

Judgment (Klaver PCJ)

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02 September 1999.
Nanaimo, B.C.

THE CLERK: Calling from the small claims list, File C18709, Rupinder Parmar and the City of Parksville.

THE COURT: Thank you. This was a trial that I heard on Monday, I think it was, and I said that I would try and make some notes and render my decision orally as soon as possible, and I have asked it to be added to the list today and for both sides to be notified. So this is my decision in the case of Parmar versus the City of Parksville.

In this case the claimant seeks damages for injuries he sustained to his teeth and lips at the venture park owned by the City of Parksville in the City of Parksville. He says that he and four other teens attended the park at about 8:30 p.m. on the 3rd of July 1999 -- excuse me, 1997. One of the teenagers used the washroom and the others waited for him in the playground area. The plaintiff says that he stepped on the end of a two-by-eight plank on a platform and that plank dislodged from the other end, flipped up and hit him in the mouth. He suffered injuries and had stitches to his lips and lost two front teeth, which have now been replaced with a permanent bridge.

I have some concerns about the claimant's case, especially in regards to why the teenagers were in this particular place, which board was actually involved, and when the claimant's photographs were actually taken. I am, however, prepared to set those concerns aside for now and deal with the City's liability.

The case law presented sets out the law in regards to government liability and the differences between policy and operational decisions. Clearly, when examining operations a government's conduct must reach the stage of being reasonable under the circumstances. This is reinforced in all the cases presented. Where it is a pure policy decision constrained by budgetary options, then a government can be immune. In this case playground inspection was a budgeted item approved of by the council itself. Clearly, to spend more on this item would require less to be

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1 spent in other areas; for instance, operationally,
2 grass cutting, if it was within the overall
3 maintenance budget.

4 Although the decision to allot one hour per
5 week for the parks foreman to inspect the
6 playground is a budgetary item and therefore
7 policy, the council would clearly have increased
8 that amount if the operational manager and foreman
9 had made that request. Therefore, in my opinion,
10 the matter turns on whether this allocation
11 recommendation by the parks foreman and the
12 operations manager was reasonable under the
13 circumstances.

14 Mr. Crawshaw, the parks foreman, said that he
15 spends one hour per week, usually Tuesdays at 8
16 a.m., examining the playground equipment and
17 completed a checklist which he devised in 1992
18 using the Canadian Standards Association
19 guidelines as a base. This is his routine all
20 year long. I am satisfied that this hour refers
21 only to the two playgrounds and not to the whole
22 park, because there is nothing in the checklist
23 referring to other equipment such as backstops in
24 the park, and my notes did not indicate that he
25 ever referred to the other areas of the park in
26 his evidence.

27 Mr. Crawshaw says he spends most of his time
28 on the wooden structure, and his inspection
29 includes looking at each piece of the equipment,
30 pushing up on some eye-level planks, randomly
31 kicking lower planks to check for rot, but that he
32 does not usually grab planks or step onto the
33 planks unless he notices something visually. If
34 he notices a nail has lifted he will bang it down,
35 otherwise he reports all repair needs to the
36 Lion's Club representative. He finds a problem
37 only once every two to three weeks, and very
38 rarely a plank problem. To his knowledge nothing
39 similar to this incident has ever happened before
40 or since this incident.

41 In addition to Mr. Crawshaw, the city employs
42 summer students whose main job is to clean litter
43 and glass in the park and playground and report
44 any problems they see or find to Mr. Crawshaw or
45 directly to the Lion's Club representative.

46 In addition, the Lion's Club, and in
47 particular, Mr. Ettinger, also does inspections.

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1 He was involved in the Lion's Club constructing
2 the playground. He helped replace the decking.
3 He assisted with the renailing of the planks with
4 screw nails. Mr. Ettinger and a partner (although
5 infrequently it may be one or two other Lion's
6 Club members), inspect and do necessary repairs
7 every morning from May to October. He also does a
8 less intensive inspection every afternoon, and
9 will sometimes do an evening cursory inspection.
10 He is responsible for any repairs needed as seen
11 by the city workers as well as the Lion's Club
12 members themselves. He described his inspections
13 as being routine. One morning he goes through the
14 playground clockwise, and the next morning
15 counter-clockwise, looking at every piece of
16 equipment. He knows the parts well and he knows
17 the parts that wear and erode the most.

18 The morning inspection takes approximately
19 forty-five minutes. He looks mainly for loose
20 boards, worn links and cable frays. In the
21 afternoon he does a visual inspection and he talks
22 to people in the area about their observations of
23 the equipment. He says that each board has at
24 least two screw nails at each end, and if a board
25 is loosened he can see it and he repairs it. He
26 recalls a few boards being kicked up over the
27 years. He has never heard of an incident like
28 this one previously, and this is the first board
29 they have every replaced.

30 Under cross-examination Mr. Ettinger said
31 that he mainly visually examines the equipment,
32 and if he sees something ajar he shakes it to see
33 if it's loose. He also does physical checks, but
34 mainly on problem areas such as the chains. He
35 said that if this board was loose on the morning
36 of July 3rd he would have noticed it during his
37 inspection and fixed it.

38 Mr. Ettinger reports that he was called about
39 this incident on the morning of the 4th of July.
40 He attended immediately and found the board
41 completely missing. He went and got a new board,
42 but misjudged its length to be four foot six. He
43 nailed it down, went home to get his saw and
44 returned, cut the board to four feet and renailed
45 it down. This was completed by noon. He
46 therefore says that the claimant's pictures could
47 not have been taken after July 8th as alleged by

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1 the claimant because those photographs show the
2 four-foot-six-inch board in place.

3 Finally, did the City act reasonably under
4 the circumstances? The City adopted a policy
5 expressed in its budget to have its parks foreman
6 inspect the playground equipment once per week
7 year-round. It did this and did not add
8 additional inspection time in the summer knowing
9 that there was more use in the summer, but the
10 City took the following into consideration in
11 making this decision:

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- 13 (1) The structure was constructed by the
- 14 Lion's Club.
- 15 (2) The planks were renailed with screw
- 16 nails.
- 17 (3) All the planks had been replaced over
- 18 time.
- 19 (4) There had never been an incident of a
- 20 loose board flipping up since it was
- 21 built in 1985.
- 22 (6) The checklist was developed using the
- 23 Canadian Standards Association standards
- 24 as a guideline.
- 25 (7) There were summer student employees in
- 26 the area Monday to Friday in the summer
- 27 reporting any problems they saw or
- 28 found.
- 29 (8) There were extensive additional morning
- 30 inspections daily from May to October by
- 31 two very dedicated members of the Lion's
- 32 Club.
- 33 (9) There was at least one, and sometimes
- 34 two additional walkabouts by a dedicated
- 35 Lion's member in the afternoon and
- 36 evening.
- 37 (10) The Lion's Club had been completely
- 38 reliable and has continued to be
- 39 completely reliable.
- 40

41 If the accident occurred as the claimant says
42 it did, how did a board double-nailed with screw
43 nails into solid wood come loose? If someone set
44 a trap during the day it's unlikely any amount of
45 inspecting would have discovered the problem.

46 I find that the City acted reasonably under
47 the circumstances and I dismiss the claim.

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Okay, we will stand down for a minute.
(PROCEEDINGS CONCLUDED)