

# BRIEFING NOTE

## **Recreational League Soccer Team Captain Found Liable for Team Member Breaking the Rules**

### ***Forestieri v. Urban Recreation Ltd., 2015 BCSC 249***

In a recent BC Supreme Court decision a recreational soccer team organizer and captain has been found liable for injuries suffered by the plaintiff when he was slide tackled by one of their team members, injuring his knee. The decision is of interest to recreational team organizers, participants, and their insurers. While signed waivers have often been upheld by B.C. courts to defeat such claims against sports leagues themselves, the decision in *Forestieri* opens an avenue of recovery for injured sport participants, even where the perpetrator cannot be identified. It may also have a chilling effect on those who organize recreational team sports.

### ***Background:***

The plaintiff was injured in 2011 when he was slide tackled by an opponent during an Urban Rec soccer game in Vancouver. His team was playing against a group of students from a local international college. The plaintiff brought a claim in negligence against the school as well as its Activities Coordinator, an employee of the school who did not play on the team but registered it with Urban Rec and put her name down as the designated “team captain”.

Interestingly, Urban Rec, who ran the co-ed soccer league, was initially a defendant. According to the judgment, Urban Rec negotiated a settlement based on the waiver of liability signed by the plaintiff. While that waiver may have provided a defence to any claim against the league, it apparently did not waive claims against other players or team captains.

### ***The Plaintiff’s Case:***

The case largely turned on the plaintiff’s evidence that he was an experienced player and only chose to play in the Urban Rec league because slide tackling was expressly prohibited under its Rules. The court also found that the defendant team organizer had delegated the actual task of captaining the team to another person, and had not ensured that all persons who played for the team were registered with the league and had read Urban Rec’s special rules. This is an important fact because there are no referees in Urban Rec soccer, and each player and team captain has to “self-police” their team and call their own fouls. The court found that this factor increased the responsibility on the team captain to ensure their players were registered and knew the rules.

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***Evidence from the Defence...or the lack thereof:***

One interesting aspect of the case is that the real offending party, the nefarious slide tackler, was an unknown player who was named in the action only as John Doe. In reaching its findings on liability, the court made findings of fact that John Doe was an experienced soccer player who wreaked havoc on the recreational game by playing by the standard FIFA soccer rules as opposed to Urban Rec's modified rules. The court found that there was no reason to believe that John Doe knew that slide tackles were prohibited in Urban Rec. The court found that John Doe used excessive force in his slide tackle and intended to slide tackle the plaintiff. It is not clear what evidentiary basis there was for these findings in the absence of John Doe's testimony. The court appears to rely on reports of his actions during the game and the Activities Coordinator's own evidence that she herself had not told John Doe of the prohibition in the rules. The court rejected as conjecture arguments that John Doe may have been aware of the rules through some other avenue (for example playing in previous Urban Rec seasons) but does not appear to confront the question of whether John Doe may have slide tackled the plaintiff anyway, even if he had been properly registered and been given an opportunity to read the rules?

***Inherent or Accepted Risk of Injury:***

One defence argument dismissed by the court was whether, by participating in a soccer game, the plaintiff assumed the risk of being slide tackled and injured. Putting that argument another way, where the infraction and the resultant injury arose from the ordinary and inherent risks of that particular sport, risks that are reasonably accepted by sporting persons taking part in the game, there is no negligence when such an incident and injury ultimately occurs. After all, the very reason there are rules in place, and penalties for infractions, is that sometimes infractions occur. Rules and penalties keep order but do not guarantee safety. As the old saying goes, "rules are made to be broken" or perhaps a more apt rephrasing is "penalties exist because rules are broken".

The court readily dismissed the accepted risk defence based on Mr. Forestieri's own evidence that he specifically chose the Urban Rec league because slide tackles were prohibited and were not a risk he accepted. However, Mr. Forestieri also gave evidence that he had played in the league for several seasons and had witnessed slide tackles on perhaps three occasions. The court clearly found this to mean that slide tackles were "almost unheard of" and exceptionally rare, but it is also arguable that although rare, on the plaintiff's own evidence a slide tackle was a foreseeable occurrence in the league. While not recorded in the reasons, the Urban Rec rules penalize a first slide tackle offence with a free kick, with increased penalties if the offence re-occurs. Thus while prohibited, it could be said that slide tackles were one of the accepted risks of play – they are a "soccer play" that is an infraction under the rules and is to be penalized with the awarding of a free kick. However, the court accepted the plaintiff's subjective evidence of what risks he accepted when participating in the Urban Rec soccer game, as opposed to what risks a reasonable soccer player participating in an Urban Rec game objectively accepts.

***Liability:***

The court concluded that Mr. Forestieri was the "neighbour" of the defendants, and that there was sufficient proximity and foreseeability to establish that a duty of care was owed. In establishing both a duty of care and causation the court found that it was reasonably foreseeable that the plaintiff would be injured if the team captain failed to ensure her team's players knew the rules. At the second stage of the duty of care

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analysis, the court found that because the team captain owed a duty to see that her players knew the rules, there could be no policy consideration to condone passivity about trying to ensure safety. It is not clear from the reasons what if any specific policy considerations or arguments the court considered in reaching that conclusion.

In finding a breach of duty the court concluded that the designated team captain failed in her duty to ensure that those who played for the team knew the rules. She could have ensured this by only allowing registered players to participate or, more directly, by properly delegating the task of ensuring that those who played each game knew the rules beforehand.

With respect to causation, the court makes an implicit finding that the “but for” test has been met. This appears to be based on the plaintiff’s evidence that he would not have played in the game had he known another player did not know the rules, and that the defendants failed to advise John Doe of the rules. As noted above, the court rejected as speculative the suggestion that John Doe might have known the rules, but does not address the possibility that John Doe may have slide tackled the plaintiff anyway even if the team captain had done all she was supposed to in explaining the rules. In the latter scenario, the plaintiff arguably would not satisfy the “but for” test.

### ***Conclusion:***

One of the potential outcomes of the decision in *Forestieri* is the chilling effect it may have on those who act as “beer league” team captains or organizers. In the wake of the decision, team captains, and companies or organizations that form recreational sports teams, face liability exposure for the actions of their players. This is particularly the case if “spares” arrive at the last minute, are not fully aware of the league rules, and go on to commit a rule infraction causing injury. As a practical example, a company could be liable for an employee’s conduct in the course of a Slo-Pitch game if that employee was not made aware of the league rules and a rule infraction causes injury to an opposing player.

Mr. *Forestieri* suffered an injury to his knee but the financial impact of a successful claim against a team captain or organizer could be far more substantial if a team member’s actions cause a serious brain or spinal cord injury. Individuals and groups may be less inclined to organize a team if they know it comes with significant exposure to liability for the actions of team members over which they often have little control.

With respect to an appeal, it appears that Mr. *Forestieri*’s lawsuit was resolved shortly after the summary trial decision. This is perhaps because of the economics of an appeal in relation to the likely quantum of the plaintiff’s claim. As a result, the trial court’s conclusions will not be explored or tested on appeal.



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