

# **Personal Injury in Snow Sports in Canada, An Analysis of Recent Decisions**

## **A Brief Overview of the Canadian System**

The legal system in Canada is administered on a provincial basis. We have ten provinces and three territories. With the notable exception of the province of Quebec all of the jurisdictions apply the common law as formulated in Great Britain. Quebec has a system based upon the Napoleonic Code as formulated in France. Despite the different systems, all of the jurisdictions have the same court as the final court of appeal, the Supreme Court of Canada. As a result the law in Canada, it is almost entirely analyzed on the principal of *res judicata* or precedent.

When it comes to personal injury cases, the principal fact situation involves motor vehicle accidents. In Canada, these matters are in a unique area of law based upon rules of the road for liability and different insurance regimes when it comes to damages. The remaining personal injury cases fit into the category of negligence based tort actions. In almost every case some type of liability insurance policy will apply. For most ski areas liability insurance premiums are a cost of doing business.

To succeed in any such action, a three step process is required. Firstly, one must establish that a duty exists between the injured party and the parties from whom the claim is being made. Secondly, it must be proven that this duty has been breached; therefore, imposing liability. Thirdly, it must be shown that damages have been suffered by the claimant which arose directly out of the breach of that duty.

In this context, Canadian personal injury cases tend to impose a greater obligation on the claimant to protect themselves from harm and usually result in smaller awards for damages than we see in the United States. In fact, in researching for this presentation, literally hundreds of recent American decisions were found with significantly fewer Canadian cases.

General damages in Canada are limited or capped as a result of a decision of the Supreme Court of Canada. This amount rises with inflation and at present is approximately \$315,000.00 which would apply to the most serious of injuries. Accordingly, the largest part of most damage awards is reserved for loss of past and future income together with the cost of future care. It is within this context that I intend to illustrate how the courts in Canada have treated snow sport related personal injury cases through a review of some recent decisions.

**Milsom v. Verron** 2005 CarswellBC 2428

Facts

On her first day of a ski holiday in 2004 at a ski resort known as Sun Peaks in central British Columbia, the 50 year old Plaintiff was hit by the defendant near the bottom of the slope in an area marked for slow skiing. As a result, the plaintiff suffered injuries to her right knee. The injury required surgery and a post operative regime of rehabilitation. The plaintiff was a very physically active person and was employed as a physical education teacher. The claim was made against the skier that hit the plaintiff only and not as against the ski area. As no one appeared for the Defendant at the trial, liability was not an issue and all that the court was required to do was assess damages.

Damages were assessed as follows:

- i) General Damages-\$25,000.00
  - ii) Special Damages-\$17,624.59
    - Housekeeping-\$10,000.00
    - Massage and Physiotherapy-\$5,929.59
    - Private Doctor Consultation-\$200.00
    - Private MRI-\$875.00
    - Parking-\$520.00
  - iii) Past Income Loss-\$33,800.00
- Total- \$75,324.59

| **Skrocki v. Red Deer Ski & Recreation Area Limited** Docket: Edmonton 0003-00543

Facts

| This was a motion by the defendants to attempt to have the plaintiff's claim dismissed by having the court determine on a summary basis that there was no liability. The plaintiff was a 15 year old girl who was injured as a result of an accident that occurred in 1998 on a slope which was prepared for an upcoming mogul competition. Although the slope contained a warning sign as well as fencing, the plaintiff still apparently skied down the slope. The plaintiff was a season's pass holder and a member of the local alpine racing club. Both she

and her mother signed a release of liability form at the time the pass was purchased. She was also an experienced alpine racer. Additionally she would have had to have seen the slope in question from the chairlift she took to get up the hill. There was also evidence that on the day of the accident the light was flat. As a result of all of these circumstances, the defendants felt that they could possibly convince a court that there was no liability on their part without the need to have a trial.

### Decision

The application was dismissed as the court determined that at that stage of the evidence liability could still be imposed on the defendants. In particular, the court determined that the release was not determinative of the issue despite having been signed by both the plaintiff and her mother. Seemingly, such a release offered no protection at all to the defendants. The court decided that the remaining issues would require further evidence by way of a trial in order to be able to make a finding on liability and dismissed the motion with costs.

### ***Richardson v. American Home Assurance Co.*** 2003 CarswellQue 3220

### Facts

The plaintiff was a 70 year old experienced skier who broke his neck on an overcast morning while descending an exit ramp from the deck of the chalet at the top of Mont Sainte Anne in the Province of Quebec. in 1999. The tips of his skis stuck into a pile of snow at the bottom of the ramp causing him to eject from his skis and land on his head. The allegation against the ski area was that the pile of snow was a trap as it had been piled at the bottom of the ramp by the staff of the ski area by using shovels. The position of the ski area was that the pile was caused naturally by a build up of snow by other skiers continually turning and was therefore not a trap. They also disputed the magnitude of the plaintiff's damages which were being claimed at \$414,753.33. The plaintiff's injuries consisted of an unstable fracture of his spine at the C1 and C2 levels. The injury was treated by surgery which fused the C1-C2. The result was permanent restriction on mobility of the neck with a resultant restriction on activities. As the plaintiff was retired, there was no loss of income claim.

### Decision

Despite conflicting evidence as to the cause of the build up of snow, the civil court came to the conclusion that the pile of snow was made as a result of the use of shovels and rejected the defendant's position that it was created by skier traffic and was a well known type of situation and not a trap. Having found the defendants liable, the court assessed damages in total at \$171,453.00. This was comprised of \$21,453.00 in out of pocket and special damages, \$75,000.00 for loss of physical integrity and a further \$75,000.00 for pain, suffering and loss of enjoyment of life.

Not surprisingly the defendants appealed the decision on liability. The appeal court upheld the decision, as they found that the evidence supported the finding that the pile of snow had been formed by shovels and was not caused by skier traffic.

***Murao v. Blackcomb Skiing Enterprises Ltd. Partnership*** 2003 BCSC 1961, 22 B.C.L.R.(4th)392,[2004]B.C.W.L.D.281, 2005 BCCA 43, [2005] B.C.W.L.D. 1689, [2005] B.C.W.L.D. 1769, [2005] B.C.W.L.D. 1699, [2005] B.C.W.L.D. 1654, [2005] B.C.W.L.D. 1655, 36 B.C.L.R. (4th) 318, 207 B.C.A.C. 257, 341 W.A.C. 257, 30 C.C.L.T. (3d) 73

## Facts

While on a school ski trip in 2000 the plaintiff suffered a serious and permanent injury by fracturing his neck thereby rendering him a quadriplegic. The injury occurred as a result of the plaintiff falling while attempting a jump while snowboarding in a terrain park at the largest ski area in Canada, Blackcomb Mountain. The plaintiff brought his action against the owner of the resort, the School Board and the various teachers that organized and attended on the trip. Blackcomb settled with the plaintiff for an undisclosed sum ten days prior to trial. Accordingly, the trial proceeded as against the teachers and School Board only. The trial was heard before a jury and lasted six weeks. Not surprisingly, the plaintiff attempted to diminish the responsibility of the ski area and it fell to the School Board to lead evidence showing Blackcomb's negligence. Such evidence suggested that Blackcomb knew of the dangers of the terrain park in general as well as the particular jump where the accident occurred. Further, there was evidence that the signage used to designate the experience level of users of the park were wholly inadequate and inaccurate. It also appeared that the School Board did not have a policy in place for how such activities were to be monitored and supervised.

## Decision

The trial judge was required to make certain rulings concerning the admissibility of evidence as well as how the jury was to be instructed. It appears that the settlement with Blackcomb on the eve of trial served to make the process somewhat more difficult. The jury found that on the evidence that Blackcomb was 70% liable, the School Board 15% liable and the plaintiff 15% liable. The action was dismissed as against the individual teachers. Although it is difficult to discern it appears that the jury assessed the damages at \$3,500,000.00. Accordingly, the amount for which the School Board was ordered to pay was \$533,333.33. In addition, the School Board was required to pay 15% of the plaintiff's costs. Apparently, the plaintiff was not content with this decision which provides some insight into the amount of the settlement with Blackcomb. It appears that the plaintiff's hope was to increase the

portion of liability on the part of the School Board. As a result, the plaintiff appealed the decision and requested a new trial. It is exceedingly difficult to set aside a jury decision in Canada and this case was no exception as the appeal was dismissed.

The most interesting result of this matter was the fact that the resort operator proceeded to completely revamp all of its terrain park signage and protocol. No longer would they apply the same system of signage to terrain parks as they did to trails outside of the parks. They also segregated these parks with fencing and limited access only to those that had taken a course and had an additional pass allowing them into the parks. These changes in signage are now being urged to be used on a universal basis throughout North America at all ski areas which have terrain parks.

### **Conclusion**

Although personal injury actions are common in Canada there is significantly fewer claims advanced on a per capita basis as compared with the United States. This is especially so when considering claims as against ski areas. Additionally the damage awards are considerably lower due largely to judicially imposed limits on general damages. Accordingly Canada may be considered a reasonable jurisdiction to operate a ski area when considering liability for personal injury although not entirely risk free.

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