KIDS MAY BE KIDS, BUT ADULTS OVERSEE: THE LIABILITY OF ADULT SUPERVISORS FOR CHILD INJURIES

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Introduction

The general test for determining whether one person has acted negligently towards another in Canada is contained in the dual concepts of duty of care and standard of care – that is, the hurt party has to show that the party they think is responsible for their harm was under a legal obligation to protect them from or prevent that harm. The Supreme Court of Canada recently looked at the different categories of duty of care in its decision *Childs v Desormeaux.* The language the court used to describe duty of care is as follows: "A positive duty of care may exist if foreseeability of harm is present and if other aspects of the relationship between the plaintiff and the defendant establish a special link or proximity."1 Once that link has been established, the standard of care kicks in, dictating how much the individual is required to step in and prevent an injury from occurring.

Where does this leave adult supervisors when the children they are overseeing hurt themselves? This paper will focus on the liability different types of supervisors – teachers, coaches, referees, even parents – may face when supervising children, and how they can effectively protect themselves and the children they are caring for from liability and harm.

I. LAW OF NEGLIGENCE, GENERALLY

To establish negligence the following five elements are required: (1) an established duty of care; (2) breach of the standard of care; (3) causation; (4) remoteness of damages/ reasonable foreseeability of harm; and (5) actual loss. Even if all of those elements are present, a defendant may still be able to avail him or herself of the various defences available at common law to avoid liability in negligence. This paper will focus on the duty of care, standard of care, and reasonable foreseeability portions of the negligence analysis.

i. Duty of Care

A duty of care will be found when it can be demonstrated that parties have a sufficiently close relationship that one ought to be liable to the other at law. The common law *Anns-Cooper* test[2] that determines whether a duty of care exists contains two-steps and a threshold consideration. The threshold consideration is whether the relationship in question between the parties has already been established to give rise to a duty of care. If the Courts have, then the case will move on to the standard of care portion of a negligence analysis. If not, there is a two-step test for establishing a new category of duty of care. First, it must be established that there is a "sufficiently close relationship between the parties" or "proximity" that would justify imposing a duty. If this can be shown, then, secondly, it must be determined whether or not there is an

[1] *Childs v Desormeaux* 2006 SCC 18 at para 34.
[2] *Anns v Merton London Borough Council (1977)*, [1978] AC 728 (UK HL) & *Cooper v Hobart*, [2001] 3 SCR 537 (SCC).

overriding policy consideration that would serve to cancel out or restrict the scope of the duty.[3] If no such policy consideration can be shown, then a duty of care is established and the analysis will advance to the next stage.

ii. Standard of Care

The standard of care expected of a certain actor will vary with the relationship that actor had with the injured individual. Simply put, the standard of care is how the person *should* have acted and a breach happens when the person did not act with the necessary amount of care.[4] Different relationships will give rise to different standards of care. As a general rule, the closer the relationship between the parties, the higher the standard of care. However, as will be demonstrated below, often teachers have a higher standard of care in regards to the injured child than the child's parents do.

II. REPONSIBILITY OF SPECIFIC ACTORS

i. Teachers

Teachers are entrusted with helping to form society's next generation, and as such, society has high expectations of them in this regard. However, accidents do happen. The courts have struggled with differentiating between a true accident and one that could have been prevented.

That teachers have a duty of care towards their students has been well established.[5] The issue therefore is one of standard of care. The standard of care, established in *Williams v Eady* in 1893, is that of a 'prudent parent.'[6] The Supreme Court of Canada ("SCC") confirmed this standard in the 1981 case of *Myers et al v Peel County Board of Education*.[7] As the modern classroom advances, however, so too does the meaning of the 'prudent parent.' Indeed, as the years progress, teachers are expected to intervene more and more when students are partaking in potentially dangerous situations. The standard has, essentially, moved from parental to supra-parental to reflect the changing nature of modern school life. What the courts seem to disagree on is when the parental and when the supra-parental standard applies. The following discussion will explore recent trends in the case law with respect to these issues.

a. Recess

In *Gu (Litigation Guardian of) v Friesen*,[8] the plaintiff child was carrying her friend piggyback-style during recess. While the girls were engaged in this behaviour, one of their male classmates came from behind and pushed the girls. As a result of the push, both girls fell. The girl being carried was fine; however, the plaintiff fractured her elbow. She claimed in negligence against the boy who pushed her and against the school for failing to properly supervise the playground – and by extension, prevent her injury.

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[3] *Supra,* note 1 at para 11.
[4] Cases and Materials on the Law of Torts, 7th ed at p483
[5] *Supra,* note 1 at para 36: "The second situation where a positive duty of care has been held to exist concerns paternalistic relationships of supervision and control, such as those of parent-child or teacher-student."
[6] *Williams v Eady* (1893), 10 TLR 41 (CA).
[7] (1981), 123 DLR (3d) 1 (SCC).
[8] 2013 BCSC 607.

The Court held that because the injury as suffered by the plaintiff was one that occurred spontaneously and would not have been prevented even had there been continuous supervision, the teacher and school board had not breached their standard of care owed to the student.[9]

The factors the judge looked to when determining whether the supervisory program was deficient was "the ages of the children, the playground areas in which they were being supervised, and the types of activities that they engaged in there."[10] The Court held that because during recess the children were involved in "relatively lowkey [sic] kinds of activities, with the games ostensibly restricted to no or minimal physical contact" and the most frequent admonition given by the supervisor was "against bringing food on the turf," the system as employed by the school was reasonable.[11]

The Court in *Gu* contrasted the plaintiff's injury against the injury sustained by the plaintiff in *Hentze v Board of Education of School District No 72.*[12] In that case, the board was found negligent in its supervision of the playground. T A Schultes, J differentiated between *Hentze* and *Gu* in the following way:

> What made the gap in supervision negligent in *Hentze* was that it occurred while the events that ended up causing the plaintiff's injuries were happening. Presumably, they could have been prevented by timely intervention had the supervisor been doing her job properly. In this case Liam's run towards and push of Elizabeth [the plaintiff] would have taken a matter of seconds and could have been missed by even the most diligent observation unless that observation had been continuous, something that the law does not require.[13]

The Court stated what it believed the standard to be plainly: "it is not a component of a reasonable regime of supervision or the proper discharge of [the teacher's] responsibilities that all students are constantly deterred from bad behaviour by the immediate presence of a supervisor at all times. That would be more than the law requires."[14]

It seems reasonable, therefore, to conclude that the Court will not hold teachers/school boards responsible for spontaneous actions that would not have been prevented by even the most scrupulous supervision. However, when a situation develops that could be defused or prevented by the presence of a supervisor, the courts seem more likely to hold the supervisors and school boards responsible for any resulting injuries.

b. Gym Class and School Sports Teams

There is a considerable amount of litigation concerning accidents in gym classes and while students are playing on sports teams. The very essence of sports is that there is a risk that

[9] *Ibid* at para 101.
[10] *Ibid* at para 85.
[11] *Ibid* at para 86.
[12] (1994), 49 BCAC 241 (BCCA).
[13] *Supra,* note 8 at para 97.
[14] *Ibid* at para 107.

on occasion people are injured. The courts, as with recess, are not looking for all injuries to be avoided. What they are looking for is a supervisor who is reasonably prudent in instructing and overseeing his or her pupils.

In *Hussack v Chilliwack School District No 33*,[15] the British Columbia Court of Appeal upheld the trial judge's finding of liability on the part of the teacher and school district. The plaintiff was in Grade 7 and had missed a significant amount of class at the time of the incident. On the day of the injury, the plaintiff came to his PE class having missed the four previous classes that had focused on skill learning and instruction in how to play field hockey. The teacher had the students warm up as usual, and then encouraged the plaintiff to participate in the game of field hockey. Despite the fact that he had missed all of the instructional classes, the teacher felt that because the plaintiff had a significant amount of experience playing floor, ice, and roller hockey, he would take to field hockey naturally.

Before beginning the game, the teacher reminded the students that they were not to use the back of their sticks (only the flat parts), their feet were not to touch the ball, they were not to raise their sticks above their knees, and they were not to check from behind. After this recitation, the game began. During the second game, a female student made a breakaway with the ball and the plaintiff came up to check her from behind and prevent her from scoring. The female student was unaware that the plaintiff was behind her, raised her stick to shoot, and struck the plaintiff in the face with her stick.

The Court described the standard of care required of the teacher as the test set out in *Thornton v Prince George Board of Education*: that of a "reasonable and careful parent, taking into account the judicial modification of the reasonable-and-careful parent test to allow for the larger-than-family size of the physical education class and the supraparental expertise command of [the teacher]."[16] They also referenced *Myers v Peel (County) Board of Education* and the four factors the court should consider when determining whether allowing student participation was negligent on the part of the teacher:

1. If it is suitable to his age and condition (mental and physical);
2. If he is progressively trained and coached to do it properly and avoid the danger;
3. If the equipment is adequate and suitably arranged; and
4. If the performance, having regard to its inherently dangerous nature, is properly supervised.[17]

It was found that it was "unsafe for [the plaintiff] to participate in the class without having the building blocks [of the activity] in place."[18]

This decision should serve as a warning to teachers and school boards that students who have not had prior training in each specific sport or activity should not be permitted to partake in those activities until they are able to get that training. The rules of each game need to be internalized by the student such that basic mistakes and errors can be effectively avoided by

[15] 2011 BCCA 258.
[16] (1976), 73 DLR (3d) 35 (BCCA) at 57-58.
[17] *Supra,* note 15 at para 35, citing *Myers v Peel (County) Board of Education,* [1981] 2 SCR 21 (SCC) at 29.
[18] *Ibid* at para 46.

them. This is consistent with the finding in *Hamilton v Delta School District No 37,*[19] discussed below, where the Court relied heavily on the fact that the plaintiff had extensive experience with the sport and was progressively taught the rules of the game, such that she possessed the skill set to partake in the sport safely.

In *Hamilton,* the plaintiff was hit in the face with a floor hockey stick, causing her nose to break. The plaintiff was taking part in a Grade 11 Physical Education class at the time of the injury. She brought suit against the school district in negligence, alleging that her PE teacher had fallen below the standard of care in allowing her injury to occur. In reviewing the evidence, the Court looked at how the students in the class had been taught to play the game, the experience of the plaintiff, the supervision provided in the class, and the equipment used by the students to play the game.

A high premium was placed on the fact that the plaintiff had played floor hockey previously in her Grade 10 PE class and that the rules enforced by her Grade 11 teacher were the same as those enforced by her Grade 10 teacher: "Mr. Becker [Grade 10 teacher] taught the class the same rules as Mr. Parhar taught the Grade 11 class, including no sticks above the waist and no body-checking."[20]

In finding that the teacher had not breached his standard of care towards the plaintiff, the Court made an important distinction between *Hamilton* and previous cases where liability had been found: "The circumstances which formed the basis for liability in *Hussack* […] – inexperience and lack of proper instruction – are simply not present here, on the facts."[21]

In the Ontario Court of Appeal decision of *Thomas v Hamilton (City) Board of Education*,[22] a high school student was injured while playing a football game against a rival school. As a result of the injury, the student was rendered quadriplegic. It was found that the injury was sustained because the student plaintiff had failed to keep his head up during a tackle. In his time with the school, the plaintiff's coaches "provided tackling instruction and required all players to participate in tackling drills. […] The coaches instructed their players to make contact with their shoulders and with their heads up, that is with their necks extended to a limited degree."[23] The plaintiff was a very talented and advanced football player, playing on the offensive, defensive, and special teams for the school.

The Court held, in reviewing the standard of care required of the plaintiff's coaches, that "the careful or prudent parent standard of care applies, but […] it must be adjusted to the circumstances where, for example in a school setting the particular expertise expected of the school authorities – those responsible for a given group of students – may extend beyond the expertise which may be provided by a careful or prudent parent."[24] The Court pointed to the many drills the coaches performed with the players, that it was the third season the plaintiff had played organized football, and that "he had been taught to tackle by keeping his head up and to

[19] 2010 BCSC 712.
[20] *Ibid* at para 13.
[21] *Ibid* at para 52.
[22] (1994), 20 OR 598 (ONCA).
[23] *Ibid* at para 16.
[24] *Ibid* at para 37.

make contact with his shoulders in all three seasons."[25] The coaches and school district were thus found to have met their standard of care to the plaintiff.

c. Field Trips

While it is true that many students are injured while on trips outside of the classroom, many of these trips are undertaken with a letter of permission or waiver provided by the students' parents. A more fulsome discussion of this issue will, therefore, be outlined below in the 'Defence of Consent' portion of this paper.

d. Conclusions

The direction of case law has demonstrated that the standard of care of teachers is moving towards a 'supraparental' standard. Teachers and other individuals who supervise children in a school setting need to be alive to the lessons learned from the recent case law, that teachers are required, through their standard of care, to give students enough time to internalize rules and prohibitions. Teachers would be well advised that just stating rules to students will not suffice to discharge their standard of care. They will need to provide students time to practice their skills before a potentially dangerous game is commenced. In this way, students will learn what is expected of them on the field and know how to behave accordingly.

That does not mean that the impossible is expected of teachers. Indeed, in *Hamilton v Delta School District No 37,* Madam Justice Adair concluded her findings with the following: "Ms. Hamilton's injuries were certainly unfortunate. However, there is some risk of injury inherent generally in high school physical education activities and sports. The standard Mr. Parhar is required to meet is one of reasonableness, not perfection."[26] This is the common thread in the school negligence cases, that teachers are human and accidents happen. The best way for teachers to avoid liability is to ensure that their students are properly instructed in whatever activity they are engaging in, and that the supervision they are providing to the students is attentive.

ii. Coaches and Other Supervisors

Most coaches that students work with are employed by a school board, and would be subsumed under the standard of care as analyzed above. Not all coaches, however, are employed by school boards. Some are employed by or are volunteers for community clubs and associations. The standard of care for these individuals is very fact-driven and is based on the amount of responsibility their organization has assumed in relation to the participants.

a. Coaches

In *Blondeau (Litigation Guardian of) v Peterborough (City)*,[27] the Ontario Court of Justice (General Division) examined a situation where an individual was partaking in community figure skating program through the Peterborough Figure Skating Club (the "Club"). The coaches were hired by parents of skaters, were certified by the Canadian Figure Skating Association, and were paid a "nominal fee by the Club for general coaching during the "stroking session" when

[25] *Ibid* at para 46.
[26] *Supra,* note 19 at para 61.
[27] (1998), 82 ACWS (3d) 207 (Ont Ct J (Gen Div)).

the skaters [were] skating around the rink."[28] During "stroking sessions" skaters were asked to skate in a circle, with an appropriate posture and their eyes up and heads forward. It was during one of these "stroking sessions" that the plaintiff caught her skate in a hole in the ice and fractured her hip.

The hole in the ice came from where a goalie post had been. The hole was improperly iced over after the hockey session that preceded the figure skating practice. At the beginning of each of these sessions, an 'ice captain' (a parent volunteer) would visually survey the ice and relay any complaints regarding the fitness of the ice to the staff at the ice pad. Given the nature of the figure skating, however, the captains and coaches would not directly skate the surface of the ice, as they needed to preserve an unblemished ice surface for the skaters to perform their drills.

On the day of the incident, the ice captain was a seasoned coach for the Club. She surveyed the ice prior to the beginning of the session and nothing about the condition of the ice jumped out at her as being amiss. When asked about the goal post areas of the ice in general, she indicated that "nine times out of ten the hole was frozen over […] it's not a problem we've had all the time […] it's not part of our regular schedule to look to see if it's a problem."[29] The Court found that because the coaches had specific knowledge as relating to problems with the goal post areas, "the failure by the coaches relate specifically to the area of the ice in the goal post holes."[30] The Court stressed that the coaches were not responsible for any "rut or hole or crack somewhere on the ice surface," but rather the previously identified 'problem areas' of the goal posts.[31]

This is in line with the general rule of 'reasonable foreseeability' that comes from the UK decision in *The Wagon Mound (No 1); Overseas Tankship (UK) Ltd. V Morts Dock & Engineering Co*.[32] In that case, Viscount Simmonds held that "a man must be considered to be responsible for the probable consequences of his act. To demand more of him is too harsh a rule, to demand less is to ignore that civilized order requires the observance of a minimum standard of behaviour." It was reasonably foreseeable, given the coaches' knowledge of the goal posts as potential problem spots, that if they were not properly inspected, someone would fall and hurt themselves.

In determining whether the Club had met its standard of care, the Court made the following determination:

> The Club was aware of the previous ice complaint problems and failed to set in place any system to record these problems or to bring to the attention of the coaches and the students the prior ice problems that had been encountered. Having this knowledge and the fact that there was no "on-ice" inspection by the Memorial Centre, the Club had a duty to either do its own inspection through its ice captain or coaches or to require the Memorial Centre staff to do a walk-on inspection. The Club, given the information it had, could not

[28] *Ibid* at para 5.
[29] *Ibid* para 31.
[30] *Ibid* para 75.
[31] *Ibid* at para 68.
[32] [1961] AC 388 (PC) at p 422-423.

> simply rely on an expectation that the ice surface was generally in good condition and the coaches would be inspecting the ice.[33]

The Club knew that certain areas of the ice could cause problems for the skaters, and thus was required to ensure that a proper inspection system was in place for their coaches and ice captains to report on those problem areas.

Blondeau essentially stands for the principle that once a coach, club, or organization becomes aware of a potential problem that could lead to their students hurting themselves, they need to make a good faith effort to implement a system that will prevent those injuries. At a minimum, coaches and clubs will need to show that they are alive to potential problems and that they have turned their minds to solving them.

b. Vicarious Liability

The Manitoba Court of Queen's Bench, in *Henderson v Canadian Hockey Assn Inc*,[34] examined a situation in which a referee was injured by a coach opening the gate at the players' bench to allow the players to change 'on the fly.' One of the players, upon leaving the bench, collided with the plaintiff referee causing a severe permanent injury. The plaintiff brought suit against the player, the coach, and the hockey association.

In situations where there is a league or association that oversees the sport being played, there will always be a question of whether the league is responsible for the negligence of the coach. This issue is dealt with by the concept of 'vicarious liability.' Though vicarious liability is primarily concerned with employment situations, the general concept can be distilled from the following statement: "The question in each case is whether there is a connection or nexus between the employment enterprise and that wrong that justifies imposition of vicarious liability on the employer for the wrong, in terms of fair allocation of the consequences of the risk and/or deterrence."[35]

In rejecting the vicarious liability claim against the association in *Henderson*, the Court found that there was "no allegation or evidence that […] the Association defendants were the employers of any coach, manager, or player involved in the tournament" or that any degree of control was exercised by the Association over either the coach or player in the incident.[36] This suggests that if the Association more closely resembled an employer/employee relationship, then it would have been possible for the plaintiff to claim against them.

Even in that case, it would have been necessary to show that holding the Association responsible would have been justified for the twin policy reasons of risk avoidance and deterrence of certain behaviours. This is because the Courts have held that "a wrong that is only coincidentally linked to the activity of the employer and duties of the employee cannot justify the imposition of vicarious liability on the employer. To impose vicarious liability on the employer for such a wrong does not respond to common sense notions of fairness. Nor does it serve to deter future harms."[37]

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[33] *Supra,* note 27 at para 63.
[34] 2010 MBQB 20.
[35] *Bazley v Curry*, [1999] SCJ No 35 at para 37.
[36] *Supra,* note 34 at para 14-15.
[37] *Supra,* note 35 at para 36.

It is not inconceivable to envision a situation where it would be possible to demonstrate that a league or association exerted a level of control over a coach such that they could be considered to be their employer and that holding the league or association responsible for the actions of the coach would serve to deter future harms from occurring. Though the term 'vicarious liability' was not used in *Blondeau*, it can be seen that the way the courts held the Skating Association liable for the failure of the coaches to properly survey the goal post holes proceeded in this manner.

c. Other Supervisors

For a finding regarding general supervisory liability, we look to the BC Supreme Court decision of *Awan v Canada (Attorney General*),[38] where the Court heard from a teenage plaintiff who was injured while partaking in the Canadian Forces Cadet program. She, along with another Cadet and two civilian instructors, had been delegated supervisory authority over a group of younger Cadets. While demonstrating how to play a variation of 'tug-of-war' for the younger Cadets, the plaintiff struggled with the other supervisory Cadet, was pushed over, and either a small twig or blade of grass entered her inner ear canal causing serious and lasting damage.

Prior to the incident, the four supervisors did a 'sweep' of the area in which they would be playing the game, looking "for anything – foreign or natural to the surroundings – that constituted a hazard."[39] When they did not find anything, they proceeded with the demonstration. The two teenage Cadets told the younger Cadets that they were not to push or otherwise roughhouse with whomever they were playing 'tug-of-war' with, it was to be purely a game of strength.

In discussing whether the other Cadet or the two civilian supervisors had breached their standard of care, the Court came to the following conclusion:

> I find that the standard of care observed by all concerned in the case at bar was that of a *reasonable and prudent parent* and created only a slight and acceptable risk of minimal harm encompassing bumps, bruises, and scrapes be the conduct that resulted in the bump, bruise, or scrape, a stumble or a tug on a rope, i.e., conduct within the rules or a push, i.e., contrary to the rules. The fact that a push resulted in not a bump, bruise, or scrape but serious injury does not translate into a finding that an unreasonable risk of harm had been created by either of the two named defendants or anyone else of interest here such as the civilian instructors.[40]

The wording used by the BC Supreme Court in this decision indicates that the Courts are using the original prudent parent standard for general supervisors – that is, those not employed by a school board as teachers or coaches. This, again, is in line with the *Blondeau* decision. There, the coaches and Club were aware of a potential problem and could have taken reasonable steps to prevent the plaintiff's injury. In *Awan* they were similarly aware, and did take reasonable steps to prevent the injury. As in the *Gu* decision, the Courts are not expecting

[38] 2010 BCSC 942.
[39] *Ibid* at para 18.
[40] *Ibid* at para 47 (emphasis added).

supervisors to prevent all injuries – they are cognizant of the fact that accidents happen despite everyone's best intentions. What the Courts expect from coaches and other general supervisors is a good faith effort to prevent and minimize the magnitude of injuries when they do happen.

iii. Referees

The majority of the case law in this area originates in the UK. Nevertheless, these cases set a precedent for the way in which Canadian courts will assess the liability of adult referees of sports involving children.

In *Vowles v Evans,*[41] a 24-year-old rugby player was left with permanent incomplete tetraplegia and confined to a wheelchair as a result of the injury he sustained when two front rows failed to engage cleanly in the final set scrum of the match. The amateur match in question was being played under the 1997 version of the 'Laws of the Game' as issued by the Council of International Rugby Football Board. However, the referee failed to comply with Law 3(12), in that he allowed a player who lacked suitable training and experience to play in the front row.

The issue before the court was whether it was 'fair, just, and reasonable' that a duty of care towards the players be imposed on an amateur referee. The referee submitted that if referees were potentially liable in negligence for injuries to players, the supply of volunteers who served as referees would diminish. He went on to contend that it was not fair, just, and reasonable that amateur referees who received no remuneration for their services were exposed to legal liability.

The Queen's Bench Division held that an amateur referee owed a duty of care to a rugby player in an amateur match. In this case the referee had breached that duty.

The Court of Appeal (Civil Division)[42] dismissed the referee's appeal, affirming that a rugby referee did, in fact, owe a duty of care to the players on the field. Rugby is a dangerous sport and the rules of the game were designed to minimize danger. Players were dependent for their safety on the rules being enforced, and the enforcement of the rules fell to the referee. The standard of care depended on the circumstances, including the nature of the game. In a fast moving and high contact game like rugby, the potential for injury is high, and a referee cannot reasonably be expected to avoid liability due to errors in judgment, oversight or lapses.[43]

The aggressive and physical nature of the game did not serve as an exception to the fact that the law rarely, if ever, absolves a person whose actions or omissions are capable of causing physical harm to others in a structured relationship from a duty of care. The referee failed to ensure that the player was suitably trained or experienced to play in the front row and was thus liable for the resulting injury.

In *Smoldon v Whitworth & Nolan*[44] the Court of Appeal held that the referee of an under-19 rugby match owed a duty to the players to exercise a level of care that was appropriate in all circumstances, although he would not be held liable for oversights or errors of judgment that might easily be made during a competitive and fast-moving game. It was found that one of the duties of a referee was to ensure the players' safety. This duty would be breached if it were

[41] *Vowles v Evans*, [2002] EWHC 2612 (UK QB).
[42] *Vowles v Evans,* [2003] 1 WLR 1607 (UK CA Civ Div).
[43] *Smoldon v Whitworth & Nolan* [1997] PIQR P133 (UK CA Civ Div).
[44] *Ibid.*

found that a referee had failed to take steps to prevent a scrum collapse. In that event, the referee would be liable for the foreseeably resulting spinal injuries, even though the probability of such injury occurring was slight.

On the facts of that case, the referee was found to have failed to ensure that the standard sequence of engagement was used. This was evidenced by the large number of collapsed scrums occurring during the game, which, in light of expert evidence, meant the defendant's refereeing had fallen below an acceptable standard.

Further, it was not open to the defendant to rely on the defence of *volenti non fit injuria* ("there is no injury to one who consents") in arguing that the plaintiff had consented to the risk of injury by participating voluntarily in the scrum and thus was partially liable for his injuries. The plaintiff might have consented to the ordinary risks of the game, but could not be said to have agreed to the referee's breach of duty in failing to apply the rules intended to protect players from injury.

The UK case law indicates that referees have been assigned the same standard of care as coaches and other supervisory adults – the basic 'prudent parent' standard. The standard is more relaxed than it is for teachers. However, that does not mean that referees are able to be blasé about safety in the games they oversee. What *Vowles* and *Smoldon* indicate is that if a referee can demonstrate that they took reasonable precautions to ensure that the rules of the game were enforced, then they will have met their standard of care.

iv. Parents

As a final note, this paper will examine the standard of care expected of parents towards their infant children. The SCC in *Arnold v Teno*,[45] established the parental standard of care as the standard other parents in the community use when dealing with their children.[46] *Arnold* concerned an incident where a young girl was seriously injured by an ice cream truck after purchasing food from the truck. The little girl and her older brother had been given money and a strict admonition to "watch out for street cars" from her mother before walking over to the truck. The Court found "I do not think it can be said that that mother, who permitted her children to cross that quiet residential street to buy wares from the ice cream truck, as the same children and the other children in the neighbourhood had been accustomed to doing, can be found to be contributorily negligent."[47]

In subsequent cases, the courts have continued to uphold the standard of 'the reasonable parent in similar circumstances.' This standard was reiterated in 2013 by the BC Supreme Court in *Taggart (Litigation Guardian of) v Heuchert*:

> An error of judgment standing alone does not prove negligence if the parent's actions are those a reasonably careful parent might have taken, viewed by the standard of care generally accepted in the community. The standard of care is not one of perfection. It does not require a parent to take every possible step to ensure the safety of the child. It includes both an objective and subjective aspect. The

[45] (1978) 2 SCR 287 (SCC).
[46] *Ibid* at para 63.
[47] *Ibid* at para 62.

> objective aspect requires determination of the community standard at the time generally expected of a reasonably prudent parent. The subjective aspect places the reasonably prudent parent in circumstances identical to those [the parent] faced at the time, and knowing only what [they] believed and understood.[48]

There are fewer cases of minor plaintiffs suing their parents where the plaintiff is at school or a sports camp as the child is under the supervision of their teacher or coach at any material time of injury. What the cases on the matter do suggest is that parents have a responsibility to properly instruct their children. This includes a responsibility to warn them of the inherent dangers of a given sporting or outdoor activity. It also entails proper instruction when allowing them to partake in a particularly dangerous activity without supervision.[49]

There are ways in which it can be seen that this standard is lower than the standard expected of teachers and other professionals entrusted with the care of children. Parents are not expected to have specialized knowledge on how to teach their children how to partake in certain sports safely, nor are they expected to be aware of new and evolving methods of keeping their children safe – they are expected to behave reasonably given the knowledge in their community at the time of the injury.

III. CONCLUSIONS

The direction of case law has demonstrated that the standard of care of teachers is moving towards a 'supraparental' standard. Teachers and other individuals who supervise children in a school setting need to be alive to the lessons learned from the recent case law, that teachers are required, through their standard of care, to give students enough time to internalize rules and prohibitions. Teachers would be well advised that just stating rules to students will not suffice to discharge their standard of care. They will need to provide students time to practice their skills before a potentially dangerous game is commenced. In this way, students will learn what is expected of them on the field and know to behave accordingly.

That does not mean that the impossible is expected of teachers. Indeed, in *Hamilton v Delta School District No 37,* Madam Justice Adair concluded her findings with the following: "Ms. Hamilton's injuries were certainly unfortunate. However, there is some risk of injury inherent generally in high school physical education activities and sports. The standard Mr. Parhar is required to meet is one of reasonableness, not perfection."[50] This is the common thread in the school negligence cases. The best way for teachers to avoid liability is to ensure that their students are properly instructed in whatever activity they are engaging in, and that the supervision they are providing to the students is attentive.

In regard to other supervisors, those who are not employed as teachers or by a school board such as little league coaches or referees, the standard of care is more relaxed than it is for teachers. The courts have made direct references to the 'prudent parent' standard when

[48] 2013 BCSC 1248 at paras 189-190.
[49] *Ryan v Hickson* (1974) 7 OR (2d) 352 (ONSC).
[50] *Supra,* note 19 at para 61.

examining the liability of these individuals, and have made no mention of the ‘supraparental’ standard. This means that if coaches, leagues, and referees are able to show that they behaved reasonably, having taken notice of potential and known risks and acted to prevent injuries that would arise as a result of them, then they will have discharged their duty.

The courts have, in general, been moving towards holding people responsible for negligently instructing children and for failing to adequately inspect the area where the proposed activity will take place. Emphasis has been placed on the reasonable foreseeability of certain injuries, and so adult supervisors will need to be alive to these issues. While the standard is higher for education professionals, the standard of care for all adult supervisors is rooted in the ‘prudent parent’ standard from *Williams v Eady*. Though nearly 120 years have passed since it was first articulated by the Courts, this standard will continue to be analyzed by the Courts, with necessary changes made to reflect the realities of modern life; adult supervisors would do well to note its lessons.