

# BRIEFING NOTE

## **Trial judge awards damages to plaintiff injured in recreational soccer game – Implications for future sports claims?**

In *Miller v. Cox*<sup>i</sup>, the British Columbia Supreme Court awarded damages to the plaintiff to compensate him for injuries sustained as a result of the defendant’s “negligent” and “last-ditch” slide tackle executed during a recreational soccer match.

In doing so, the Court effectively confirmed that sports injuries claims are easier for plaintiffs to prosecute in BC than in several other provinces.

### **Background**

In May 2018, Mr. Miller and Mr. Cox played on opposing teams in a soccer match organized by the Millar’s North Shore Soccer League and regulated by modified FIFA rules. During the game, as Mr. Miller approached the opposing goal with the ball, Mr. Cox slide tackled Mr. Miller from behind, causing him to fall forward and injure his shoulder. The referee penalized Mr. Cox with a yellow card and awarded a penalty kick to Mr. Miller’s team.

### **Issues and Law**

The only issue at trial was whether Mr. Miller’s injuries arose as a result of Mr. Cox’s negligence.

The Court started its analysis by considering authorities from across Canada and acknowledged that there is a divergence between the degree of carelessness and state of mind required to establish liability in BC and what is required in other provinces.

BC courts consider whether the defendant’s actions comport with what a reasonable competitor would do in the circumstances, which is a standard that can be breached by mere carelessness. In contrast, in Manitoba, Ontario and New Brunswick, courts consider whether the defendant created an unreasonable risk of harm, which requires more than mere carelessness.

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In considering the standard of care in BC, Justice Baker acknowledged that while injuries occur in sports, players do not consent to the risk of *all* injuries they may suffer merely by virtue of their participation in the sport.

In determining whether Mr. Miller had consented to the risk of the injury he suffered or whether it had been caused by Mr. Cox's breach of duty, the question was whether Mr. Miller suffered injuries as a result of acceptable, reasonable conduct by Mr. Cox in executing a slide tackle, or whether Mr. Miller was injured as a result of conduct on the part of Mr. Cox that was outside the risks which a reasonable competitor would assume in the game.

### **Findings and Disposition**

Justice Baker found all the witnesses to be credible, other than Mr. Cox, whose evidence concerning the tackle was rejected by Justice Baker as entirely self-serving and wholly unbelievable. Justice Baker determined that there was no possibility of Mr. Cox reaching the ball and that the tackle was outside the rules of play and was dangerous and reckless.

Justice Baker held that while slide tackles are permitted under the FIFA rules, the players in this league did not consent to dangerous and reckless conduct, such as that undertaken by Mr. Cox, which carried with it the risk of severe injury.

In the result, Mr. Cox was negligent when he attempted to execute the slide tackle in the manner he did and he was liable for Mr. Miller's injuries. The Court awarded Mr. Miller the agreed amount of \$103,764.11 in damages.

### **Analysis**

In Manitoba, New Brunswick and Ontario, a plaintiff must establish that the defendant's conduct represented an unreasonable risk of harm, which requires more than mere lack of care on the part of the defendant. Intentional conduct (or at least recklessness) is required to establish liability.

In BC, however, the standard of proof is lower. To impose liability, a court must only determine that the conduct fell outside the risks assumed by a reasonable competitor. Carelessness is sufficient to establish liability.

Accordingly – and as expressly recognized by Justice Baker in this decision – a player injured in BC faces a much less substantial burden of proof of an actionable injury than does a similar player in other provinces.

In this particular instance, the higher standard may have been satisfied in any event, since the Court determined that the defendant's conduct was dangerous and reckless and that the defendant was well aware of the risk of injury.

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## Comment

Participation in sport inevitably brings the risk of injury, even (or perhaps particularly) in the amateur context. At times, it is the competitiveness of sport and the acceptance of the associated risks that can make it fulfilling.

The challenge for judges is to balance the need to fairly compensate tort victims with the need to recognize the role that competitive sport plays in society and to acknowledge participants' assumption of the associated risks. A decisive factor that determines this balancing act is: what level of risk does the amateur participant accept?

Justice Baker's analysis is premised on the assumption that when a participant in amateur sports enters the field of play, while they accept the risk of being injured by an opponent, that acceptance is only with respect to injuries arising from conduct that is within the rules of play and that occur despite reasonable care on the part of the opponent.

While there may be forms of recreational sport in which players *do* accept the risk of injuries arising from careless (or even reckless) conduct – in this instance at least, an organized “beer league” is not one of them.

In BC, it appears that if a participant suspects they cannot play with reasonable care – for example, because of incompetence, inexperience, lack of training, ignorance of the rules, exhaustion, injury, the ingestion of drugs or alcohol, or the “red mist” that can render even a professional unfit to participate<sup>ii</sup> – it would likely be prudent that they settle for a place on the sidelines, at least until they acquire the requisite competence or appropriate mindset.

Some may take the view that the BC jurisprudence has set the bar too high for participants, and that the standard of care risks compromising either the level of participation or the level of competitiveness at the amateur level. Those with that perspective may be pleased to hear the decision has been appealed.

Unlike Justice Baker in the BC Supreme Court, the BC Court of Appeal can review earlier decisions and depart from the existing jurisprudence, if the panel considers it appropriate. Therefore, if the appeal proceeds to a hearing, the BC Court of Appeal will soon have the opportunity to reconsider whether the BC approach strikes the appropriate balance or whether BC law ought to be brought in line with that of Manitoba, New Brunswick and Ontario.

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Given sport plays essentially the same societal role in each of the provinces, arguably there should be consistency across Canada in the standard of care that is applied in these cases. Depending on the outcome of the Appeal, ultimately it may require an appeal to the Supreme Court of Canada for this issue to be definitively resolved.

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<sup>i</sup> 2023 BCSC 349

<sup>ii</sup> For example, see BBC News (February 23, 2023)

[Reading rugby player wins compensation over revenge tackle](#)

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