four types of negligence: Ordinary, Slight, Gross, and Wilful or Wanton.

3. GENERAL BASIS OF LIABILITY FOR NEGLIGENCE - deals with the general basis of liability for negligence, and includes the five legal elements which courts may consider when formulating their judgments, namely: (a) Proof of Injury, (b) Duty of Care, (c) Standard of Care, (d) Breach of Duty, and (e) Proximate Cause.
4. DEFENCES AGAINST NEGLIGENCE SUITS - is concerned with defences which may be used by a defendant in a negligence suit, namely: (a) Contributory Negligence and (b) Voluntary Assumption of Risk.
5. SUMMARY - presents a summary of this chapter.

DEFINITION OF TORT

The word "tort" has derived from the Latin word "tortus", meaning twisted or crooked. This expression found its way into early English language and soon became synonymous with the word "wrong". Although the word is infrequently used in everyday language, the legal profession has maintained it as a technical term.[20] A tort has been legally

[20] Allen M. Linden, Canadian Tort Law. (Toronto, Ontario: Butterworth and Co. Ltd., 1977), p. 1.

defined as:

> ...a civil wrong, giving rise to a cause of action, independent of contract. It involves a right in the plaintiff with the corresponding legal duty by the defendant and damage as a result of that breach...[21]

On the basis of this definition, it is evident that a tort is neither a crime nor a breach of contract. However, a tort may be both criminal and tortious, although the term "tort" is used only in a wrong of a civil nature.[22] Civil litigations involve legal cases which deal with lawsuits that are concerned with civil liberties of individuals. These liberties include the personal and natural rights that are guaranteed by the Constitution, such as freedom of speech, freedom from discrimination, freedom of religion, and so forth. They have derived from the recognition which has been given by the judicial system to principles, customs, and rules of conduct which have existed among their society at a particular time.[23]

It has been noted that the laws of negligence form a large part of tort law.[24] The primary function of tort law is to compensate a tort victim with a monetary award for any

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[21] Sodhi, op. cit., p. 381.

[22] Bargen, op. cit., p. 135.

[23] Reader's Digest Association, You and the Law. (Montreal, Quebec: Reader's Digest Association for the Canadian Automobile Association (Canada) Limited, 1976), pp. 750-52.

[24] Peter Frank Bargen, The Legal Status of the Canadian School Pupil. (Toronto: The Macmillan Company of Canada Limited, 1961), p. 135.

damages that he may have incurred as a result of a tortious act that has been committed by another individual.[25]

In general, any violation of your private rights which is not considered to be a crime is a tort. Whenever your person, property, or character has been harmed by the negligent conduct of another, a tort has been committed. If you are the injured party, you have a statutory right to file a suit against the other party for damages. A guilty party is legally referred to as a tortfeasor. In contrast, a crime is an offense which is legally considered to have been committed against the government. Since crimes are written in the Criminal Code, the question of intent is all important in assessing whether or not an action is tortious or criminal.[26]

FUNDAMENTAL GROUNDS FOR TORT LIABILITY

According to Bargen, the three fundamental grounds on which tort liability may be established are:

1. intentional infliction of harm
2. negligence
3. strict liability[27]

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[25] Linden, op. cit., p. 3

[26] Ibid

[27] Bargen, loc. cit.

The first ground for tort liability, the intentional infliction of harm, concerns itself with such torts as assault, battery, false imprisonment, intentional infliction of mental suffering, and defamation of character.[28] However, these torts are outside the parameters of this thesis. Therefore, they have not been dealt with.

Negligence and strict liability form the basis of liability for the legal actions which have been studied in this thesis. Each of these has been considered separately.

Negligence

Negligence has been defined as:

> ...the omitting to do something that a reasonable man would do or the doing of something which a reasonable man would not do...it is the failure, in certain circumstances, to exercise that degree of foresight which a court, in its aftersight, thinks ought to have been exercised.[29]

By way of this definition, it appears that negligence is a type of conduct which does not approach judicially established standards. Negligence seems to involve acts of commission or omission which result in injury to others. The burden of proving that a negligent act has occurred usually rests upon the party that has filed the lawsuit (plaintiff), except in the event of the imposition of the legal principle of strict liability (which will be discussed

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[28] Linden, op. cit., pp. 38-48.

[29] Sodhi, op. cit., p. 259.

later) or the doctrine of res ipsa loquitor.[30] This doctrine is used by courts to describe situations in which the fact of an accident by itself is sufficient evidence to justify the conclusion that most probably the defendant (the person against whom the lawsuit has been filed) was negligent and that his negligence caused the injury.[31]

Bargen has noted four types of negligence:

1. Ordinary (failure to use ordinary care)
2. Slight (failure to use a great amount of care)
3. Gross (failure to use the slightest care which even a careless person would have used)
4. Wilful and Wanton (negligence which is intentional in the face of clearly evident risks and dangers)[32]

When courts attempt to determine a type of negligence, they often use a method which is based largely upon the following formula: The greater the risk/danger = The greater the standard of care. In other words, the greater the risk or danger in a specific activity, the greater the degree of caution to be exercised by an actor to prevent others from sustaining injuries.[33]

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[30] Bargen, op. cit., p. 136.

[31] Linden, op. cit., pp. 220-22.

[32] Bargen, op. cit., p. 138.

[33] Linden, op. cit., p. 83.

Strict Liability

The legal principle of strict liability, which is relatively rare in Canada, requires one person to compensate another for injury or damages, even though the loss may have been neither intentionally nor negligently inflicted.[34] "This liability extends to anything done on lands which the defendant does not own but merely occupies."[35]

In the event that strict liability is imposed, the burden of proof is usually shifted from the plaintiff to the defendant.[36] Therefore, if this principle is imposed in a cause of action for negligence against educational personnel, an educator must prove that his conduct or action was not the proximate cause of the injury that had been incurred by a student.

Connected with the tort of strict liability is the tort of vicarious liability, which is:

> ...the liability of one person for the wrongs of another as for instance the liability of the master for a tort committed by his servant in the course and within the scope of his employment.[37]

By way of vicarious liability, a school board is legally considered to be in the position of a master, and may be held liable for any student injuries which may be incurred by the negligence of a teacher, who is legally considered to

[34] Ibid, p. 445.

[35] Sodhi, op. cit., p.362.

[36] Bargen, loc. cit.

[37] Sodhi, op. cit., pp. 401-02.

be acting as a servant.[38] The master and servant relationship that has been mentioned in the previous definition has been defined as:

> ...The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labour for any given period. It is essential for such a relationship that the employer has the order and control of the work done by the employee, that is to say, the employer not only prescribes to the employee the end of his work, but directs or at any moment may direct the means also, that is to say, retains the power of controlling the work.[39]

In order for teacher liability to be established on the basis of the master-servant relationship, an injury must be proven to have occurred within the scope of the legal duties of a teacher.[40]

Principals have also been judicially considered as "servants". In one particular case, for example, it was decided that a principal had failed in his legal duty to provide systematic arrangements for the supervision of pupils during recess. This was the primary reason that both he and the school board were held liable for negligence when a student sustained an injury during this school activity.[41]

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[38] Frederick Enns, The Legal Status of the Canadian School Board. (Toronto, The Macmillan Company of Canada Limited, 1963), p. 60.

[39] Sodhi, op. cit., p. 261.

[40] Beauparlant et al. v. Board of Trustees of Separate School Section No. 1 of Appleby et al., (1955) 4 D.L.R. 558.

[41] Brost v. Tilley School District, (1955) 15 W.W.R. 241.

It appears, therefore, that the hallmark of vicarious liability is that it is based neither on any conduct by the defendant himself nor on a breach of his own duty. Instead, his liability is based upon the tort which had been committed by his servant being imputed to him. However, the vicarious liability of a master does not necessarily displace any personal liability of a servant to the tort victim.[42]

GENERAL BASIS OF LIABILITY FOR NEGLIGENCE

If a cause of action that has been filed on grounds of negligence is to be successful, several legal elements must be proved to have existed at the time of an injury. However, the number of elements in such a cause of action does not appear to matter very much. It seems that they are merely artificial divisions which scholars construct in order to assist them in clarifying various aspects of a negligence case.[43] Scholars such as Bargen,[44] McCurdy,[45] and Lamb[46] present an outline with four elements, while others

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[42] Sodhi, op. cit., pp. 401-02.

[43] Linden, op. cit., p. 1.

[44] Bargen, op. cit., p. 136.

[45] Sherburne G. McCurdy, The Legal Status of the Canadian Teacher. (Toronto, Ontario: The Macmillan Company of Canada Limited, 1968), p. 137.

[46] Robert L. Lamb, Legal Liability of School Boards and Teachers for School Accidents. (Ottawa, Ontario: Canadian Teachers' Federation, March, 1959), p. 15.

such as Fleming[47] and Thomas[48] utilize a five element scheme. Linden[49] prefers six components, although within them are also included defences for negligence suits.

This thesis elucidates the general basis of liability for negligence within a five element framework: Proof of Injury, Legal Duty, Standard of Care, Breach of Duty, and Proximate Cause.

Each of these elements has been reviewed separately. ALL OF THEM must exist in order for a negligence lawsuit to be successful.[50]

Certain circumstances and situations, such as those which may occur in laboratory, industrial shop, field trip, physical education and recess activities, are unique to the educational system. Therefore, each of the following legal elements has been reviewed primarily in an educational context.

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[47] John G. Fleming, The Law of Torts. (Agincourt, Ontario: The Carswell Co. Ltd., 1977), pp. 104-05.

[48] Alan M. Thomas, Accidents Will Happen. (Toronto, Ontario: Ontario Institute for Studies in Education, July, 1976), pp. 3-4.

[49] Linden, op. cit., p. 86.

[50] Ibid, p. 83.

Proof of Injury

In a suit based on negligence, negligent conduct is not sufficient ground for the imposition of liability. In order to sue for negligence, proof of damage is required by law in order to complete an action. In other words, it must be demonstrated to the satisfaction of the court that some sort of damage had been incurred by the plaintiff. This proof is usually presented in a formal document. It may contain claims by the plaintiff for damages such as medical expenses, loss of present or future earning power, pain and suffering, and other similar variables which may have been related to the injury.[51] Despite the clear presence of negligent conduct on the part of school authorities, negligence actions have often been dismissed because no loss had been established.[52]

Limitation periods that begin when a cause of action for negligence arises commence to run from the date the damage was incurred. By way of these periods, a cause of action must be legally filed within a specific duration. Limitation periods are set out in the Limitations Act and are not normally applied against infants or the mentally disabled, unless the period within which the action had been brought was enacted in a special statute.[53]

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[51] Lamb, op. cit., p. 25.

[52] Linden, op. cit., pp. 123-24.

[53] Ibid, pp. 124-25.

In British Columbia, a suit which had been filed by a student against a teacher on grounds of negligence was dismissed because it had been filed eight years after the accident had occurred. Section 81 of the Statute of Limitations[54] required that legal action had to be initiated within three months after the date of the injury.[55]

If a lawsuit that has been filed on the grounds of negligence is successful, courts will then attempt to measure the damage which has been inflicted upon the plaintiff by the defendant. Such damage may be general or specific, and will be redressed monetarily. General damages are those which the law presumes to be the direct and probable consequences of the tortious act that has been complained of. These damages may include pain and suffering, injury to health, personal inconvenience, psychological disturbances, and so on. Special damages, on the other hand, are such as the courts will not infer as having been directly incurred from the nature of the tortious act that has been complained of. These damages must be specifically pleaded and proven by the plaintiff, and may include such items as loss of wages and cost of basic care needs. Court costs may also be included in the judgment. These refer to the financial costs of the court proceedings.[56]

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[54] R.S.B.C. ch. 226, sec. 81 (1924).

[55] Duncan v. Ladysmith School Trustees, (1931) 1 D.L.R. 176.

[56] Sodhi, op. cit., p. 107.

Duty of Care

In order for a lawsuit which has been filed on grounds of negligence to be successful, it must be legally proved that the defendant owed the plaintiff a legal duty of care.

Any legal duties of care which teachers and school boards owe to students are those which are prescribed for them by statute law and those which are imposed upon them by common law.[57] A statute is a law that has been passed by a legislative body. It is the written will and command of the government. In contrast, a common law is not written in statutes. It is based upon court decisions of the past, which are often referred to as legal precedents. In Canada, much of this unwritten law has been inherited from England.[58]

The duty of care which is owed by teachers to students has evolved from the common law and is customarily referred to as the duty of supervision.[59] However, it appears that no such duty is owed to students who are on school property before or after school hours.[60] Similarly, it seems that no liability may be accrued to school authorities for student accidents which occur outside school property, unless an accident is sustained within a school activity that is being

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[57] Lamb, op. cit., p. 16.

[58] Reader's Digest Association, op. cit., p. 843.

[59] Thomas, op. cit., p. 20.

[60] Bargen, op. cit., p. 146.

sponsored by school authorities.[61] With respect to field trips, for example, it has been judicially held that permission slips do not eliminate the possibility of legal action if a student happens to sustain an injury during such a trip.[62]

School boards are generally required by statute law to keep buildings and school property in reasonably safe conditions.[63] Furthermore, they owe students the common law duty of warning them of any concealed or unusual dangers which may be located on school property. In addition, school boards must lock up and clear away any inherently dangerous articles which might be on their property.[64] It has been held that school authorities have a legal duty to provide safe and adequate playground[65] and industrial shop equipment.[66]

Apparently, school authorities are not legally obligated to provide supervision for students who are outside of the parameters of school premises, except during such an instance as a field trip. In one particular case, for

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[61] Beauparlant v. Board of Trustees of Separate School Section No. 1 of Appleby, loc. cit.

[62] McCurdy, op. cit., p. 133.

[63] Lamb, loc. cit.

[64] Thomas, op. cit., p. 4.

[65] Schultz v. Grosswald School Trustees, (1930) 1 W.W.R. 579.

[66] Smiles v. Edmonton School District, (1918) 43 D.L.R. 171.

example, a school board was not held legally liable for negligence when a student who was on his way home after school dismissal sustained an injury as a result of having been struck by an automobile off school property. The court dismissed the action primarily because the region in which the injury had been incurred was not within the jurisdiction of the board.[67]

School boards also have a legal duty to hire individuals whom they consider to possess certain skills which will enable them to perform their duties in a reasonably careful manner.[68]

Any other legal duties which may be required by law of educational personnel are listed in statutes such as the Public Schools Act or school board policy manuals.

Standard of Care

The general standard of care which is required by law of educational personnel is a necessary complement of the legal element of "duty of care". Not only do teachers and school boards owe students such legal duties as providing careful supervision or reasonably safe property and equipment, but they must also adhere to certain STANDARDS of care. It has been noted that teachers must conform to a standard which is

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[67] Ritchie v. Gale and Vancouver Board of School Trustees, (1934) 3 W.W.R. 703.

[68] Enns, op. cit., p. 187.

legally referred to as "in loco parentis".[69] On the other hand, the legal standard of care which is to be met by school boards has been considered to be greater than that which is to be owed by an invitor to an invitee.[70] The standards of care to be met by teachers and school boards have been examined separately.

Teacher Standards

In order to determine whether or not a reasonable standard of care had been exercised by a teacher at the time of an accident, courts have utilized a fictional character known as the "reasonable person". Since teachers have legally been considered to be acting "in loco parentis" (in the place of a parent),[71] courts have attempted to assess whether or not particular educators had acted in the ways that "reasonably careful parents" would have acted under similar sets of circumstances.[72] Expert witnesses, such as other teachers, have been summoned to testify in court as to the manner in which they believe that a particular educator would have performed his duties. A complete and accurate description of the reasonable person and his characteristics was presented by Mr. Justice Laidlaw in Armand v. Taylor:

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[69] Lamb, op. cit., p. 20.

[70] Bargen, op. cit., p. 145.

[71] Sodhi, op. cit., p. 461.

[72] McCurdy, op. cit., p. 130.

> [The reasonable person is] a mythical creature of the law whose conduct is the standard by which the courts measure the conduct of all persons and find it to be proper or improper in particular circumstances as they may exist from time to time. He is not an extraordinary or unusual creature; he is not superhuman; he is not a genius who can perform uncommon feats, nor is he possessed of unusual powers of foresight. He is a person of normal intelligence who makes prudence a guide to his conduct. He does nothing that a prudent man would not do and does not omit to do anything that a prudent man would do. He acts in accord with general and approved practice. His conduct is guided by considerations which ordinarily regulate the conduct of human afairs. His conduct is the standard adopted in the community by persons of ordinary intelligence and prudence.[73]

The careful-parent test was applied in a case in Nova Scotia when an eight-year-old boy was struck in the eye by a stone which had been thrown by another pupil during recess. The court held that no duty of continuous supervision was owed by the school authorities to the students in the school yard. It believed that a careful parent would not have refused to allow his son to play in the yard merely because there was no teacher in the vicinity to provide supervision for him every minute.[74]

School Board Standards

It has been noted that:

> ...varying standards of care are owed to various classes of persons that enter the property of the occupier. These classes are legally referred to

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[73] Armand v. Taylor, (1955) 131 O.R. 142.

[74] Adams v. Board of School Commissioners for Halifax, (1951) 2 D.L.R. 816.

as invitees, licensees, and trespassers.[75]

It appears that the greatest amount of care is owed to an "invitee", who has been defined as:

> One who comes upon land or enters a building by the invitation of the occupier. The invitation does not have to be direct but can be implied such as that given by a church, theatre, mall, etc... At common law, an invitee, using reasonable care for his own safety, is entitled to expect that the occupier will take reasonable care to prevent damage to the invitee from unusual dangers of which the occupier knows or ought to know...[76]

Since most children are compelled by law to attend school until they have reached sixteen years of age, it is evident that they have not been merely invited to attend. Although no legal term has yet been established for such students, it is believed that they are owed an even higher standard of care than that which is owed by invitors to invitees. Such students have been referred to as "compulsees".[77]

The chronological and mental ages of students have also been judicially considered when determining whether or not an appropriate standard of care had been exercised by school authorities under a certain set of circumstances. Apparently, the legal standard of care which is required of educational personnel decreases as the chronological and mental ages of a student increase.[78]

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[75] Lamb, op. cit., pp. 20-21.

[76] Sodhi, op. cit., p. 202.

[77] Bargen, op. cit., p. 145.

[78] Ibid, p. 141.

A licensee has been defined as:

> ...one to whom permission, implied or expressed, has been granted to enter another's land and premises. At common law, an occupier was bound to warn the licensee of hidden dangers known to the occupier.[79]

After school hours, the status of a student seems to change from that of an invitee, or "compulsee", to that of a licensee. During such time, a lesser degree of care is owed to students by school authorities. It has been noted that teachers and school boards have not been held liable for injuries which have been sustained by students on school grounds but outside of school hours.[80]

A trespasser has been defined as:

> ...one who goes on the land of another without invitation of any sort and whose presence is either unknown to that other or if known, is objected to...the only duty of the person in possession of the dangerous premises towards the trespasser is not to maliciously or deliberately injure him by some wilful act, such as laying a trap.[81]

It appears that the least amount of legal care is owed to a trespasser.

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[79] Sodhi, op. cit., p. 227.

[80] Bargen, op. cit., p. 147.

[81] Sodhi, op. cit., p. 386.

Breach of Duty

Negligence is concerned with omissions and commissions which involve unreasonable risks of harm. In the case of an omission, a defendant will merely have failed to benefit the plaintiff by not interfering in his affairs. In the case of a commission, however, a defendant increases the possibility of legal liability because he CREATES a risk. The failure of carrying out a legal duty is known as nonfeasance, whereas the failure to properly conduct such a duty is referred to as misfeasance. These are the principles which courts consider when determining whether or not an individual has been in breach of his legal duty or standard of care.[82] It appears that if a school board were required by statute law to provide playground facilities for students, failure to provide such facilities would not necessarily be sufficient grounds to establish a charge of negligence. On the other hand, it seems that the provision of faulty playground equipment WOULD result in a charge of negligence being successful if it can be shown that such a playground had a causal connection with the injury that had been sustained. Similarly, it is probable that teachers and school boards will be held liable for providing "poor" supervision. However, depending upon the facts and circumstances of a particular case, it may not necessarily be held liable for providing NO supervision.[83]

[82] Linden, op. cit., pp. 276-286.

School boards have also been held legally liable for negligence because their school patrols were made mandatory and had been improperly conducted. This was judicially considered to have been an instance of misfeasance. In another instance, where school patrols had been discretionary, and therefore not implemented, no liability was accrued because this was not considered as having been an instance of non-feasance.[84]

Concerning the transportation of students, school boards have been held guilty for misfeasance when they failed to provide adequate and proper transportation equipment and bus drivers. School boards have usually been held liable for the negligent conduct of their bus drivers, whether such drivers were direct servants of the board or independent contractors. Apparently, the employment of independent transportation contractors by a school board does not provide any escape from liability.[85]

Proximate Cause

This legal element has also been referred to as remoteness of damage[86] and cause-in- fact.[87] It requires a plain-

[83] Lamb, op. cit., p. 17.

[84] Eyres v. Gillis and Warren Limited, and Chivers, (1940) 4 D.L.R. 747.

[85] Bargen, op. cit., p. 152.

[86] Fleming, op. cit., p. 179.

[87] Linden, op. cit., p. 137.

tiff to prove that the conduct of the defendant was the proximate, or immediate cause (causa causans) of the injury or loss. In other words, it must be proven that "the accident would not have occurred BUT FOR the defendant's negligence."[88] This is legally referred to as causa sine qua non. On these bases, a teacher or school board can escape liability if their conduct had nothing to do with the injury or loss, or if the injury had occurred for reasons other than those which were related to their professional duties. Such was the case in Ontario, when a plaintiff student attempted to prove to the court that she became crippled as a result of a chill that she had developed when she walked through some flooded channels on the school grounds in order to reach the outside toilet. The court dismissed her action of negligence because no proximate cause had been established between her injury and the condition of the school grounds.[89]

Regarding student injuries which have occurred during physical education activities, courts have recognized the "normal" hazards and risks which are inherent in such activities. For example, when a court held that a student had incurred a "normal" injury during a physical education class, a school board and teacher were NOT held legally liable for negligence because their conduct was considered

[88] Ibid, p. 127.

[89] Wiggins v. Colchester South Pacific School, (1922) 23 O.W.N. 157.

by the courts NOT to have been the direct cause of the accident.'[10]

DEFENCES AGAINST NEGLIGENCE SUITS

Despite the presence of a proven legal duty, standard of care, breach of duty, proximate cause, and resulting damage, a plaintiff may still have his claim defeated because of his own conduct. There exist two primary defences against a cause of action for negligence which must be specifically pleaded and proved by school authorities. They are:

1. Contributory Negligence
2. Voluntary Assumption of Risk'[11]

These defences have been elaborated upon individually.

Contributory Negligence

Contributory negligence has been defined as:

> Negligence which contributes with some other negligence to cause the injury complained of. It is an act or omission on the part of the plaintiff, amounting to a want of ordinary care, as concurring or co-operating with the negligent act of the defendant as a proximate cause of the injury...In order to constitute contributory negligence, the fault on the part of the plaintiff should be connected with the injury complained, so that it can be reasonably inferred that the plaintiff's negligence was one of the proximate causes for the injury.'[12]

'[10] Gard v. School Trustees of Duncan, (1946) 2 D.L.R. 441.

'[11] Linden, op. cit., p. 403.

'[12] Sodhi, op. cit., pp. 92-93.

It has been judicially held that a student is required to conform to the same standard of care as a teacher. However, this standard of care is to be adhered to for his own safety and not the safety of others.'[3] Contributory negligence must also be the proximate cause of an injury in order for a lawsuit which has been filed on grounds of negligence to be successful.'[4] However, it appears that this type of negligence may not be used as a complete defence. Instead, it may only be used to prorate the fault for the damages between the plaintiff and the defendant.'[5]

It seems that children of "tender years" (six years of age or under) cannot be found guilty of contributory negligence. Apparently, such children have been judicially considered as "too young", both chronologically and mentally, to have appreciated and comprehended many of the risks or dangers which were inherent in certain activities.'[6]

'[3] Butterworth et al. v. Collegiate Institute Board of Ottawa, (1940) 3 D.L.R. 466.

'[4] Linden, op. cit., pp. 403-07.

'[5] McCurdy, op. cit., p. 133.

'[6] Eyres v. Gillis and Warren Limited, and Chivers, loc. cit.

Voluntary Assumption of Risk

The latin term used by the courts for this defence is "volenti non fit injuria". It means that:

> To a willing person no injury is done. A person who voluntarily assumes a risk, cannot be heard to complain of any damages suffered as a result of such voluntary assumption...'[97]

By way of this defence, it appears that a student absolves school authorities from their legal duty of care if he knowingly assumes a risk.'[98]

In order to establish the defence of voluntary assumption of risk, school authorities must prove that a student was not only aware of the dangers and risks in an activity, but that he also appreciated and voluntarily accepted them. It stands to reason that a student could not have assumed a risk if he was not aware of any accompanying danger.'[99] If a defendant can convince the court that "volenti non fit injuria" was evident, then no claim of negligence or strict liability can be upheld.[100]

It seems that the doctrine of voluntary assumption of risk cannot be applied if someone becomes injured as a result of having been required to participate in an activity. For example, because student participation in most physical education activities is mandatory, it would

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[97] Sodhi, op. cit., p. 504.

[98] Lamb, op. cit., p. 23.

[99] Linden, op. cit., pp. 424-26.

[100] Lamb, loc. cit.

seem that the defence of voluntary assumption of risk could not be applied by a teacher if a student happened to suffer an injury after having been required to participate in a physical education task. However, "volenti" has also been used as a defence when a student voluntarily consented to participate in an extra-curricular event and became injured as a result.[101] In order for legal liability to be established, it must be shown that any alleged negligence on the part of a teacher or school board was the proximate cause of the injury.

SUMMARY

A tort is a civil wrong. The primary purpose of tort law is to compensate tortious victims for any damages which they had sustained as a result of a tort that had been committed by another party.

There are three fundamental grounds on which tort liability may be established:

1. intentional infliction of harm
2. negligence
3. strict liability

The first of these has not been considered in this chapter because it was not within the scope of this thesis.

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[101] Ibid

In order for a lawsuit which has been filed on grounds of negligence to be successful, several elements must be legally proved to have been evident at the time that an injury occurred. First, it must be proved to the satisfaction of a court that some sort of injury had been incurred by the student. Second, it must be proved that the school authorities owed the student a legal duty to protect him from reasonably foreseeable risks and dangers. If it is shown that a legal duty HAD existed, then the student must also prove that the school authorities were required to conform to a certain standard of care. For teachers, who are judicially considered as being "in loco parentis", this standard is based upon an artificially designed character known by the courts as the "reasonably prudent parent". Regarding school boards, it appears that they are required by law to provide students with a higher standard of care than that which is owed by an "invitor" to an "invitee". The burden of proof is also upon the student to show that the school authorities were in breach of their legal duty of care. In addition, the student must not only show that the school authorities failed to conform to their legal standard of care, but that this failure was the immediate, or proximate cause of the injury.

Teachers and school boards operate within what is legally referred to as a "master-servant" relationship. As a result of this legal bond, school boards may be held liable for the

negligent conduct of their teachers, principals, or other employees, such as bus drivers, caretakers, and secretaries. This relationship is incorporated within the field of tort law which is known as vicarious liability. Since students are legally classified as invitees, school boards owe them a higher duty of care than licensees or trespassers.

If defendant school authorities can specifically prove that the conduct of a student had contributed to his own injury, or that a student had voluntarily assumed a risk in an activity, then a negligence lawsuit may be unsuccessful. However, a judicial decision of contributory negligence may not necessarily absolve school authorities of all liability. Instead, it may be used to prorate the fault of each party for the injury.

Chapter III

COURT CASES IN CANADA: 1968-1981

This chapter presents condensed accounts of adjudications which were based upon the alleged negligent conduct of Canadian educational personnel. These cases have been reviewed in the chronological order that they have been decided. The year 1968 was selected as a base point because it marked the last year, to the knowledge of this researcher, that a Canadian author published a book concerning school law. Therefore, this researcher has assumed that a thorough review of negligence lawsuits against educational personnel had been conducted up until, but not including 1968. The year 1981 was selected as an end point because any lawsuits which may have been judicially considered in 1982 had not yet been available in any of the resource material at the Faculty of Law Library at the University of Manitoba at the time this research was being conducted.

The case data contained within this thesis has been drawn from the following sources:

1. The Canadian Abridgment (Second Edition).[102]

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[102] The Canadian Abridgment (Second Edition), The Carswell Company Limited, Toronto, Canada, volumes 1-5, 1980.

2. The Canadian Abridgment (Second Edition), Cumulative Supplement.[103]
3. The Canadian Abridgment (Second Edition), First Permanent Supplement.[104]
4. The Canadian Abridgment (Second Edition), Second Permanent Supplement.[105]
5. Dominion Report Service.[106]
6. All Canada Weekly Summaries.[107]

The various index headings which this researcher used to locate the case material for this thesis from the above material were: (a) contributory negligence, (b) injuries to pupils, (c) liability, (d) negligence, (e) teachers, (f) trustees and boards, and (g) schools.

Various legal abbreviations were encountered by this researcher while reviewing the case summaries which have been located for this thesis. These abbreviations are contained within some of the footnoted material in the next

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[103] The Canadian Abridgment (Second Edition), Cumulative Supplement, The Carswell Company Limited, Toronto, Canada, 1980.

[104] The Canadian Abridgment (Second Edition), First Permanent Supplement, 1974-78, The Carswell Company Limited, Toronto, Canada, 1979.

[105] The Canadian Abridgment (Second Edition), Second Permanent Supplement, 1979-80, The Carswell Company Limited, Toronto, Canada, 1981.

[106] Dominion Report Service, Canada Law Book Ltd., Agincourt, Ontario, 1970-81.

[107] All-Canada Weekly Summaries. (Second Series), Canada Law Book Limited, Agincourt, Ontario, 1977-81.

two chapters. Their meanings are as follows:

1. A.R. (Alberta Reports)
2. B.C.L.R. (British Columbia Law Reports)
3. C.P. (Common Pleas)
4. D.L.R. (Dominion Law Reports)
5. E.R. (English Reports)
6. L.J.C.P. (Law Journal Common Pleas)
7. L.R. (Law Reports)
8. Man. R. (Manitoba Reports)
9. N.R. (National Reporter)
10. N.Y. (New York)
11. O.R. (Ontario Reports)
12. W.W.R. (Western Weekly Reports)

Legal processes and argot are often confusing. In order to clearly understand civil litigations in the context of this thesis, a brief summary of certain judicial processes and terms has been provided.

The parties involved in an ordinary civil action are referred to as plaintiff (the person who files the lawsuit) and defendant (the person against whom the lawsuit is filed).[108]

"Pleadings" is a legal term which refers to the formal written statements of the parties which precede the court hearing in litigation. These are usually compiled by lawyers. The purpose of these statements is to present

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[108] Waddams, op. cit., p. 54.

clearly the issues involved in the case as viewed by the plaintiff and the defendant. Proceedings begin with the plaintiff's lawyer presenting the formal statement of his client (Statement of Claim) to the lawyer of the defendant, who then prepares a formal statement of his own (Statement of Defence). A countersuit may be filed by the defendant if he has his own complaint against the other party.[10]

Before an actual trial, there usually occurs a stage that is known as Examination for Discovery, or, more simply, Discovery. This stage of the civil process is basically an opportunity for each party to examine all the evidence and issues of the case. The primary purposes of the Discovery stage are: (a) to encourage settlement before the case is allowed to proceed to court, and (b) to narrow the issues of the trial.

Judicial processes and procedures may be quite lengthy, involved, and expensive. It is not uncommon for legal cases to continue for several years before a final judgment is rendered. Such durations may be quite disturbing and taxing for the parties who are involved in a suit. Furthermore, if a lawsuit is allowed to proceed to court it may become public knowledge. Therefore, the parties may choose to settle "out of court" for some sort of mutually acceptable compensation in order to avoid courtroom complications. For such reasons, it is not surprising that most civil lawsuits

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[10] Ibid, p. 57.

are settled at this stage.

If a case proceeds to court it is transcribed in a specific legal format. For example, a case written as Smith et al. v. Winnipeg School Division No. 20 et al. indicates several facts and possibilities. The plaintiff is always cited first. Therefore, in this case, Smith is the plaintiff and is filing suit against the Winnipeg School Division No. 20 et al., who are the defendants. The "v." on the written transcript means "versus" or "against". The "et al." is an expression meaning "and others", and is only used in certain instances. For example, if a student is not of legal age he cannot personally file a suit against another party. However, the law allows him to file suit through a parent or legal guardian of legal age. Thus, the "et al." represents the included party. Similarly, if a suit is filed against a teacher for negligence, the name of the school division or district in which the educator was employed may be cited as the first defendant because of the "master-servant" relationship in which they are legally engaged. The teacher, and perhaps a principal, represents the "et al." However, the words "et al." are usually omitted when citing the name of a case in a report or monograph.[110]

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[110] Ibid, p. 55.

In Canada, there exist several courts which may be involved in civil litigations which concern tort liability. Names of these courts may vary from province to province.[111] The decision as to the type of court which will hear a civil lawsuit is dependent upon the legal principles and guidelines of a particular province. Basically, however, the type of court to which a case may be allowed to proceed depends upon the amount of money for which a lawsuit has been filed. Again, this amount varies from province to province. In Manitoba, for example, Small Claims Courts deal with civil cases where the Statement of Claim does not exceed $1,000. County Courts deal with civil cases where the Statement of Claim is greater than $1,000 but less than $10,000. The Manitoba Court of Queen's Bench deals with all civil matters, regardless of the amount of the Statement of Claim. Courts of Appeal deal with appeals of previous judicial decisions. The Supreme Court of Canada is the ultimate appeal court in Canada, and it is not uncommon for as many as eleven judges to consider the same case.

The purpose of any initial civil trial is to collect factual evidence from which the trial judge will form his decision and pass his final judgment. Witnesses and exhibits may be presented at this stage of the civil process.

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[111] Ibid, p. 157.

Most civil trials in Canada are conducted by judges without juries, partly because of the "vagaries of jury awards" and partly because of "judicial and legislative constraints."[112] Jury trials are used only for such civil cases which involve lawsuits that are based upon such torts as false imprisonment or false arrest.

If one party is dissatisfied with a verdict given by a trial judge, it may appeal the decision to a higher court. If the appeal is accepted, then three or more judges review and decide the case on the basis of the factual evidence which had been presented to the trial judge. It is the function of appeal courts to review evidence which has been collected by the trial judge and then reach their own decision. Therefore, the inferences which they draw from the evidence may overrule the decision of a trial judge.

The legally significant facts and circumstances of the legal cases which have been located for this thesis chapter have been presented in the chronological order in which they were judicially decided.

The following information was sought for each case summary:

1. The court in which the case was finally decided.
2. The date the case was finally decided.
3. The date the injury occurred.

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[112] John Sopinka and Sidney N. Lederman, The Law of Evidence in Civil Cases. (Toronto: Butterworths, 1974), p. 6.

4. The age, sex, and grade level of the student.
5. The activity during which the injury occurred.
6. The nature of the injury.
7. Facts and circumstances surrounding the case.
8. Arguments presented by attorneys for their clients.
9. Judgment, legal reasoning, and decision of the court.
10. Amount of compensatory award (if given), and to whom awarded.

SOMBACH ET AL. V. TRUSTEES OF REGINA ROMAN CATHOLIC HIGH SCHOOL DISTRICT OF SASKATCHEWAN[113]

This case was decided at the Saskatchewan Court of Queen's Bench on December 22, 1969.

The evidence in this case showed that the plaintiff, Karen Sombach, suffered severe lacerations of her left leg when she stepped through a glass panel of one of the schools of the defendants. She required 87 stitches to close her wounds and was medically advised to wear orthopedic shoes for about nine months as a result. Dr. Szlazak, one of the attending surgeons, had testified that further surgery would be necessary to narrow the scars once Karen had ceased her adolescent growth spurt. The plaintiff sued the defendants for negligence and claimed damages for her pain, suffering, and resulting disfigurement. She basically argued that the defendant had failed to maintain the entrance of the school

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[113] Sombach v. Trustees of Regina Roman Catholic High School District of Saskatchewan, (1969) 72 W.W.R. 92-100.

in a proper and safe condition, and that the entrance was constructed in such a way so that the plate glass panel was nearly indistinguishable from the adjacent doors. This construction was also argued as having constituted a hazard to users, and was viewed as being responsible for the plaintiff sustaining her injuries.

On the day of the accident, October 17, 1968, the plaintiff was a fourteen-year-old student and a member of the girl's volleyball team at her school. On that day, the team was to congregate in the gymnasium after classes with their coach, Lydia Chatto. From that point, they were to proceed to another collegiate to compete with another volleyball team. Karen and a friend had arrived late to the gymnasium, however, and they deduced that the team had departed without them because they were the only people in the area. Karen then proceeded to the front doors of her school and walked through what she had described as the "girl's" door. She also testified that this door was propped open at the time. At that point, Karen noticed that Miss Chatto was at the front of the school beside a taxi which contained some of the members of the volleyball team. Karen then stated that she had proceeded a couple of steps outside the door, from where she managed to catch the attention of her coach and attempted to explain her late arrival to the gymnasium. In contrast, Miss Chatto testified that Karen had wandered approximately sixteen feet from the doors. In any case,

Karen was told by Miss Chatto that if she wanted a ride she "had better hurry up and change". It was at that point in time that Karen turned and stepped through the glass panel of the door next to the one she had exitted from. The resulting injuries have already been described.

The evidence revealed that the main entrance of the school was made primarily of glass and contained two sets of doors with a twelve foot vestibule in between. On either side of the vestibule were three sets of double glass doors, which collectively occupied a width of approximately thirty-two feet. Between each set of doors, and on both sides, there was a floor-to-ceiling glass panel partition. The panels which separated the doors were approximately the same width as a door, which contained a metal frame with a handle on the outside to pull it open. About three and one-half to four feet from the floor level there was a push-bar on the inside of each door. The glass partitions between and on both sides of the doors were set in a metal frame. In order to distinguish the panels from the doors, the school board had a diamond design sand-blasted on them. The evidence indicated, however, that the panel which Karen hit had not been sand- blasted at the time. The secretary-treasurer of the school district testified that about two weeks prior to the accident, while visiting the school in question, he saw several strips of colored paper attached to the glass panel. This resulted in them being indistingui-

shable from the doors. However, the plaintiff testified that she did not see any such strips at the time of the accident. Furthermore, no evidence was submitted by any witnesses which would have indicated that there might have been strips present at the time of the accident.

The defence counsel argued that the entrance to the school in the case at bar did not constitute an unusual danger because the plaintiff had used it at least twenty times since she had been enrolled in the school. It was also argued that Karen was flustered because she was late, the rest of the team was in the taxi, and that she and her friend would miss the game if they did not hurry to get their uniforms. As a result, it was submitted that Karen could not have exercised a reasonable amount of care for her own safety because of her "flustered" condition. To support this argument, the defence counsel relied upon a decision from Piket v. Monk Office Supply Limited.[114] The plaintiff in that case had also collided with a glass door, believing that it was open because there were no markings on it which might have suggested otherwise. The Supreme Court of British Columbia concluded that the plaintiff had failed to exercise reasonable care for his own safety, and that the accident occurred as a result.

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[114] Piket v. Monk Office Supply Ltd., 64 W.W.R. 63 (1968).

With all the facts, circumstances, and arguments having been presented, it remained for the judge to reach a verdict. While preparing for his decision, he ruled that the teacher in this case did not owe any legal duty of care to the plaintiff, even though Karen was in the process of going to play volleyball on a team supervised by Miss Chatto. He reasoned that Miss Chatto was not responsible for the supervision of the manner in which Karen had stepped through the glass panel. As such, she could not be held liable for negligence.

The judge believed that the school board owed Karen the duty which an invitor owes an invitee. He clarified the standard of such a duty by quoting a passage from a decision rendered by Mr. Justice Willes in Indemaur v. Dames, where it was stated that:

> [the invitee], using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know.[115]

When articulating his decision, the judge also emphasized that the plaintiff who collided with the glass door in Piket v. Monk Office Supply Ltd. was an adult. Therefore, the question of whether or not an unusual danger had been presented by the school entrance was examined on the basis of the age of Karen Sombach. At fourteen years of age, the judge did not consider her to be an adult. Subsequently, he

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[115] Indemaur v. Dames, (1866) L. R. 1 CP 274, 288, LJCP 184.

ruled that the glass doors and panels DID constitute an unusual danger to the infant plaintiff. The defendant should have been aware of the danger and should have taken the necessary safety precautions to guard against it.

On these bases, the defendant was found guilty of negligent conduct.

Judgment was for the plaintiff for $3,500 for pain, suffering, disfigurement, and court costs.

DZIWENKA ET AL. V. THE QUEEN IN RIGHT OF THE PROVINCE OF ALBERTA ET AL.[116]

This case was decided by the Alberta Supreme Court on September 8, 1970. The defendants appealed the judgment of the trial judge who found the defendants sixty per cent negligent and assessed the damages which had been suffered by the plaintiff at $10,716.60.

The evidence in this case showed that the plaintiff, Dziwenka, suffered an injury to his hand while operating a power saw in a shop class. The saw cut deeply, chewing tissues and amputating the index finger and the small finger at the large knuckle. The tendons of the long and middle fingers were also severed, resulting in a contracture at the joints of these fingers. As a result, Dziwenka filed suit against the defendant for negligence, stating that the teacher did not supervise the activity properly.

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[116] Dziwenka v. The Queen in Right of the Province of Alberta, (1970) 16 D.L.R. (3d) 190-201.

The accident occurred on November 30, 1961, at which time Dziwenka, a deaf mute since birth, was eighteen years of age and attending a school for the deaf in Edmonton. Since this school was operated by the province, and not by a school board, the plaintiff filed suit against "The Queen in Right of the Province of Alberta". The instructor was Mr. Mapplebeck. The evidence presented in court revealed that the accident occurred in the following manner.

Both the plaintiff and the defendant had removed the safety guard from a circular power saw that was to be used in this particular classroom activity. After the guard had been removed, Mr. Mapplebeck demonstrated to Dziwenka the type of cut which was to be made on a group of wooden drawers. He did this by performing "one or two" cuts himself and then watched the plaintiff when he was given the opportunity to perform the same task. Mapplebeck then instructed another student, named Turner, to receive the drawers after Dziwenka had passed them through the saw. The instructor then moved to a different bench where another group of students were working. At that point, he was approximately fifteen to twenty feet from Dziwenka and Turner, and occasionally looked over his shoulder to note the progress of the plaintiff. Suddenly, Mapplebeck noticed a change in the sound of the power saw which Dziwenka was using. This indicated to him that the saw was cutting into a substance softer than wood. It was, of course, the sound of the hand of the plaintiff contacting the saw blade.

The instructor testified that he had neither heard nor seen anything which would have indicated that Dziwenka was having some difficulty with his task. Dziwenka testified that his hand had slipped from the drawer and onto the saw blade. Turner, the assistant, testified that he had witnessed that occurrence.

One witness, a high school instructor of vocational education with the Department of Education, was summoned to testify by the defence counsel. He stated that the operation that Dziwenka was conducting was "comparatively simple". Furthermore, it was viewed as being a reasonable method for achieving the desired results in this activity.

Another witness, a building construction inspector at a high school in Edmonton, testified that it was necessary to remove the safety guard in order to trim the drawers. He also stated that he would not assign such a task to a novice, and that the instructional procedures taken by Mapplebeck were the type he would use himself to demonstrate such an operation.

The plaintiff's attorney strongly emphasized the handicap of his client, Dziwenka. On that basis, it was argued that the plaintiff should have been owed a higher standard of care than a physically "normal" person. The court did not recognize the validity of this argument, however, and supported its decision by stating that there was no evidence presented which might have suggested that the disability of

the plaintiff had impaired his ability to perform the operation in which he was engaged at the time of the accident. It did recognize, though, that the reasonable man is expected to show a greater degree of care towards a person who is suffering from a peculiar disability.

The trial judge had also established that Dziwenka was an "intelligent and observant" boy, and that he was a careful student with a considerable aptitude. The evidence disclosed that he was in his third year in an industrial shop class where he received approximately 120 hours annually of instruction and operation with all forms of power equipment. It was concluded that he was well aware of any dangers or risks which might have been involved in using a power saw without the safety guard being attached.

On the evidence, the trial judge concluded that Mapplebeck had inadequately supervised the activity, thereby constituting negligence and making him and his employer liable for the damages. However, the defendants were held to have been sixty per cent negligent. The appellate court overruled this decision, stating that no evidence had been presented which might have suggested that if Mapplebeck had stayed with Turner and Dziwenka during the course of the operation, that he could have prevented the plaintiff's attention from drifting momentarily, thereby striking the power saw blade with his hand.

The following facts were considered when forming the final decision:

1. Dziwenka was a capable operator with all forms of power equipment, and therefore could hardly be classified as a novice.
2. The operation was comparatively simple.
3. Mapplebeck had followed the course of procedure which the building construction inspector would have used for the same operation.
4. There was no evidence to suggest that the instructor could have prevented the accident if he had been closer to the plaintiff and his assistant.
5. The observations which had been taken by Mapplebeck from the other part of the room had indicated that Dziwenka and Turner were progressing satisfactorily with their assigned task.

On the basis of these facts, the appeal court found it difficult to deduce that the operation had been inadequately supervised. It ruled that simply moving away from close proximity to the work did not prove that the instructor had failed "to take normal and proper precautions to endeavor to avoid the possibility of injury to Dziwenka in such operations."[117] Furthermore, it was considered unreasonable to have expected the instructor to foresee the possibility that an experienced operator such as the plaintiff would become

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[117] Ibid, p. 200.

careless and "permit his mind to stray" from the inherently dangerous task at hand.

In conclusion, the court ruled that the proximate cause, and "sole author of the injury", was the momentary inattention of Dziwenka to the task at hand. As a result of this carelessness, he was held by the court to have been 100% contributorily negligent for his own actions.

The appeal was allowed and the action dismissed with court costs, if asked for.

MODDEJONGE ET AL. V. HURON COUNTY BOARD OF EDUCATION ET AL.[118]

This action was settled in the Ontario High Court of Justice on January 4, 1972.

The lawsuit was filed by the respective fathers of Geraldine Moddejonge and Janet Guenther--two fourteen year old high school students who drowned on May 14, 1970 while participating in a field trip which had been approved and sponsored by the defendants. The two plaintiffs filed suit under the provisions of the Fatal Accidents Act. Under the provisions of this Act, damages were to be assessed at such a sum as would reasonably compensate the most immediate family or guardians for any pecuniary loss which they may have suffered as a result of the death of the deceased. The claim by the plaintiffs was for damages which had been

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[118] Moddejonge v. Huron County Board of Education, (1972) O.R. v.2 pp. 437-46.

suffered as a result of the deaths of their daughters. It was alleged that the defendants had been in breach of their duty of care, and, as a consequence, their daughters lost their lives.

The facts of the case showed that the defendants, David McClure and John McCauley, were teachers employed by the Huron County Board of Education. As such, they were considered by the court to have been in a master-servant relationship with their employer.

The evidence revealed that McCauley was the coordinator of the outdoor educational program in his high school. All activities of this program were described and disclosed to the parental community of the school by means of an information paper which had been given to students by the school authorities. In order for a student to be allowed to participate in the program, the defendants required a seven dollar enrollment fee as well as the written consent of the parents. It was specifically noted in the information paper that any swimming activity would be conducted under the accompaniment and supervision of a teacher or student leader.

The plaintiffs in this case had paid the required fees and consented in writing that their daughters could accompany twenty-seven other students on the morning of Wednesday, May 13, 1970, to the Ausable River Conservation Authority property. The students were to reach their desti-

nation by way of a bus which had been chartered by the Board. They planned on staying until Friday, May 16, at a farmhouse which they referred to as the "Old Petersen place".

The critical date in this case was Thursday, May 14, when McClure and McCauley divided the students into two groups and proceeded to direct them on separate field trips. When the group which had been directed by McCauley was to return to their point of reference, five students, including Geraldine Moddejonge and Janet Guenther, pleaded with McCauley to allow them to go swimming. McCauley agreed and proceeded to drive them to a beach that was located approximately one mile from the "Old Petersen Place". While travelling to the swimming hole, he encountered McClure, who was briefed on the recently developed plan to go swimming. No objection was taken and McCauley progressed to the beach.

The local conservation authority created the artificial beach in such a fashion so as to allow a non-swimmer to wade safely from the dry land area to a distance in the water of approximately twenty-five feet, at which point a sharp decline developed.

The evidence further disclosed that McCauley held a Master's Degree in Outdoor Education but was unable to swim. He was also familiar with the geographical contours of the area because he recently resigned from his position of resources manager of the Ausable River Conservation

Authority in order to take his job as a teacher. He was well aware that no buoys had been established in this area and that no life-saving equipment was available.

The judge accepted the testimony of McCauley as being the most accurate description of the events which were most closely associated with the accident. Apparently, immediately upon arrival at the swimming hole, the defendant explained the features of the beach to the students. He drew an imaginery, irregular line from their position on the beach and a "T-bar" fence post which the conservation authority erected to outline one limit of the swimming area. This line was not to be ventured beyond, because at that point a sharp decline of the shoreline occurred. This feature and the dangers it presented was emphatically stressed by the defendant.

After receiving the instructions, the girls ventured into the water. A breeze developed, but apparently it was not forceful enough to warrant catching the attention of McCauley. A surface current developed on the water and carried some of the girls toward the drop-off area. Geraldine Moddejonge swam to the rescue of Janet Guenther, but was unsuccessful in her attempt to retrieve her to the shallow area. McCauley then rushed into the water as far as he could and summoned another girl for assistance. He then left the water, told the remaining girls to return to dry land, and ran for his car to get help from McClure at the

"Old Petersen Place". At that point both Geraldine and Janet had passed from sight. When McCauley and McClure returned they attempted a rescue, but were unsuccessful in locating Geraldine and Janet. The authorities recovered the bodies the next day.

On the basis of these facts, the judge considered and pronounced the claims of the plaintiffs separately. First, he dealt with the claim that had been filed by the parents of Janet Guenther. The judge searched for three elements which he felt the plaintiffs needed to prove were present in order to constitute their charge of negligence. They were:

1. That the defendants owed Janet Guenther a legal duty of care.
2. That the defendants failed in their duty.
3. That this failure was the proximate cause of her death.

The judge ruled that McCauley was "in loco parentis". Therefore, he was legally bound to care for his students in the same way that a reasonably careful parent would guard against foreseeable risks to which his children were exposed to. It was ruled that McCauley was in breach of that duty. It was reasoned that a reasonably prudent parent, who was unable to swim, would probably not allow his daughter, who also could not swim, to wander into a body of water which was not equipped with any life-saving equipment and contained a dangerous drop-off point. The teacher should

have foreseen the danger in the risk which the girls were exposed to as a result of the strong breeze which developed and which he was aware of. Subsequently, the judge held that the defendant, McCauley, was negligent and liable in respect to the plaintiff, Guenther.

The judge then proceeded to decide the case for the plaintiff, John Moddejonge, whose daughter, Geraldine, drowned while attempting to save Janet Guenther.

The court maintained that there was no legal duty to assist anyone in danger, stating that it was:

> a great reproach to our legal institutions that rescuers for many years were denied recovery by a train of reasoning based on the concept of voluntary assumption of risk.[119]

To develop support for his forthcoming decision, the judge quoted a passage from Wagner v. International R. Co., where Justice Cardozo stated that:

> Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal...The risk of rescue, if only it be wanton, is born of the occasion. The emergency begets the man. The wrongdoer may not have foreseen the coming of a deliverer. He is accountable as if he had.[120]

The judge used this precedent to defeat the argument which had been presented earlier by the defence counsel, who argued that the efforts of Geraldine Moddejonge constituted a "rash and futile gesture". The fact that Geraldine had

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[119] Ibid, p.444.

[120] Wagner v. International R. Co., 232 N.Y. 176 (1921).

already saved one of the girls from drowning provided the final thrust against this argument.

It was held that the proximate cause of the accidents in this case was the negligence of the defendants. Also, since McCauley acted within the scope of his employment, the court held that the Board was also liable because of the master-servant relationship which existed between the two of them.

Damages were assessed at $2,800 and costs with respect to the claim of each plaintiff.

MAGNUSSON ET AL. V. BOARD OF THE NIPAWAN SCHOOL UNIT NO. 61 OF SASKATCHEWAN[121]

This suit was decided by the Saskatchewan Court of Appeal on June 24, 1975. The appeal arose as a result of the trial judge dismissing the action which had been filed by the plaintiff for damages for personal injuries.

The evidence showed that on June 4, 1970, during school recess, the fourteen-year-old, grade six plaintiff, and some of his friends, had wandered onto an adjoining fair ground, where he suffered a serious eye injury. He sued for damages, stating that (a) the school had an obligation to supervise as a careful parent would have, (b) that it was in breach of that duty, and (c) that the injury occurred as a result.

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[121] Magnusson v. Board of the Nipawan School Unit No. 61 of Saskatchewan, (1975) 60 D.L.R.(3d) 572-74.

It was disclosed in the evidence that no barrier of any sort separated the school premises from the fair grounds. On the fair grounds was a small, inoperative concession booth, around which the boys noticed a wasps' nest. Some of the boys began to throw various objects at this nest. One individual underhandedly swung a broken bottle towards it, but, just as he was about to release it, the plaintiff bent over and ran in front of him. The broken edge of the bottle struck Magnusson in the eye, causing serious injury which required surgery to repair.

The trial judge found that the school was not the owner of the fair grounds property. Therefore, the school authorities did not have the immediate legal responsibility of supervising, permitting, or prohibiting the entry of other persons onto the adjoining grounds. On this basis, the defendant was not the legal occupant of the premises.

On appeal, the plaintiff argued that even though the defendant was not the legal occupier of the fair grounds, it could still be liable for negligence on the basis that it failed to provide proper supervision for students during recess. It was further argued that the defendant should have foreseen the possibility that broken glass might have been lying around in the fair ground. It was reasoned that precautionary measures, such as erecting a fence or stationing a teacher or supervisor on the school boundary, should have been taken by the school authorities to prevent students from entering the fair grounds.

It was also disclosed in the evidence that two teachers had been assigned to supervise the students during recess on the day of the accident. The appellate court ruled that the adequacy of this dual supervision could only be seriously questioned if there was something inherently dangerous on the fair ground itself. Therefore, the court considered the dangers and risks which were presented by the variety of glass pieces on the fair ground property. To support their forthcoming decision, the judges quoted from a decision in Wray v. Essex County Council, where it was stated that:

> It may not be possible to say what article is inherently dangerous and what is not by any general definition...things like a naked sword or hatchet or loaded gun or an explosive are clearly inherently dangerous...they cannot be handled without a serious risk. On the other hand, you have things in ordinary use which are only what is called 'potentially dangerous', that is to say, if there is negligence...then the thing may be a source of danger..it merely depends on the concurrence of certain circumstances...generally, negligence on the part of someone.[122]

The court also noted that a danger or risk had to be reasonably foreseeable in order for a schoolmaster to be expected to guard against it.

On the basis of the facts and circumstances of the case at bar, the appellate court concluded that the broken glass was "potentially", and not inherently dangerous. Therefore, it was held to be "unreasonable" to expect a careful parent to disallow his fourteen-year-old child from wandering onto a fair ground simply because there was some broken glass in

[122] Wray v. Essex County Council, (1936) 3 All E.R. 102.

the area. It was also considered to be "unreasonable" to have expected the school authorities to foresee the combination of circumstances which had resulted in the eye injuries that had been sustained by the plaintiff in the case at bar.

The defendant was found not guilty of negligence and the appeal was dismissed with costs.

JAMES ET AL. V. RIVER EAST SCHOOL DIVISION NO. 9 ET AL.[123]

This case was decided on November 3, 1975 by the Manitoba Court of Appeal. The defendants had appealed the judgment of the trial judge, who ruled in favor of the plaintiffs in an action for damages for personal injuries.

The evidence which had been presented to the court showed that on September 22, 1972, an eighteen-year-old female grade twelve student, Joni James, suffered permanent damage to the tear duct of the upper and lower eyelid of her left eye during a chemistry laboratory class. She also sustained some facial scarring. She required extensive medical treatment, some of which included the insertion of an artificial tube into the wall of her nose. Her vision blurred occassionally as a result of tears flowing over her left eyeball.

The evidence also revealed that Mr. Peniuk, the chemistry teacher, had distributed some instructional materials to his students on the day before the experiment was to be performed. This was done on the premise that the students

[123] James v. River East School Division, (1975) 64 D.L.R.(3d) 338-52.

would obtain a fuller understanding of the experiment if they studied the procedures beforehand.

On the day of the experiment, the defendant instructed the chemistry class verbally. In addition, written instructions were given on the blackboard.

The purpose of the experiment was to determine the precise atomic weight of tin. To perform this experiment, one gram of tin was to be placed in a previously weighed dish, to which five millilitres of concentrated nitric acid was to be added. After that, the dish was to be covered. A reaction, involving the emission of a reddish- colored gas, would then occur. This reaction would be finished when the gas was no longer generated, at which time the dish cover was to be removed and a bunsen burner was to be waved underneath the evaporating dish to remove excess moisture. When the moisture had been removed, the precise atomic weight of tin could be determined by weighing the mass again and calculating the difference between this weight and the weight when the experiment began.

The evidence revealed that the following circumstances surrounded the accident. The plaintiff and her partner had followed the verbal and written instructions as outlined by Mr. Peniuk, and had reached the point in their activity which required them to use the bunsen burner to heat the dish in order to evaporate the moisture which had accumulated from the preceeding reaction. The material turned

powdery and white, in accordance with the directions and instructions which had been given earlier, and the heat under the dish was increased. The plaintiff had become confused about where to progress from this stage, and attempted to locate Mr. Peniuk in the room for assistance. She was unsuccessful, and continued heating the dish. The mass exploded onto her face and blouse and resulted in the injuries mentioned earlier. The appeal court found the plaintiff not contributorily negligent for proceeding with the experiment.

The master copy of the printed instructions which were given to the students on the day prior to the accident had been retained by Mr. Peniuk. It contained several additional comments which had been added to it AFTER the accident, such as: "Very powerful acid" (after the first reference to the concentrated nitric acid), "Don't overheat---spattering ruins your results", and "Also dangerous when heating--use goggles". The defendant had testified that these comments were provided to remind him to caution future students of the dangers and risks which were presented by this particular experiment. Although goggles had been available, none were used by any of the students on the day of the accident.

The defence counsel argued that this evidence was inadmissable because it happened AFTER the accident. However, the appellate court accepted the evidence, stating that:

> ...in an action for negligence, evidence of repairs, improvements, removal, substitution, or the like, done after the occurrence of an injury, is, if it stands entirely alone, no evidence of negligence, but that such evidence is admissible because it is logically relevant.[124]

The defence counsel also argued that Mr. Peniuk had supervised, cautioned, and instructed the students properly, and that it was their responsibility to accurately follow the instructions. The judge, however, rejected this argument on the basis that such responsibility would still not eliminate the need for careful supervision in the presence of dangerous chemicals.

The defence counsel further argued that there was no finding of carelessness by the trial judge, who found only that Mr. Peniuk had omitted to do what he ought to have done (non-feasance). He also contended that the experiment had been performed several times in past years without any accident occurring, and that the manner in which it was conducted had correlated closely with the manner in which it had been conducted in other schools. Furthermore, if there was any deviation from such practice, the burden was legally placed upon the plaintiff to prove it.

Lastly, it was argued that no evidence had been submitted which would have suggested that the actions of Mr. Peniuk did not conform to an acceptable level, and that the standard of care demanded of the teacher in this case was similar to those imposed in medical malpractice suits.

[124] Ibid, p. 341.

To support his case, the plaintiff's attorney summoned several witnesses to the stand. One of them, Mr. Laidlaw, was the President and Chief Chemist of the National Testing Laboratory, and he testified that there appeared to him to be a certain amount of ambiguity in the instructions which had been printed on the instruction sheet. He specifically attacked the sections which stated "Heat strongly for ten minutes" and "Heat strongly for twenty minutes". He believed that these directions were probably desired to indicate that the bunsen burner flame was to be gradually increased for ten minutes. Mr. Laidlaw also stated that the visual part of the experiment, which required students to determine whether the mixture was ready for strong heat, was a very direct and very serious hazard since the material inside the dish was spattering. He also criticized the warnings given to the students about various parts of the experiment, stating that this part of the activity was "particularly lacking for a training course", and that he did not see the comments that he would have liked to have seen in heavy type, namely: "Caution, this is corrosive, dangerous to skin, dangerous to the eyes."[125] Mr. Laidlaw believed that such information should be mandatory for "anyone less than a professional" chemist.

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[125] Ibid, p. 345.

The court ruled, however, that the defendant failed to instruct the class in the way that a reasonably prudent parent would have. He did not advise the students of the inherent dangers and risks of the spattering material, nor did he clarify the contradictions surrounding the time of the heating procedures on the instruction sheet. The court also ruled that the students were not adequately cautioned about the danger in working with heated nitric acid. Therefore, all these factors were viewed as constituting negligence.

The question that had been considered by the court in this case was not whether other schools had exercised similar standards of care when conducting similar experiments, but, rather, what standards of care should have been conducted under these particular circumstances? The court accepted the testimony of Mr. Laidlaw which criticized the inadequacy of the instructional methods and procedures of this experiment for a high school class. It was held that: (a) the possibility of an explosion occurring during the heating process, and (b) the possibility of an injury occurring as a result, should have been foreseen by the defendant.

The appeal was dismissed with costs. The judge allowed general damages to the plaintiff in the amount of $25,000.

THORNTON ET AL. V. BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 57 (PRINCE GEORGE) ET AL.[126]

This case was decided by the British Columbia Court of Appeal on July 22, 1976. The defendants had appealed a judgment by the trial judge which held them guilty of negligence and therefore liable for the injuries which had been suffered by the plaintiff. Damages had been assessed and awarded to the plaintiff in the sum of $1,534,058.93.

The facts of the case showed that on April 6, 1971, at Kelly Road Secondary School in Prince George, British Columbia, the plaintiff, Gary Thornton, a fifteen-year-old student, was participating in a grade ten physical education class. Gymnastics was the scheduled program activity. The students of that class were to perform aerial somersaults for the first time. As a result of an unsuccessful attempt at this manoeuver, the plaintiff suffered a serious flexion injury to his neck as well as a comminuted fracture of his fourth cervical vertebra. He suffered immediate paralysis of his arms and legs and was irreparably rendered a quadraplegic. Further medical evidence had been presented to the court which revealed that he was able to rotate his head. He was also able to flex his arms and move them horizontally, although his forearms could only be slightly rotated. From the shoulder level down he could not not move any part of his body. He could eat his food only if it was cut into

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[126] Thornton v. Board of School Trustees of School District No. 57 (Prince George), (1976) 73 D.L.R.(3d) 35-62.

small pieces and only if he utilized a specially designed glove which allowed him to hold a spoon. He was unable to shave, brush his teeth, or attend to any other personal need and was considered by the doctors to require constant care for the remainder of his life. His mental faculties, however, stayed intact.

The evidence revealed that the accident occurred in the following manner. The students were to stand on a vaulting box, or horse, and jump down onto a springboard--the lower end of which was placed against the horse. The springboard would elevate the individual after he jumped on it, at which point he would attempt to gyrate slowly, head over heels, and complete the aerial somersault in a standing position upon the thick landing mats. However, when Gary attempted his aerial rotation, he overshot the thick mats, failed to complete a full revolution, and landed on his head on a thin mat at the far end of the landing pit.

Further evidence showed that the plaintiff was not gangling, awkward, or uncoordinated, and that he actually wanted to attempt the required exercise. It was also disclosed that the grade ten physical education class was divided into four terms. The activity of instruction during the first term was football. The second term involved basic and rudimentary gymanstics, during which time Thornton did some tumbling on floor mats, vaulting off a springboard, and tumbling over a low box-horse. Head stands, hand stands,

and cart wheels were also performed to give students experience with problems of orientation and equilibrium in the air. The third term involved outdoor activities such as snow-shoeing. The fourth term again involved gymnastics at a higher skill level, and it was during this part of the program that Thornton had suffered the injury. It was indicated that Thornton had received no formal instruction in regard to performing an aerial somersault. The evidence showed that the vaulting box which had been used in the gymnastic activity was about four feet in height and five feet in length, with a base width of about two and one-half feet and a top width of about fifteen inches. This box had been set at a right angle to the lower end of the springboard, which was approximately six feet long and eighteen inches in height at the end which was to be used for jumping on. The landing pit beyond the springboard was comprised of foam chunks in netting to a depth of about two and one-half feet, and had been placed on a two inch thick foam addamat. It extended for approximately seven feet, at which point approximately seven feet of addamat had been placed.

The plaintiff's attorney criticized the unpredictable nature of the type of springboard which had been used in that instance. The landing pit was also criticized for being more appropriate for other sports, not gymnastics.

The appellate court, when attempting to formulate a decision, felt that school authorities could not be considered

negligent nor in breach of their duty of care by permitting a pupil to undertake to perform an aerial front somersault off a springboard IF:

1. It was suitable to his age AND mental and physical condition.
2. He was progressively trained AND coached to perform the manoeuver properly AND to avoid the danger.
3. The equipment was adequate AND suitably arranged.
4. The performance was properly supervised.

Given the circumstances of the case at bar, these were the component criteria which the court believed would have constituted the appropriate duty or standard of care. Each criterion was considered separately on the basis of particular facts and circumstances of this case.

First, the appellate court held that the exercise was suitable to the age and mental and physical condition of the plaintiff.

Second, it was held that Thornton had been progressively trained and sufficiently coached to perform the exercise reasonably well and to avoid danger.

Third, the court considered whether or not the equipment had been adequate and suitably arranged. It rejected one of the arguments which had been submitted by the defence counsel, who proved that the springboard which had been exhibited in this case had also been commonly used in other schools. Furthermore, since the landing pit had no causal

connection with the accident, (Thornton missed it completely), whatever faults it may have had were not considered.

The principal objection which had been taken to the equipment by the court was in regard to the manner in which it had been arranged. The appeal court, when considering this question, accepted the legal reasoning of the trial judge, who stated that:

> The whole of the evidence leads me to find that these boys, possessing such limited expertise in gymnastics, had undoubtedly not progressed to the point where they could be trusted to somersault from this unpredictable, dangerous configuration. I do not suggest that each piece of equipment was per se dangerous; I am concerned with the configuration. I think Edamura (the defendant) should have taken care to instruct these boys on the use of the configuration. They had used it before. He should have given them some advice, some instruction, a word of caution, and, at least imposed some limits on what they could or could not do in the circumstances. His attention to them was, in my opinion, casual.[127]

Fourth, the court considered whether or not the activity had received proper supervision. The evidence disclosed that the instructor agreed to the way in which the students had arranged the equipment for the performance of an aerial somersault. However, he left the immediate area and ventured to a nearby desk where he engaged himself in paperwork. He gave no instructions, no cautions, no training, no demonstration, and no direct supervision. Although it had also been disclosed that no spotters were used, the court

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[127] Ibid, p. 448.

did not consider this fact in its decision because the lack of a spotter was found not to be causative of the injury which had been suffered by the plaintiff.

On the basis of these facts, the court held that the instruction and supervision which had been given for the "dangerous configuration" of the equipment in this case was insufficient. Furthermore, the risks of such a configuration should not only have been foreseen, but should also have been guarded against.

The defendants were found guilty of negligence and damages were reduced and awarded to the plaintiff in the sum of $649,628,.87. Special damages had been assessed at $49,628.87. When assessing general damages at $600,000.00, the court had considered such items as cost of future care needs (ex. para-van motor vehicle, annual cost of care), loss of ability to earn income in the future, compensation for mental and physical pain and suffering endured and to be endured, loss of amenities and enjoyment of life, and loss of expectation of life.

EATON V. LASUTA ET AL.[128]

This action was decided by the British Columbia Supreme Court on January 26, 1977.

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[128] Eaton v. Lasuta, (1977) 75 D.L.R.(3d) 476-80.

The case involved an action for damages for negligence arising from an accident which occurred on May 10, 1973. The female plaintiff, twelve years old at the time, was participating in a "piggy-back" race in a physical education class and suffered a broken leg during the activity. She required hospitilization for three months, two months of which were spent in traction. The broken bone required a pin to be inserted to keep it together, thereby leaving small scars on the outside of the leg.

The evidence revealed that on May 10, 1973, the defendant, Muriel Lasuta, a physical education teacher, allowed the students of her class the opportunity to practice for the school sports day which had been scheduled for the following week. It was a sunny afternoon and the class was divided into several groups which had proceeded outdoors to perform various activities. The plaintiff was a member of a group of eight girls who were going to practice for the "piggy-back" race. This event was one of a group of novelty activities, such as sack races, which had been incorporated into the sports day to encourage the participation of girls who were not very athletically inclined. The defendant asked Eaton to volunteer for the piggy-back race during this class. After she volunteered, she was instructed to select a lighter and smaller "rider", which she did.

Prior to the race, the four pairs of girls lined up on a starting line on a dry grass-hockey field. The defendant

signaled the start of the race, and the plaintiff, after running a relatively short distance with her partner on her back, stumbled, fell, and broke her leg.

The plaintiff argued that the defendant, Lasuta, was negligent for having encouraged an uncoordinated girl to participate in such an activity. Furthermore, it was believed that the instructor should have foreseen the risk that he created by requiring the plaintiff to carry the extra weight on her back. As a concluding thrust for his argument, the plaintiff's attorney felt that his client should be considered as handicapped because evidence which had been disclosed earlier revealed that she was tall, uncoordinated, gangling, awkward, and not athletically inclined. Therefore, it was believed that she should have been owed a higher duty of care than would be owed to a normal child.

The judge did not accept these arguments and did not view the race as being an unsuitable activity for the plaintiff. Furthermore, the attempt to classify the plaintiff as a handicapped student was rejected.

The court ruled that the activity was not inherently dangerous nor likely to cause injury. Even if there was reason to believe that some of the students would fall, that alone could not be considered as sufficient reason to establish negligence. It was considered to be unreasonable to have expected the instructor in this case to have foreseen

the probability that an injury such as the one suffered by the plaintiff would have occurred. To support his decision, the judge quoted a passage from Gard v. Board of School Trustees of Duncan, where it was stated that:

> The duty should not be determined from the happening of the extraordinary accident in this case, but from the danger that was reasonably foreseeable before the game (grass- hockey).[129]

In conclusion, the judge held that:

> ...a careful and reasonable parent would not hesitate to allow his twelve-year-old daughter to engage in a piggy-back race on a grass-hockey field on a sunny afternoon in May.[130]

Therefore, the defendant was found not negligent and the action was dismissed with costs.

PISZEL V. BOARD OF EDUCATION FOR ETOBICOKE ET AL.[131]

The final decision for this case was rendered by the Ontario Court of Appeal on May 12, 1977. The defendants had appealed the findings of the trial judge, who held that the equipment utilized in this case was unsafe. Therefore, the defendants were held negligent because they were held responsible for its implementation.

The events of this case occurred during a grade eleven physical education class in which the sixteen-year-old plaintiff, James Piszel, was involved in a wrestling

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[129] Gard v. Board of School Trustees of Duncan, (1946) 1 W.W.R. 322.

[130] Eaton v. Lasuta, op. cit., p. 477.

[131] Piszel v. Board of Education for Etobicoke, (1977) 77 D.L.R.(3d) 52-54.

activity in which he suffered a fractured dislocation of the left elbow. The student filed suit against the defendants on the ground that the safety equipment system which had been adopted for the operation of a high school wrestling class had been inadequate.

The evidence revealed that during a "take-down" from a standing position, the plaintiff suffered the aforementioned injury. The instructor had previously demonstrated this manoeuver. The plaintiff struck the hardwood floor of the gymnasium at a point where the wrestling mats had become separated immediately before the fall. The instructor required non-participating students to sit around the edges of the mats with their feet pressed against the edges. He felt that this was a sufficient precaution to prevent the mats from separating.

The defence counsel had argued that the wrestling activity in this case did not represent a competitive situation and that the instructor had adopted reasonable safety precautions under the circumstances.

It had further argued that the standard of care which had been imposed by the trial judge was one of perfection and not one of reasonableness, and attacked the following part of his decision:

> If the Board of Education undertakes to include the art or sport of wrestling in the compulsory education program...there is a burden cast upon it to take the best safety precautions reasonably possible. With physical education for boys in several grades concentrated exclusively on wrestling during certain periods of the year, as was

> the evidence in the present case, and with three gymnasia available, to require that one gymnasium be provided with a mat large enough to fill the floor space and to be left permanently in place, or, at least, with two or three large mats which together would fill the space, is not, in my view, an unreasonable requirement. Such a practice would meet the safety standards which...are the minimum required for competitive wrestling.[132]

The appellate court, however, supported the legal reasoning of the trial judge, who stated:

> While there was some difference of opinion as to when wrestling becomes 'competitive' I find as a fact that when boys are required to pit themselves against their fellows in an attempt to perform a take-down from a standing position, they may be expected to exert themselves fully and this becomes a competitive situation of the sort that places severe stress upon the equipment employed.[133]

Physical education instructors from the Royal York Collegiate had testified that such methods as outlined above were minimum standards required for competitive wrestling. Therefore, the argument of the defence counsel was rejected.

The court ruled that it was not their function to define or outline minimum safety requirements for high school wrestling classes. Instead, it was their responsibility to decide whether or not the system which had been used was unsafe and unsatisfactory. It was concluded that the system which had been used by the instructor to prevent the wrestling mats from separating did not meet the standard of care imposed on school authorities for the protection of students

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[132] Ibid, p. 54.

[133] Ibid.

who participate in physical education activities. The instructor should have foreseen the possible risks which might have resulted from his method and should have guarded against them in a more reasonably safe and cautious manner. Therefore, he was negligent, and the Board, acting as master in the master-servant relationship, was also held liable because it provided the school with inadequate equipment.

The appeal was dismissed with costs and the judgment was for the plaintiff for $10,148.96 for damages.

ROBINSON ET AL. V. BOARD OF TRUSTEES OF CALGARY SCHOOL DISTRICT NO. 19 ET AL.[134]

This suit was decided in the Alberta Supreme Court on July 11, 1977.

The evidence showed that the fourteen-year-old plaintiff, Daniel Robinson, was injured on February 2, 1972 while attempting to slide down a banister at school after lunch hour. As a result of a subsequent fall, he suffered an injury to the spleen, a torn liver, a bruised kidney, a collapsed lung, and a fracture of the ilium (one of three bones which form the pelvis). Daniel required surgery to remove his spleen. Medical evidence was submitted which indicated that there would be no permanent disability.

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[134] Robinson v. Board of Trustees of Calgary School District No. 19, (1977) A.R. 430-35.

The plaintiff sued the defendants for negligence, arguing that they did not take reasonably proper steps to protect him from the danger which was alleged to have existed in the stairwell on the date of the accident.

Daniel Robinson was enrolled in a special class for slow learners at a Calgary elementary school. In court, he admitted that he slid down the banister but could not remember the accident. Mr. Franklin, the principal, had testified that the students had been warned repeatedly about sliding down the banisters. The plaintiff affirmed his habit of sliding down the banister almost daily, and further affirmed that several teachers had warned him not to slide on many occasions. It was also noted that on none of these occasions had he been sent to the principal for disciplinary action. The plaintiff further confessed that he had recognized the danger involved in sliding down a banister. However, he never thought that any injury would occur to himself. The evidence also disclosed, by way of testimony from the father of the plaintiff, that Daniel was considered to be physically and mentally normal, although he was also considered to be frequently disobedient.

The Supreme court was of the opinion that Daniel Robinson did not adhere to, nor respect, the cautionary advice that had been given to him by his teachers. By his own admission, he had been warned on several occasions not to slide down the banister.

The issue which the judges were most concerned with involved the amount of supervision that Daniel Robinson needed in this particular case to protect himself from his own actions.

The court ruled that it was not unreasonable for a reasonably prudent parent to permit a fourteen-year-old boy to walk down a stairwell in a school with no supervision. The duty of supervision of the school authorities was examined in this context. It was held that the teachers were not required to provide students with any direct supervision under such circumstances. The physically and mentally normal plaintiff was held to have voluntarily assumed the risk of his action. By so doing, he removed any duty of care which may have been owed to him by the school authorities. As a result, the court held that:

> It is clear, therefore, on the whole of the evidence that we have a young man who was paying absolutely no attention or heed to his teachers or supervisors, a person that was by his own admission warned on more than one occasion, in fact, on several occasions of not to slide down the banister, a person who is a disciplinary problem becoming injured as a result of his own acts.[135]

The defendants were judged to be not negligent and the action was dismissed.

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[135] Ibid, p. 432.

CROPP V. POTASHVILLE SCHOOL UNIT NO. 25[136]

This action was settled by the Saskatchewan Queen's Bench on September 1, 1977.

This case involved an action for damages which had arisen from personal injuries suffered by David Cropp when he fell on the property of the defendant on October 1, 1971. At that time, David was a fourteen-year-old, grade eight student, and, while walking on the temporary walkway at the entrance of the school of the defendant, he fell and suffered a slipped femoral epiphysis (the end part of the thighbone). He required major surgery to install a new socket into which the hip bone would fit. As a result of this operation, one leg remained three centimeters shorter than the other. At the trial, medical experts had testified that further surgery would be required, and that the plaintiff would only have about fifty percent normal usage of the hip.

The walkway that had led to the entrance of Parkside School consisted of loose crushed rock which measured up to two and one half inches in diameter. It was approximately six inches deep, six feet wide, and was bordered by "two-by-six" boards which were held upright by "two-by-four" pegs. These sidewalls projected slightly above the level of the crushed rock.

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[136] Cropp v. Potashville School Unit No. 25, (1977) 81 D.L.R.(3d) 115-20.

On October 1, 1971, at approximately eleven o'clock in the morning, the plaintiff proceeded to Parkside School from across the street. Both schools were used to accomodate students for program instruction. Therefore, it was common practice for students to commute from school to school at some point during a school day. The accident occurred when the plaintiff, who was wearing cowboy boots with heels approximately two inches in height, began to slip on the stones of the walkway. His immediate reaction was to attempt to step laterally over the sidewalls and onto the ground. In this attempt, however, he contacted the side-board with his foot, lost his balance, fell down, and suffered the previously mentioned injury.

According to the testimony of one teacher, the walkway had been in use since 1970.

Evidence also revealed that the students of these schools had been instructed to use the walkway in order to avoid tracking dirt or mud into the schools. However, no signs were posted to inform students to exercise caution when proceeding on the walkway. A trustee of the defendant school board had admitted that the walkway represented a hazard to those who walked on it, and that nothing had been done to rectify the problem.

The judge noted that the plaintiff had been required by section three of the School Attendance Act (R.S.S. 1965, c. 186) to be at school until he had reached sixteen years of

age. Therefore, he was not considered to be an ordinary invitee. The judge decided to adopt part of a passage from the decision in Indemaur v. Dames, where it was stated that:

> ...more specific care is demanded of them (school authorities) than that which is ordinarily required from the occupier of premises in respect of invitees thereon. A definition of the term 'supervision', which has been judicially accepted, is as follows: 'Supervision...involves at least some keeping of order, some stopping of fights, some general protection of the children against dangers that are known or that are to be apprehended.[137]

The judge ruled that the school board did not exercise the higher standard of care required of it by law, and that it should have foreseen the possibility of the fall which the plaintiff took. On this basis, the defendant was held to be negligent in maintaining the temporary stone walkway.

Special damages were awarded to the plaintiff for $3,461.67 and general damages were assessed at $75,000.

BOURGEAULT V. BOARD OF EDUCATION, ST. PAUL'S ROMAN CATHOLIC SCHOOL DISTRICT NO. 20 ET AL.[138]

This case was decided by the Saskatchewan Court of Queen's Bench on December 23, 1977.

The plaintiff, Vivian Bourgeault, a fourteen-year-old, grade seven student, suffered a broken collar bone and also required surgery on her right ear. The accident occurred on December 18, 1975, when Vivian, without permission, assisted

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[137] Indemaur v. Dames, (1866) 35 L.J.C.P. 184.
[138] Bourgeault v. Board of Education, St. Paul's Roman Catholic School District No. 20, (1977) 82 D.L.R.(3d) 701-06.

in the decorating of the school gymnasium for the upcoming Christmas concert. While decorating, she fell from a ladder and suffered the aforementioned injuries. In order to attempt to recover for damages suffered as a result of the accident, Vivian filed suit against the defendant on grounds of negligence.

The facts of the case are as follows. While the boys in Bourgeault's grade seven class were in a music class, the girls were in the gymnasium under the supervision of Mr. Macsymic, the principal. Ordinarily, a physical education class would have been conducted for the girls of a grade six class. However, such an activity was not possible on that occasion because a portable stage had been assembled on the gymnasium floor for use in the Christmas concert which was to be held the next day. Instead, the girls helped assemble the stage and decorate the gym with posters. There was no ladder in the gymnasium at that time. This was the last class of the day for these girls, and they were sent back to their home room at 3:25 P.M. for dismissal at 3:30 P.M.. The plaintiff was amongst them. Mr. Macsymic remained in the gymnasium with about "six or eight" grade six girls, who were permitted to remain if they wished to help clean and tidy up.

When the boys and girls returned to their home room from their respective classes, they remained there until 3:30 P.M., at which time Mr. Wawryk, the home room teacher,

dismissed them and also told them that he was leaving the school almost immediately, and that they were to leave for home. This was standard school policy, unless a student stayed after hours to participate in an activity that was supervised by a teacher, or unless he or she had received permission from a member of the teaching staff to remain in the building. The plaintiff acknowledged her familiarity with this policy. Mr. Wawryk left the school at approximately 3:50 P.M..

At 3:30 P.M., Mr. Macsymic returned to his office, and, at 3:55 P.M., he left the building without returning to the gymnasium. The six or eight grade six girls who stayed to help clean up the gymnasium were still there at the time Mr. Macsymic left the school. Between 3:30 P.M. and 3:55 P.M., the plaintiff returned to the gymnasium, even though she had been told by Mr. Wawryk to leave for home at 3:30 P.M. dismissal.

At approximately 4:40 P.M., the school caretaker, Arthur G. Hoffman, looked into the gymnasium and saw a male student (who also apparently wandered into the gymnasium after dismissal) on top of a ladder. He was affixing some decorations to the basketball backboard. The caretaker told the student to get down, as he was considered to have been in a dangerous standing position on top of the ladder and that he could fall and injure himself. The student stated that he was almost finished and that he would descend almost

immediately. This satisfied Mr. Hoffman, who then left for another part of the school to carry out his caretaking responsibilities.

The ladder which had been used by the male student was an eight-foot metal step ladder which was ordinarily stored in the caretaker's furnace room some one hundred feet down the hall from the gymnasium. Between 3:30 P.M. and 4:40 P.M., some of the students, including the plaintiff, had gone to the furnace room and brought the ladder to the gymnasium without having acquired permission from anyone to do so. No evidence had been presented which would have suggested that any member of the teaching staff remained in the school. Just before 4:50 P.M., the plaintiff climbed the ladder with the purpose of attaching some decorations in a high corner of the gymnasium room. She had the misfortune of falling from at or near the top of the ladder onto the hardwood floor beneath. Mr. Hoffman was immediately summoned. He called an ambulance and the plaintiff was rushed to the hospital. At the point of the accident, it was disclosed in the evidence that no teachers were present in the school.

The issue which the court considered was that whether or not, on the basis of the facts, the defendant was liable for negligence. The plaintiff argued that the defendants had failed in their duty to provide adequate supervision for the plaintiff and the other students who were in the gymnasium at the time of the accident. Given these circumstances, the

judge had to determine whether or not a duty had been owed by the defendant to provide the type of supervision which had been stipulated by the prosecuting attorney. In making his decision, the judge quoted from a decision in Edmondson v. Board of Trustees for Moose Jaw School District No. 1, where it was stated that:

> So far as this case is concerned, the infant respondent had no right to be where he was at the time of the accident. It was out of school hours; his duty was to go home.[139]

The judge also made notice of the fact that the plaintiff had been aware of the standard school policy which required students to depart for home on dismissal. In addition, special instructions were noted as having been given to the students on this occasion to depart for home. The judge also quoted part of the decision from Schade et al. v. School District of Winnipeg No. 1 and Ducharme, where it was stated:

> I agree with the emphasis the learned trial judge placed on the necessity of developing a sense of self-responsibility on the part of the children...the realization of this fact by the Courts has led to a changing attitude and a more practical approach to the question of supervision by school authorities. While it must be recognized there is a duty on teachers to supervise certain school activities, a duty that of necessity bears some relation to the age of the pupils, the special circumstances of each case and, in particular, the type of activity engaged in, nevertheless it must also be recognized that one of the most important aims of education is to develop a sense of responsibility on the part of the pupils, personal responsibility for their individual

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[139] Edmondson v. Board of Trustees for Moose Jaw School District No. 1, (1920) 55 D.L.R. 573.

actions, and a realization of the personal consequences of such actions.[140]

The judge of the case at bar further considered whether or not a duty had rested with the defendant to have a member of the teaching staff responsible for touring the school premises after dismissal of classes, to be sure that all students had left the building before he or she departed from the premises. The plaintiff's attorney argued that if such a policy had been in force and had been followed on this occasion, the accident would almost certainly never have occurred. However, the judge ruled that no such duty was owed to a student of fourteen years of age in the seventh grade, especially one who had received and comprehended the instructions which told her to depart for home. He also stated, however, that had the mishap occurred to one of the grade six girls during the cleaning-up process, the result might have been different. The plaintiff, of course, was not one of those girls.

Therefore, on the evidence, the action was dismissed with costs (if demanded).

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[140] Schade et al. v. School District of Winnipeg No. 1 and Ducharme, (1953) 66 Man. R. 583-84.

BOESE V. BOARD OF EDUCATION OF ST. PAUL'S ROMAN CATHOLIC SEPARATE SCHOOL DISTRICT NO. 20 ET AL.[141]

This case was decided by the Saskatchewan Queen's Bench on February 20, 1979.

The plaintiff, Thomas Boese, filed suit by his mother. At the time of the accident, he was a thirteen-year old boy in a grade eight physical education class. On March 19, while participating in a movement education activity, he suffered a fractured leg. The incident occurred when he performed a vertical jump from a set of seven-foot high bleachers onto a mat on the gymnasium floor. The jump had been authorized and sanctioned by the head of the department of physical education at the school in question. This particular class was under the immediate active supervision of Lloyd Cenaiko, the physical education instructor.

At five feet, two inches in height and 135 pounds in weight, Thomas Boese was considered to be obese and overweight for his age. He had testified that he did not care very much for sports and that he participated only because he had to. The class activity in this case involved an obstacle course which commenced with students being required to climb onto a set of bleachers which were folded up against the wall to a height of seven feet. In succession, the students were to jump down onto a mat, progress to a bench, then to a chin bar, then onto a box horse, then a

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[141] Boese v. Board of Education of St. Paul's Roman Catholic Separate School District No. 20, (1979) 97 D.L.R.(3d) 643-53.

balance beam, followed by mats, then swing from ropes onto a table, and finally swing again from ropes onto a counter. Before the class, a standard loosening-up or warming-up period was conducted. It consisted of such activities as running, push-ups, sit-ups, stretching, etc., and lasted approximately ten minutes. After the warm-up activity, the students, including the plaintiff, were to progress to the first element of the obstacle course, which required them to climb to the top of the folded bleachers and line up in a lateral fashion. Cenaiko, the defendant and intern teacher, told the students that he wanted them to jump down onto a mat on the gymnasium floor. However, he did not attempt the jump himself, nor did he demonstrate the manner in which it was to have been performed. Boese was asked by Cenaiko to attempt a second jump, but the plaintiff stated that he did not wish to repeat the performance. Cenaiko persuaded him by saying that this would be the last time that he would call upon him to perform the feat. Boese did as he was requested to do. However, as he landed, his leg buckled under him and the fracture occurred. Cenaiko did not see the plaintiff fall because he had wandered to observe another part of the obstacle course. Boese was rushed to a hospital shortly after the accident.

The superintendent of the defendant school district had testified that jumping exercises were an integral part of the movement task program, which had been included in the

curriculum guide. For example, low jumps from a chair were introduced at the kindergarten level and higher jumps were progressively implemented into the curriculum guide each academic year, although at the higher grades no specifications were given in regard to heights of jumps.

The physical education consultant of the Saskatoon Board of Education had testified that he could see no direct physical benefit of a straight vertical drop as demanded by Cenaiko of Boese. He added that the weight and ability of a student would determine the height from which he would be allowed to jump. He agreed with the plaintiff's attorney that an obese, less agile person would be more susceptible to injury, and that students should be trained to land from a specific height. It was also agreed that students who were relatively unwilling to perform the jump should have been encouraged to do so with assistance.

Professor Anderson, another witness from the University of Saskatchewan College of Physical Education, admitted that he was not very familiar with the "movement task" program. However, he did profess to have some expertise concerning wrestling and gymnastics activities. He testified that he would "never" have required a student to climb to a height of seven feet and then jump down without giving him training on how to land properly. He stated that considerable background training was required before being able to jump in a consistently competent manner from seven feet, and doubted

very much whether he would have required or encouraged grade eight students to perform jumps from that height at all.

Professor Leicester, a colleague of Professor Anderson, testified that obstacle courses or circuit training activities sought to minimize the possibility of injury. He saw no purpose in demanding grade eight students to jump from a height of seven feet onto a one inch mat. He said that he would not include such straight jumps in "any" course which he might design because such an element seemed to represent a risk or danger. Furthermore, he stated that he had "never" seen it incorporated into any fitness course.

The defendant, Cenaiko, held firm in his belief that the seven foot vertical drop was not dangerous, and that he would not hesitate to include a similar type of station in any other obstacle courses that he might design. It was also presented in the evidence that Cenaiko had been enrolled in only one movement education class at the university.

When preparing his decision, the judge viewed the legal element of foreseeability as being the key to determining his final judgment. The main issue in the case at bar was whether or not a reasonably prudent parent would have felt any apprehension at seeing their thirteen-year-old obese, overweight boy perform a vertical jump from a seven foot height to which he was relatively unaccustomed, especially if he had expressed some concern in performing the exercise.

Under such circumstances, the court considered whether or not a reasonably careful parent would have foreseen any risk or injury that may have arisen to such an inexperienced child? The judge ruled in the affirmative for each of these issues, believing that ANY jump from such a height, by such a person, should be considered "potentially" dangerous. He accepted the validity of the professional opinions of the professors. The height of the jump was ruled as being dangerous, and an accident of this nature was ruled as being reasonably foreseeable. As a result of these particular elements being overlooked, an obese, overweight boy was injured.

The judge found it very strange that the Department of Education had not given any guidance to teachers and school boards beyond the grade six level on the role and advisability of jumps in gymnastics exercises. In effect, the department gave school boards and teachers the freedom to do as they deemed best. The judge believed that this practice was an outright "abdication of responsibility" on the part of the department. He also articulated that the department did not have to look far for any guidance in this matter, for the University of Saskatchewan was "at its doorstep" and assistance could have been readily obtained. The judge considered it to be:

> ...extremely dangerous to leave unlimited discretion in the hands of teachers who either have had no training whatsoever in a new programme, or who

enjoy but one university class in that field.[142]

On these bases, the court ruled that the defendant school district had failed in its duty to conform to the degree of care required of them by law, and that this failure caused the injury and damages to the plaintiff. The defendant was found guilty of negligence and general and special damages were assessed at $8,498.70 plus the costs of the action.

MYERS AND MYERS V. PEEL COUNTY BOARD OF EDUCATION AND JOWETT[143]

This case was decided by the Supreme Court of Canada on June 22, 1981.

The case arose out of an action by a fifteen-year-old boy and his father against their school board. The plaintiffs filed suit for damages which resulted from injuries that had been incurred by the boy when he fell from the "rings" during a gymnastics class on December 6, 1972. The evidence showed that on that date the plaintiff was a member of a grade eleven physical education class for boys at the Erindale Secondary School, which was under the control of the Peel County Board of Education in Ontario. The accident occurred near the end of a six-week gymnastic segment of the physical education program of the school. The program was conducted largely in the main gymnasium of the school. In addition to this gymnasium there was an exercise room which

[142] Ibid, p. 652.
[143] Myers and Myers v. Peel County Board of Education and Jowett, (1981) 37 N.R. 227-41.

was elevated from the gymnasium but which opened onto it. Although there was an unobstructed opening between the two rooms, the different levels of their floor surfaces made it impossible for a person in the gymnasium to see into the exercise room in order to observe any activities which may have been carried on within.

On the day of the accident, there were approximately twenty-five to thirty students in the grade eleven class in which the accident occurred. On that day, however, a grade twelve class was also in session in the main gymnasium, thereby increasing the number of participating students to about forty. The regular grade twelve teacher responsible for this class was ill and absent from school. Therefore, the responsibility of supervision of both classes had been assigned to a grade eleven teacher, Mr. Jowett. Shortly after the class commenced, the appellant and a friend named Chilton asked and received permission from Jowett to leave the gymnasium and progress to the exercise room where they would practice their gymnastic manoeuvers in preparation for future testing which would contribute to their final grades for the class. While they were in the exercise room, they were without any supervision from faculty members, and, because of the higher elevation of the room, they were out of the sight of the teacher who was in the gymnasium below them.

After entering the exercise room, the appellant commenced performance of some manoeuvers on the "rings". This apparatus consisted of two ten-inch diameter wooden rings which were suspended from the ceiling on parallel wires about eight feet from the floor and two feet apart. Chilton was being used as a spotter, whose function it was to be present during the manoeuver and assist the person on the rings. In the event of a fall, for example, he was to catch the performer or make contact with him and break the force of the fall. Student witnesses had testified that Jowett had always stressed the importance of spotters and that they had received some instruction in their duties in that capacity. They also testified that they had been told that a performer was to tell his spotter the manoeuver which he proposed to perform. By so doing, the spotter could position himself so as to be of service if required. In the case at bar, Chilton was of the opinion that Myers had finished working on the rings and turned to leave. When he was approximately fifteen feet away, he saw, "out of the corner of his eye", the appellant fall from the rings onto his head. The evidence showed that Myers broke his neck when he landed, and that this immediately rendered him a quadraplegic. Gregory Myers testified that he had never attempted such a dismount before.

Evidence revealed that three different kinds of protective mats were available for the activity:

1. Slab mats, which ranged from two to two and one-half inches in thickness, and were covered with soft vinyl and very compressed.
2. Wrestling mats, (which were used only during wrestling activities).
3. Crash mats, which were six to seven inches thick and made of foam rubber.

It had been disclosed that there were about "two or three" slab mats under the rings at the time of the accident. Jowett admitted that he was aware of the existence of the crash mats in his school, but he felt that they were unnecessary, and stated that it was not general practice to use them under the rings.

The plaintiff's attorney called Mr. Zivic, an experienced and highly qualified teacher of gymnastics from York University, to the witness stand. He testified that he would not have used regular slab mats by themselves in the learning process of gymnastic manoeuvers on the rings. He further stated that he would have insisted on the inclusion of a crash mat when conducting such activities.

The Supreme Court accepted the testimony of Mr. Zivic and ruled that the protective matting used in this case had been inadequate. However, since this fact in itself could not constitute negligence, the court directed its attention to the issue of supervision. As far as the court was concerned, on the whole of the evidence, no supervision had

been provided. The court held that the standard of care mentioned in Thornton et al. v. Board of School Trustees of District No. 57 (Prince George) et al. was not met.[144] The court was also of the opinion that training in gymnastics, particulary exercises on the rings, carried with it a potential for danger. For example, a student may fall to the floor, and, because of the position of his body during such performances as the one in the case at bar, he would be apt to fall in a manner that would increase the possibility of injury. The court reasoned that the injury in this case should have been foreseeable. It felt that a prudent parent would not have been content to have provided "only" the slab mats as protective matting for this exercise, especially when more adequate and more appropriate mats could have been easily obtained from nearby. Also, it was believed that a prudent parent would not have permitted his son to depart from the gymnasium into a room where there would be no supervision of potentially dangerous gymnastic manoeuvers on the rings.

It remained for the Supreme Court to consider whether or not the plaintiff showed that the alleged failures by the defendant were the contributory or proximate causes of the accident which resulted in the injury complained of. On all the evidence before him, the trial judge, with whom the Supreme Court agreed, held that the plaintiff had proved,

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[144] Thornton et al. v. Board of School Trustees of District No. 57 (Prince George) et al., (1976) 5 W.W.R. 240.

with the help of Mr. Zivic, that the failure of the school authorities to provide more adequate matting and insist upon its use, had contributed to the accident. The absence of supervision was also viewed as having contributed to the cause of the accident. The student had apparently been permitted to go into the exercise room without any supervision and with no inquiry as to what he had intended to do upon his arrival there.

While the Supreme Court was of the view that negligence had been shown on the part of the defendant, they also believed that the plaintiff was contributorily negligent. Gregory Myers got onto the rings, and without announcing his intended manoeuver, and without the presence of a spotter, attempted a "straddle" dismount for the first time in his life. The court ruled that Gregory was not only aware of the fact that the manoeuver he was going to attempt was difficult and involved some danger, but that he was also aware of the fact that he would be performing it without the assistance of a spotter.

The Supreme Court found the plaintiff contributorily negligent and prorated the fault at eighty percent to the defendant school board and twenty percent to the plaintiff. Judgment for damages was assessed at $66,656.30 for the plaintiff and half of his costs of the court action.

JONES V. SCHOOL DISTRICT 71 BOARD OF TRUSTEES, HEAL, PETERSON, AND ILMER[145]

This case was decided by the British Columbia Supreme Court on November 12, 1981.

The facts of this case showed that the plaintiff, a sixteen-year-old, grade ten student, was injured while attempting a "roll-over" manoeuver on the trampoline during a physical education gymnastics class. The supervisor of the activity was a student teacher.

In the roll-over manoeuver on the trampoline, individuals were required to turn 360 degrees forward or backward in the air, with both knees and chin tucked against their chest. The plaintiff had failed to maintain the "tuck" position, landed on his head as a result, and suffered a slight fracture of a neck vertebra as well as soft tissue injuries in the same area of the spine. Since then he has experienced headaches, neck pains, loss of sensation on one leg, and other discomforts which were attributed to the accident.

During the trial hearing, a physical education instructor had been called to testify. He stated that a roll-over was not a basic or elementary trampoline exercise. In contrast, both the student teacher and the regular class teacher believed that the exercise was within the capabilities of all the students of this particular class.

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[145] Jones v. School District 71 Board of Trustees, Heal, Peterson, and Ilmer, (1981) 32 B.C.L.R. 221-25.

Before the students were allowed to individually perform the required activity, Mr. Ilmer, the student teacher, had demonstrated the roll- over and also gave verbal instructions on how it was to be performed. The need to maintain the tuck position had been especially emphasized and explained. The plaintiff was asked whether he would like to attempt a front roll-over. He replied affirmatively and performed the manoeuver successfully. Mr. Ilmer then demonstrated the backward roll-over. The plaintiff voluntarily attempted this manoeuver, but failed to maintain the "tuck" position. As a result, he landed on his head and incurred the aforementioned injuries.

A journal article, issued in a circular by the provincial Ministry of Education nine months after the incident at bar, was submitted as evidence. This article emphasized the need to ensure that "skills being taught are commensurate with the readiness of the student in a proper progressive manner",[146] and prohibited the teaching of what was called the "somersault" (referring to the manoeuver on the trampoline) in regular classes.

The court ruled that the circular should have been unnecessary to inform the student teacher that he would be in breach of his duty of care if he exposed students to perform risky activities for which they had not been trained in a proper, progressive manner.

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[146] Ibid, p. 223.

Although the roll-over had been considered by the court to have been an exercise which required higher than elementary skills to perform, the judges also felt that it was not inherently risky. No evidence had been presented to suggest otherwise. The only risk evident to the court was that the plaintiff might have failed to maintain the tuck position and fall to the spring surface. On this basis, the judge considered two main questions before announcing his decision:

1. Should the teachers have anticipated that such an accident would occur?
2. Should the teachers have had reason to expect that a significant injury might be incurred by the plaintiff as a result of failing to maintain the "tuck" position?

When considering the first question, the court believed that the plaintiff had successfully mastered the forward roll-over. Second, it was believed that the student teacher had adequately demonstrated the backward roll-over by emphasizing and explaining the necessity of maintaining the "tuck" position throughout.

When considering the second question, the court was of the opinion that it was unreasonable to expect a significant injury to occur from performing a backward roll-over under the circumstances of the case at bar.

The decision of the judge read as follows:

> I conclude, on the evidence before me, that the teachers were entitled to regard any hazards involved as falling within the acceptable range of risk of injury inherent in high school physical education activities. That is the risk which society must be taken to regard as justifiable in relation to the benefits to be derived from organized physical activities at the secondary school level...To find in the present case that either of these teachers has been guilty of negligence in his professional duties simply in order to compensate the plaintiff would not result in the achievement of the ends of justice, but rather the reverse.[147]

Therefore, the action was dismissed, but the plaintiff was allowed to recover his court costs from the defendant school board.

SUMMARY

This chapter has presented the legally significant facts and circumstances which were considered in adjudications that involved negligence suits against school boards and teachers in Canada between 1968-81, inclusive.

These adjudications were listed in the chronological order in which they were finally decided by the courts.

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[147] Ibid, p. 224.

Chapter IV

ANALYSIS OF THE DATA

The purpose of this chapter is to analyze the ways in which the legal elements in Chapter II of this thesis have been considered in light of the facts and circumstances of the adjudications in Chapter III. Such an analysis provides a more recent description of the ways in which certain legal elements have been judicially interpreted, applied, or modified under particular sets of educational circumstances.

This chapter consists of individual reviews of the legal elements which, as noted in Chapter II of this thesis, must be present in order for a suit which has been filed on grounds of negligence to be successful. These elements have been individually reviewed in the context of the adjudications which have been presented in Chapter III.

When alluding to a particular case in the following sections of this chapter, only the name of the plaintiff will be used. For example, Cropp v. Potashville School Unit No. 25 will be referred to as "the Cropp case" or simply "Cropp".

ANALYSIS OF LEGAL ELEMENTS

The five legal elements which must exist in order for a cause of action for negligence to be successful will be reviewed individually.

Proof of Injury

Each of the plaintiffs in the cases which have been located for this study had incurred some sort of injury during a school-related activity. Whether such damages were assessed on physical, psychological, or other bases was evident in only in one of the case summaries. The Thornton case considered such variables as cost of future basic care needs, loss of ability to earn income in the future, compensation for physical and mental pain and suffering endured and to be endured, loss of amenities and enjoyment of life, and loss of expectation of life.

In all cases where liablity was assessed, the highest awards were given for general damages.

Duty of Care

The most frequently mentioned legal duty of care which is to be owed by teachers to students is the duty of supervision. Although the Dziwenka, Moddejonge, James, Thornton, Robinson, Magnusson, Bourgeault, and Myers cases make direct reference to this duty, other legal duties and responsibilities have been explicitly stated in the case summaries in

Chapter III of this thesis. For example, several court decisions explicitly mentioned the teacher duty to demonstrate an activity to students before they were to perform it. The appeal court in the Dziwenka case held that the industrial-shop teacher "had followed the course of procedure as outlined by Burke (a building construction inspector) as appropriate in demonstrating the manner in which the operation was to be conducted."[148] Similarly, the Supreme Court judges in the Jones case considered it relevant that the physical education instructor had "demonstrated the roll- over."[149] The judges in the Dziwenka case also emphasized the teacher duty to observe students while they perform an activity for the first time when they stated that: "Mapplebeck...watched Dziwenka make one or two cuts after his demonstration."[150] The courts in several other cases emphasized the teacher duty to supply students with either written or verbal instructions about the task which they had been required to perform. For instance, the appeal court in the James case considered the fact that "Printed material was supplemented by verbal instructions, also... additional brief instructions (were given) on the blackboard."[151] It was also considered pertinent by the appellate

[148] Dziwenka v. The Queen in Right of the Province of Alberta, (1970) 16 D.L.R.(3d) 199.

[149] Jones v. School District 71 Board of Trustees, Heal, Peterson, and Ilmer, (1981) 32 B.C.L.R. 223.

[150] Dziwenka v. The Queen, op. cit., p. 192.

court in the Jones case that the teacher "gave instructions on how to do it [the activity]."[152] Similarly, the appellate court in the Thornton case pondered the fact that the student "had received no formal instruction on how to do an aerial somersault."[153] The judicial decisions in the James, Thornton, and Cropp cases not only stated that teachers have a legal duty to caution students about any inherent or potential dangers in an activity, but that they should also advise them as to how they might guard against such dangers or risks. For example, the court in the Cropp case held that:

> no one in charge of the schools sensed that the stone walkway represented any danger because no one issued a warning to the students to be careful in traversing the stone part of the walk between the buildings. No signs were posted suggesting otherwise.[154]

In James, part of the testimony which had been given by the Chief Chemist of the National Testing Laboratory, Mr. Laidlaw, was accepted by the appeal court as the "proper" manner in which the laboratory class should have been instructed. When referring to the written chemistry instructions which had been given to the students by the

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[151] James v. River East School Division No. 9, (1975) 64 D.L.R.(3d) 339.

[152] Jones v. School District 71, op. cit., p. 223.

[153] Thornton v. Board of School Trustees of School District No. 57 (Prince George), (1976) 73 D.L.R.(3d) 61.

[154] Cropp v. Potashville School Unit No. 25, op. cit., p. 118.

teacher, he stated that "Caution [should have been given]...something which is normally inserted in an instruction to anyone less than a professional working in the field."[155] The trial judge of this case, whose opinion was not altered by the appeal court, also believed that, on the evidence presented to him, that there had been "a failure to caution... properly."[156] Furthermore, it was considered pertinent that "the students were not advised of possible danger from spattering."[157]

The trial judge in Thornton, whose opinion in regard to the following statement was agreed with by the British Columbia Court of Appeal, felt that the physical education instructor "should have given them (the students) some advice,... a word of caution, and, at least imposed some limits on what they could or could not do in the circumstances."[158]

On the basis of this judicial information, it can be shown that the following duties are required by law of teachers:

1. supervise activities

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[155] James v. River East School Division No. 9, op. cit., p. 346.

[156] Ibid, p. 347.

[157] Ibid, p. 348.

[158] Thornton v. Board of School Trustees of School District No. 57, op. cit., p. 61.

2. demonstrate activities before students are to perform them
3. provide verbal and/or written instructions as to the manner in which students are to perform an activity
4. caution students about the inherent dangers or risks in an activity
5. advise students about how they might guard against or avoid such risks

The Thornton case is unique in that the court actually outlined specific duties and responsibilities for teachers during a physical education gymnastic activity. It was held that teachers must be confident that the equipment which is to be used and the activity which is to be performed is suitable to the age and mental and physical condition of a student. Also, such equipment must be in adequate condition and suitably arranged. In addition, students must be progressively trained and coached to perform a manoeuver as well as trained to avoid any dangers. Furthermore, students must be given a demonstration of an activity by a teacher, and must be advised, cautioned, and instructed on what they are capable of performing under the circumstances. Lastly, an activity must receive direct supervision from a teacher or designated spotters.

The duty of care which is owed by school boards to pupils is primarily one which requires them to maintain their buildings and school property in reasonably safe condition.

school boards have a legal duty to warn students of any concealed or hidden dangers which may be located on school property. The judicial decisions in Sombach and Cropp illustrate this. For example, the judge in the Sombach case held that:

> ...the glass doors and panels in the front entrance of Miller (school) constituted an unusual danger to the infant plaintiff and that the defendant knew of the danger or ought to have known of it.[159]

Similarly, the court in Cropp held that the defendant school board was negligent for:

> ...maintaining the temporary stone walkway...it was a hazardous walkway and the defendant admittedly knew it represented a danger to those who walked on it, but chose to do nothing about rectifying the situation.[160]

These judicial proclamations clearly indicated that the defendant school boards were considered to have had the legal duty of warning students of the hidden dangers which were inherent in the glass doors and walkway on the school property.

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[159] Sombach v. Trustees of Regina Roman Catholic Separate High School District of Saskatchewan, (1968) 72 W.W.R. 100.

[160] Cropp v. Potashville School Unit No. 25, op. cit., p. 118.

Standard of Care

When courts attempt to determine the standard of care which is to be owed by teachers and school boards to students under a particular set of circumstances, it appears that they decide what a reasonably prudent parent, professional, or an invitor would have done under a similar set of circumstances. Thus, while the duty of care element depicts the duties which teachers or school boards are required to perform, the standard of care element depicts HOW they should perform them.

The Sombach case contrasts sharply with the belief in Chapter II that the standard of care which is owed by school boards to students is that which is owed by an invitor to an invitee. In this case, it was held that the school board should have taken some sort of precautions to prevent the plaintiff from having sustained her injuries. It was stated in the judicial decision that "...where there is a duty to supervise there is a higher duty owing than that of an invitor to an invitee."[161] Since teachers also have a legal duty to supervise, it appears that it would not be "unreasonable" to infer that they would also owe a higher standard of care to students than that which "reasonably prudent parents" owe their children. The judicial decision in Cropp expounded on this statement by stating that:

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[161] Sombach v. Trustees of Regina Roman Catholic Separate High School District of Saskatchewan, op. cit., p. 97.

> ...the plaintiff, being a student is not an ordinary invitee on the defendant's premises. He was required by s. 3 of the School Attendance Act, R.S.S. 1965, c. 186, to be there until he was 16 years old...the duty of care the defendant owes to a plaintiff was higher than that ordinarily owing by an invitor to an invitee.[162]

since the students in this case had been told to use the walkway, the court felt that an invitor would have posted some sort of cautionary signs nearby in order to warn them of any risks or dangers. On the basis of the two previous judicial decisions, it is clear that school boards must now adhere to a higher standard of care than an "invitor" for the protection of students who are compelled to attend school. However, the duties and responsibilities of such a standard have not been prescribed.

The Dziwenka case illustrated the standard of care which was legally owed to a student by a teacher during an industrial shop class. The operation which Dziwenka was required to perform was considered by the Alberta Supreme Court to have been quite reasonable. It should be noted, however, that the duties which had been performed by the teacher during that activity were compared with those which a building construction inspector had testified that he would have used under the same circumstances. It is significant that no analogy was drawn to the manner in which a "reasonably prudent parent" would have conducted the same activity. Rather, the opinion of a professional was accepted by the

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[162] Cropp v. Potashville School Unit No. 25, op. cit., p. 102.

court as being germane to this case. Although the plaintiff in this case was a deaf mute, the court did not feel that these handicaps had affected his ability to perform the activity in a reasonably safe and proper manner. It believed that Dziwenka was an experienced and capable power saw operator because he had been sufficiently and progressively trained in all forms of power equipment. It did note, however, that "the duty of care owing to a student, especially a handicapped one...is a stricter one than that owed by an employer to an employee working with dangerous machinery."[163]

Although the court did not define a "handicapped person", it is interesting to speculate whether or not such individuals as Special Education students or extremely overweight and obese students may be legally considered as handicapped. If they were, they may be expected to be owed a higher standard of care by the courts. This possibility was illustrated when the counsel for the plaintiff in the Eaton case argued that the "rider" position which was taken by the plaintiff in the "piggy-back" activity had classified her as a handicapped student. On this basis, it was felt that she should have been owed a higher standard of care than she was. The court rejected this argument because they did not consider the activity to be inherently dangerous. The supervision and instruction which had been provided by the

[163] Dziwenka v. The Queen in Right of the Province of Alberta, (1971) 25 D.L.R.(3d) 22.

teacher to the students under the conditions of a sunny day in May, on a grass hockey field, were considered by the court to have been "reasonable" and "adequate". It is interesting to ponder what the judge may have ruled if the activity in this case had been "inherently" dangerous. Would he have considered the plaintiff to be handicapped in such an instance?

The defence counsel in the James case attempted to argue that the standard of care which was demanded of the teacher was similar to the exceptionally high standards imposed by the courts in medical malpractice suits. Professional chemists were called to testify to the types of methods and procedures that they would have utilized under the same set of circumstances as those in the laboratory class of the case at bar. Their opinions, as opposed to those of reasonably prudent parents, were judicially accepted as the proper ways in which the teacher should have performed his legal duties. Once again, as in the Dziwenka case, the conduct of the teacher was not compared to that of a reasonably prudent parent, but to that of a reasonably prudent professional. The defence counsel also argued that the defendants in this case had conformed to the standards which were common in other schools. On these bases, counsel deduced that his clients should be found not guilty of negligence. However, this reasoning did not convince the courts that the methods which had been used by the defendants under the circum-

stances of this case were "reasonable". Therefore, the evidence of conformity to general practice did not dispel the charge of negligence in this instance.

In Moddejonge, the court held that the teacher did not conform to the standard of care which it believed should have been owed to the students who could not swim. Since there was no life-saving equipment available in the area, it was held that a reasonably prudent parents would not have allowed their daughter to venture into a body of water under such circumstances.

In Thornton, the British Columbia Court of Appeal held that a reasonably careful parent would not have permitted gymnastic equipment to be constructed in the manner in which the boxhorse and springboard had been assembled in this case. It was also held that a reasonably prudent parent would have provided direct supervision and would also have guarded against the risks and dangers which were created by the configuration of this equipment.

The appellate judges in the Piszel case actually provided specific minimum standards for competitive wrestling classes under the circumstances of this case. They held that it was not "unreasonable" to require a school with three gymnasia, to provide one of them with a wrestling mat which was large enough to fill the entire floor space.

The Robinson case provided further clarification of the standard of care which is to be owed by teachers to students

during noon-hour. The court held that no "reasonably foreseeable" risks or dangers were created by the fact that a "reasonably prudent parent" (when referring to the teacher) permitted a fourteen-year-old boy to walk down a stairwell at noon with no supervision. Under the facts and circumstances of this case, the school authorities were not required to have provided the student with any direct supervision.

Magnusson provided an example of the legal standard of care which is to be met by teachers and school boards during recess activities. In this case, the court held that the standard of care to be met by the school authorities did not require them to erect fences or station teachers on school boundaries to supervise and prevent students from leaving school property at recess. The supervision which had been provided by the two teachers who were on recess duty at the time of the accident was considered by the courts as having been adequate and reasonable under the circumstances. An idea to consider in regard to this case is whether the judge would have reached the same decision if only ONE teacher had supervised the recess activity.

The "reasonably prudent parent" test was also applied in the Jones case. It was held that: (a) the demonstration of the "roll-over" manoeuver, (b) the verbal instructions which had been given concerning its performance, (c) the emphatic importance which had been placed upon the need to maintain

the "tuck" position, and (d) the supervision that had been provided by the defendant teacher, were all procedures that a reasonably prudent parent would have taken under similar circumstances.

The Bourgeault case held that school authorities were under no obligation to provide students with any standard of care after school hours if the students had been directly commanded to depart from the school premises after dismissal and go home. Would the judge have ruled similarly if the students had NOT been commanded to depart from the premises?

Similarly, the judge in the Boese case held that a reasonably careful parent would not have encouraged an obese, overweight thirteen- year-old boy to perform a vertical jump from a height of seven feet, especially if the boy had expressed some concern about the task. However, the reasonably prudent parent in this case was artificially designed by the court on the basis of testimonies which had been given by university physical education professors. It also seems significant that the judge in this case made reference to the Department of Education, suggesting that it had been irresponsible by not consulting the university as to the manner in which the physical education curriculum should have been designed.

In Myers, it was held by the Supreme Court that a reasonably prudent parent would have provided more protective matting for the exercise. It was also held that such a

parent would not have permitted his son or daughter to attempt such gymnastic exercises without any direct supervision.

In summation, the application of the "reasonable standard" test varied from case to case, and depended primarily upon the following factors:

a) the number of students being supervised at any given time
b) the nature of the exercise or activity in progress
c) the age of the students
d) the degree of skill of the students
e) the training which the students received in conjunction with a certain activity
f) the nature and condition of the equipment of the equipment in use at the time
g) the competency and capacity of the students involved

Breach of Duty

The key legal elements involved in proving that educational personnel have been in breach of their legal duty of care appear to be misfeasance and nonfeasance. Courts will consider whether or not reasonably careful parents or invitors would have foreseen any dangers and risks which might have been created by their misfeasance or nonfeasance. However, not all the case summaries which have been located for this thesis made direct reference to these elements.

The school board in the Sombach case was held by the court to have been in breach of its duty because it failed to foresee the "unusual" dangers which had been presented by the "indistinguishable" condition of the glass doors from the glass panels. As a result, it was judicially decided that it failed in its legal duty to take "necessary precautions" to prevent anyone from incurring an injury from the dangerous conditions which had been presented by the condition of these doors.

In Cropp, the defendant school board, by "failing to foresee" the inherent dangers of the temporary stone walkway, and by failing to post cautionary signs to warn the students of these dangers, was considered by the court to have been in breach of its legal duty to maintain reasonably safe school property.

The judge in Dziwenka held that the defendants were not in breach of their duty of care. They felt that it was "unreasonable" to expect a prudent parent to foresee the possibility that an "experienced" power saw operator would permit his mind to stray sufficiently from an "inherently dangerous" activity so that his hand would strike a saw blade. There appears to be some confusion created by this part of the judicial decision. Although the judge accepted the testimony of a building construction inspector as the proper method to be used when conducting an industrial-shop activity such as the one in this case, an analogy was also

drawn to the method which a "reasonably prudent parent" would have used under similar circumstances.

In Moddejonge, the court held that the teacher was in breach of his duty because he did not foresee the risks which the children were exposed to from the strong breeze which had developed on the surface of the water. Since there was no life-saving equipment nearby, and since some of the girls could not swim, the teacher was believed by the courts to have failed in his duty to supervise and guard against any risks and dangers in the way a reasonably prudent parent would have.

The chemistry teacher in James was considered by the courts to have been in breach of his duty of care in the laboratory because he failed to:

1. ADVISE the students of the inherent dangers and risks of the spattering material.
2. CLARIFY the contradictions which surrounded the heating procedures on the instruction sheet.
3. adequately CAUTION the students about the danger of working with nitric acid.
4. INSTRUCT the students in the way that a reasonably parent would have.
5. SUPERVISE in the way that a reasonably parent would have.
6. FORESEE and GUARD AGAINST the possibility of an explosion such as the one which occurred.

Again, there appears to be some confusion created by the contradiction of the judicial decision in this case. For instance, the testimonies of professional chemists were accepted by the courts as being the proper manner in which the laboratory class of the case at bar should have been conducted. However, when determining whether or not the teacher had been in breach of his legal duty and standard of care, reference was also made to the "reasonable parent".

In Thornton, the trial judge held that the teacher was in breach of his duty of care because he did not "advise, instruct, nor caution" students about the dangers and risks in the activity which the students were required to perform with the configuration of the boxhorse and springboard. He also failed to impose some limits on what they could do under the circumstances. In addition, it was proved that he did not train the students for such a manoeuver, and did not demonstrate nor supervise it. It was held that the dangers and risks which became evident in the activity when the teacher failed to perform his legal duties should have been foreseeable.

The defendants in Piszel were considered by the appeal court to have been in breach of their duty of care because they failed to provide the physical education students with safe and satisfactory wrestling equipment. It was held that the instructor and school board should have foreseen the risks and dangers which had resulted from their misfeasance of not using proper matting.

Under the circumstances of the Robinson and Bourgeault cases, where the students were injured after having slid down a banister and falling off a ladder, the courts held that no duty of care was owed to the plaintiffs by the defendants because they accepted the risks of their actions. Therefore, they were not considered to have been in any breach of their legal duty of care.

Similarly, the judges in Eaton, Magnusson, and Jones felt that it would be unreasonable to have required the defendants to have foreseen the possibility of the types of injuries which had been incurred by the students under the circumstances (a broken leg during a "piggy-back" activity, an eye injury during recess, and a fractured neck vertebra while attempting a "roll-over" during a gymnastics class) to the students. Since these injuries were held to have been unforeseeable, no breach of duty could be established. The activities were judicially believed to have been adequately instructed and supervised.

In the Boese case, the defendant was held to have been in breach of his duty of care when he failed to foresee the possibility of injury by "encouraging" an obese, overweight, thirteen-year-old boy to perform a vertical jump from a height of seven feet. Furthermore, the school district was held to have been in breach of its duty of care because it permitted such an "inherently dangerous" activity to be incorporated into its curriculum. It was ruled that the

dangers which had been presented by such an activity should have been foreseeable.

The teacher in the Myers case was held to have been in breach of his legal duty of care because he failed to provide safe and satisfactory gymnastic matting for the students. Furthermore, no supervision had been provided. It was decided that the teacher should have foreseen the possibility of an injury as a result of his nonfeasance.

Proximate Cause

This legal element was only directly referred to in a few of the case summaries located for this study.

In Dziwenka, the proximate cause of the injury to the student was viewed by the Supreme Court of Alberta as being the momentary inattention of the student to the industrial-shop task. More succinctly, the court felt that the direct reason for the occurrence of the accident in this case was the carelessness of the student.

The court in the Moddejonge case held that the proximate cause of the drowning deaths of the students was a lack of supervision by the teacher.

The proximate cause of the student injury in the Piszel case was considered by the appellate court to have been the negligence of the defendants for not meeting the standards of care which were required of them by law. When a wrestling activity is scheduled in concurrence with curricular

guidelines, it was felt by the court that "wrestling mats" should be made available and used. By not doing so in this case, the court held that the accident occurred as a direct result. It felt that proper matting would have prevented the injury (fractured arm) from occurring.

In the Robinson case, the proximate cause of the student injury was considered by the Alberta Supreme Court to have been the plaintiff's voluntary assumption of the dangers and risks of sliding down the school banister at noon-hour with no supervision.

In the Boese case, the court considered the proximate cause of the injury (fractured leg) as being the failure of the defendant to exercise the degree of care as required of him by law.

GENERAL OBSERVATIONS AND ANALYSES

Several general observations have been drawn from the case summaries presented in Chapter III. For example:

1. Most of the injuries were sustained by students in junior high school.
2. The students who incurred these injuries ranged between twelve and eighteen years of age.
3. Nine out of the fourteen cases involved injuries which had been incurred by male students.
4. Most injuries were sustained in physical education classes and other "specialized" classroom activities such as industrial shop or laboratory classes.

5. Courts will determine the appropriate standard of care which should have been exercised by educators under a specific set of circumstances according to the manner in which a reasonably careful professional (rather than a reasonably careful parent) would have conducted the same activity under the same set of circumstances.
6. Professionals such as chemists, university physical education professors, and building construction inspectors were summoned as expert witnesses to testify in cases which involved specialized activities, such as laboratory classes (James), physical education classes (Piszel, Boese, and Myers), and shop classes (Dziwenka). Their opinions were accepted by the courts as being the reasonable manner in which these classroom activities should have been conducted under the circumstances.
7. The source material from which the legal cases in this chapter have been extracted did not mention whether a defendant (wherever "et al." was present) may have included the principal. Furthermore, in three of the cases (Piszel, Boese, Jones) the date on which the injury occurred was not mentioned.
8. Most of the cases required several years to reach a final decision.

9. Most cases reviewed for this thesis (8) were decided by Appeal Courts.
10. Most cases (12) cited the school board as the first defendant. More precisely, the school board was usually listed in the case citation. Any other individuals who might have been sued were listed as "et al." and were not directly alluded to in the case summaries which were located for this study.
11. The judicial assessments of damages ranged from $2,800 to approximately $650,000.

Chapter V

SUMMARY, MAJOR FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

SUMMARY

The purpose of the present study has been to explore the legal liability of Canadian school teachers and school boards for injuries which had been incurred by students who were alleged to have been under their legal duty of care during school-related activities. This exploration was conducted by way of four major research questions. The first question concerned itself with the general principles of negligence law in Canada as enunciated by various Canadian authors of school law and tort law. These principles were presented primarily in an educational context in Chapter II. The second question focused upon legally significant facts and circumstances in judicially considered lawsuits which had been filed against Canadian school teachers and school boards on grounds of negligence. Events and truths which surrounded each lawsuit were revealed, including such information as the type of injury which had been incurred by a student, their age, sex, and class placement, and the school-related activity during which the injury occurred. In addition, the major legal arguments of

the attorneys who represented the plaintiff and defendant were introduced. This material has been presented in Chapter III and analyzed in Chapter IV. The third question pertained to the judicial decisions of lawsuits which had been filed against Canadian public school teachers and school boards on grounds of negligence. Special attention was paid to the legal reasoning which underlied the court judgments of each case. This information has also been included in Chapter III and analyzed in Chapter IV. The fourth question concentrated upon the relationships which existed between the general principles of negligence law in Canada as enunciated by various Canadian authors of school law and tort law and the aforementioned adjudications. The conclusions which have been drawn from this question are presented in the "CONCLUSIONS" section of this chapter. The inclusive period of 1968-81 was selected as the time frame within which this study has been conducted. Case summaries of adjudications which involved lawsuits that had been filed against teachers and boards on grounds of negligence were drawn from various Canadian law reports.

MAJOR FINDINGS

Tort law is definitely not static. The Canadian judicial system is demanding higher standards of care from teachers and school boards than in previous decades. These standards have been clearly stated within the context of the adjudications which have been examined in Chapter III of this study.

Canadian teachers no longer appear to be considered by the courts to be only "in loco parentis". Rather, they have also been judicially regarded as reasonably prudent PROFESSIONALS! The professional opinions of individuals outside the field of education have been considered by courts to be valid and applicable to education. With respect to school boards, it has been explicitly stated in judicial decisions that they owe students a higher standard of care than that which is owed by an invitor to an invitee. However, such a standard has not yet been legally defined. Furthermore, it appears that students who have not reached "legal age" are owed a higher standard of care than their "adult" counterparts.

The duty of supervision is no longer the only legal duty which is to be owed by teachers to students. Others have emerged. For example, teachers must advise and caution students not only of any inherent dangers and risks in an activity, but also as to how they might be able to guard against them. Furthermore, verbal and sometimes written instructions must be given to students as to the manner in which they are expected to perform an activity. Finally, an activity must be demonstrated to students before they are required to perform it.

It has also been found that contributory negligence has been used as a complete defence as well as having been used to prorate the legal fault of an injury.

In addition, it appears that most of the case summaries in Chapter III involved cases of Ordinary Negligence, except for the Thornton, Moddejonge, and Boese cases, which may have been instances of Slight Negligence.

School boards must also provide "appropriate" materials for specific school activities. For example, "proper" physical education materials, such as wrestling mats, slab mats, and gymnastic mats must be made available to teachers for any "specific" activity which they conduct.

CONCLUSIONS

The purpose of this section is to draw conclusions from the questions which have been posed in Chapter I of this study on the basis of the information that has been presented in Chapters II and III. These questions will be attended to individually. They were:

1. What are the general principles of negligence law in Canada as enunciated by various authors of school law and tort law?

   The general principles of negligence law in Canada as enunciated by various authors of school law and tort law have been presented in Chapter II. It was shown that any legal action which is based on grounds of negligence will be successful only if five elements are proved to have existed at the time the alleged negligent act occurred. These elements were:

a) Proof of Injury

b) Legal Duty of Care

c) Standard of Care

d) Breach of Duty

e) Proximate Cause

It was also shown that two major legal defences exist which may be used to defeat a suit that has been based on grounds of negligence. These defences are:

a) Contributory Negligence

b) Voluntary Assumption of Risk

2. Between 1968-1981, inclusive, what were the legally significant facts and circumstances in lawsuits which had been filed against Canadian school teachers and school boards on grounds of negligence?

a) During which school-related activities did the injuries occur?

Most of the student injuries which have been mentioned in Chapter IV had been incurred during specialized school activities such as physical education classes, industrial shop operations, laboratory experiments, and field trips. Other injuries occurred during recess, lunch hour, and after school hours.

b) What sorts of injuries were incurred?

The injuries varied in nature and included the following: (a) severe leg lacerations which

required 87 stitches to repair, (b) amputation of fingers, (c) drownings, (d) eye injuries which required major surgery to repair, (e) paralysis of arms and legs, (f) broken legs, (g) torn liver, fractured spleen, bruised kidney, collapsed lung, and a fracture of the spleen, (h) slipped thigh-bone, (i) broken collar bone and damaged ear, and (j) fractured neck vertebra and tissue injuries in the spine.

c) What were the ages, sex, and class placements of the students who incurred the injuries?

The students who incurred most of the injuries were males in junior and senior high classes. The age range of all the students who incurred injuries extended from twelve to eighteen.

d) What major arguments were presented to the courts by the attorneys who represented the plaintiffs and the defendants?

The major arguments which had been presented by the attorneys who represented the plaintiffs and defendants were based upon at least one of the five legal elements which, as mentioned in Chapter II of this thesis, had to be proved to have existed in order for a lawsuit which has been filed on grounds of negligence to be successful. Once again, they were: (a) Proof of Injury (b)

Duty of Care (c) Standard of Care (d) Breach of Duty (e) Proximate Cause. The bases for, and rationale of these arguments have been presented in each of the cases in Chapter III.

3. Between 1968-1981, inclusive, what were the decisions of the courts in regard to lawsuits which had been filed against Canadian public teachers and school boards on grounds of negligence?

Eight of the fourteen cases in Chapter III established liability on grounds of negligence. Where no liability had been established, a case was either dismissed because negligence had not been proved or on the basis of the defence of voluntary assumption of risk. The defence of contributory negligence was used as a total defence and also to prorate the fault of an injury. The pertinent parts of the judicial decisions are contained in the case data in Chapter III.

a) What reasoning was responsible for the formulation of these judgments?

The judicial decisions and the legal reasoning responsible for their formulation have been included in the case data in Chapter III. These decisions and reasonings were all based upon some of the legal elements which have been presented in Chapter II.

b) If legal liability was established by the courts, what was the amount of the compensatory award?

The range of compensatory awards to the plaintiffs extended from $2,800 to approximately $650,000.

c) Against whom was the judgment made?

Only the first defendants were mentioned in the case summaries which were presented in Chapter III. As such, no evidence was available which might have indicated if any compensatory awards were to be paid by a school board, principal, teacher, insurance company, and/or a professional affiliation to which these various personnel may have belonged. More succinctly, no mention was made in the case summaries as to whom the "et al." represented.

4. What relationships exist between:

a) Judicial decisions pertaining to lawsuits which have been filed against Canadian school teachers and school boards on grounds of negligence between 1968-1981, inclusive, and...

b) the general principles of negligence law in Canada as enunciated by Canadian authors of school law?

Certainly, this study demonstrates that there is a shift towards a more "legal-bureaucratic mode of conduct" with respect to the Canadian educational system. As such, there

seems to be little relationship existing between some of the principles of tort law as presented in Chapter II of this thesis and some of the adjudications in Chapter IV. Specifically, the concept of "in loco parentis" as it applies to educators is undergoing a type of legal metamorphosis. Teachers have also been judicially considered as reasonably prudent PROFESSIONALS. Similarly, the "invitor-invitee" relationship is a lower standard than that which is now expected of school boards by the courts.

RECOMMENDATIONS

This study has important implications for education. It provides proof for the opinion that Canadian law is demanding a higher standard of care of teachers and school boards than in times previous to those within which this study was being conducted. This study provides a description of the legal duties which are required of educational personnel under particular sets of circumstances.

With reference to educational administration, the findings of this study were relevant for school administrators. Principals, superintendents, and school boards should take a more active leadership role in emphasizing consistent performance of legal duties, and that inconsistent performance of such duties may cause severe legal problems. We now have concrete data which suggests that nonfeasance and misfeasance of one's duties can create such problems.

Consequently, it is desirable to expect administrators and teachers to familiarize themselves with tort laws of negligence and related research, and make use of this knowledge in a meaningful way in schools.

This study poses several recommendations:

1. Educational personnel should familiarize themselves with provincial statues by way of such avenues as in-service seminars, workshops, and professional development conferences. Such avenues should also be used to familiarize educators with the most recently available court cases and judicial decisions (in an educational context) in order to provide them with a clearer and fuller insight into tort liability. In summation, if educational personnel are judicially expected to perform their professional duties in a legally acceptable manner, they should be given the opportunity to develop an understanding of the ways in which statutory laws and tort laws surround their professional activities.
2. A required university course which involves "legal educational issues" should be incorporated into undergraduate Education programs.
3. Professional teacher organizations and societies should take a more active role in making educational personnel more aware of their legal duties. Any bulletins or handbooks which may be issued by such

organizations or societies should include the most recent developments in legal trends or patterns in an educational context.

4. School boards should have clear and precise rules and regulations. These rules and regulations should be distributed to each teacher to study so that they may develop an understanding of school division/district guidelines.
5. School boards should provide frequent inspection of facilities, property, and equipment. They should immediately caution and warn students of any dangerous or faulty material which is located on school property. Failure to do so has resulted in a school board being held legally liable for negligence.
6. Future researchers should locate and study entire case transcripts so that all the facts and circumstances of a particular case may be reviewed. By so doing, they may, for example, determine the basis on which strict liability or vicarious liability had been established (wherever applicable). In addition, they may gain information regarding the number of school principals who have been involved in civil lawsuits and the bases upon which they were sued.
7. Future researchers should also attempt to gain information about the number of cases that have involved

educational personnel and have been settled annually outside of the parameters of a courtroom (i.e. the Discovery Stage).

8. Future researchers should further attempt to locate and interpret any cases which might have been judicially considered in the province of Quebec. Although tort law in that province is based upon a fundamentally different set of principles, as mentioned in Chapter I of this thesis, judicial decisions pertaining to lawsuits which have been filed against educational personnel on grounds of negligence in Quebec may have important implications not only for that province but also for other Canadian provinces.

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