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New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LISA MAHLOW

PLAINTIFF

AND:

THE CITY OF COQUITLAM

DEFENDANT

Counsel for the Plaintiff:	Archie L.B. Kaario, Esq.
Counsel for the Defendant:	Ms. Eileen E. Vanderburgh
Dates of Trial:	June 17th to 19th, 1996
Place of Trial:	New Westminster, B.C.

REASONS FOR JUDGMENT
OF THE HONOURABLE MR. JUSTICE DE WEERDT

1 Is the Defendant, The City of Coquitlam, legally liable for the injuries and loss suffered by the Plaintiff, Lisa Mahlow, as a result of her collision with one or more other skaters while on the Defendant's ice rink at Coquitlam on December 27th, 1992? That is the issue remaining to be resolved in this action.

2 According to the only two trial witnesses to observe the collision, namely the Plaintiff and her friend Michael Francis Bennet, several young boys had been among the skaters on the ice, noticeably weaving in and out at a speed significantly greater than

that of the other skaters, all at that time following a counter-clockwise direction during a public session of recreational skating for all ages. An attendant announced in a loud voice that the session was to end in a matter of minutes. The boys thereupon immediately reversed their direction so as to skate clockwise against the regular flow. Having done so, they came at speed directly towards the Plaintiff and Mr. Bennet, who were skating close together. Mr. Bennet managed to move to one side just in time to escape contact with them. The Plaintiff, however, was struck down by one or more of the boys as he or they collided frontally with her. She fell backwards breaking a bone in her right upper arm. Both she and Mr. Bennet testified at trial that the boys then stood over her, laughing, before disappearing together.

3 Aged 25 at the time and active in various athletics, the Plaintiff had been skating since she was five years old. While not an expert, she was not a complete novice skater either. Her evidence is that she had skated once or twice a year in the five years previous to this event. She had rented her skates at the rink on this occasion. On the ice for some ten minutes before the collision, along with Mr. Bennet, it is her evidence that they had both noticed the boys weaving in and out of the regular flow, going at about twice the general speed. Mr. Bennet's testimony is to the

same effect. I accept their evidence that the boys were then engaged in a game of tag.

4 Although the Plaintiff and Mr. Bennet each testified that they had sensed danger in the boys' play even before their sudden reversal of direction on the ice, it is noteworthy that neither took any step to eliminate or reduce the danger, for example by reporting it to the skate patrol on duty, by cautioning the boys, or even by leaving the ice. Mr. Bennet, now a member of the Royal Canadian Mounted Police, was impressive enough in physical stature to have been able quite easily to command the attention of the boys. And he was evidently a sufficiently competent skater to have been able, quite quickly, to approach and engage the attention of the skate patrol or other staff, either on the ice or in the immediate vicinity.

5 The testimony of several former skate patrol and supervisory staff members on duty at the time of the collision is to the effect that no such irregular behaviour by skaters on the ice that day had come to their attention prior to that event. Their testimony would lead one to believe that the danger seen by the Plaintiff and Mr. Bennet regarding the boys' erratic behaviour was altogether unperceived by any of the skate patrol or other staff on duty before the collision occurred. While it is the evidence of these employees and former employees of the Defendant that they were at all times on the lookout for conduct on the part of skaters which

might pose a risk to others, I am nevertheless persuaded by the trial testimony of the Plaintiff and Mr. Bennet that the degree of official vigilance actually shown by the Defendant's personnel on that occasion was less than adequate with respect to the boys in question.

6 Had the skate patrol seen and checked the boys earlier, warning them that they would be banned if they should continue their irregular activities, or had the boys been then removed from the ice as a disciplinary measure, the collision might well have been averted. Furthermore, had there been a public notice of the rules and regulations to be enforced by the skate patrol and other staff of the Defendant at the rink, other skaters such as the Plaintiff and Mr. Bennet might then even have taken steps to alert the skate patrol as to the boys' conduct before any real harm occurred. And the boys themselves would not, perhaps, have been so readily inclined to take liberties forbidden by the rules and regulations had these been publicly posted. Those are, of course, mere speculations. But, at least, they serve to illustrate the Defendant's less than fully effective control over its premises at the rink.

7 As an occupier within the meaning of the ***Occupiers Liability Act***, R.S.B.C. 1979, c. 303, the Defendant was required to show due care towards the Plaintiff in respect of dangers to her on its

premises for which it was by law responsible. That duty of reasonable care extended to the conduct of the boys on the ice. And it required the Defendant, having regard to all the circumstances, to see that the Plaintiff was reasonably safe in using the premises, including the ice.

8 The Plaintiff was aware of the ordinary risks inherent in ice skating and she willingly accepted those risks when she went on the ice. Given the supervision ostensibly exercised by the Defendant through its skate patrol and other staff on duty at the rink, and the recreational character of the skating "for all ages", those risks did not include contact with unruly individuals playing a game of tag with apparent impunity at speeds and in directions at variance with the regular flow of skaters on the ice.

9 The Defendant's public skating regulations, of which a copy is exhibited in the Defendant"s book of documents, states among other things that:

> Speed skating, games and horseplay will not be tolerated on the ice.

Furthermore, it declares that:

> All skaters must comply with the Skate Patrol's directives.

But these regulations were not posted where they could be read by members of the public using the Defendant's premises. They were only on view in a portion of the premises restricted to members of the Skate Patrol and other staff. And there were no other signs visible to the public on the premises which should have alerted them to these requirements of the regulations.

10 In all the circumstances, I find that the Defendant was in breach of its duty of reasonable care to see that the Plaintiff was reasonably safe on the ice of its premises. In making that finding, I accept the testimony of the Plaintiff and Mr. Bennet as to the boys' behaviour before the announcement that the session was to end in a matter of minutes. The evidence of the Defendant's skate patrol and other staff is that this behaviour had not come to their attention. That only tends to confirm the evidence given on behalf of the Plaintiff to the effect that the members of the skate patrol on duty were not acting with the necessary vigilance to effectively curb the boys' misbehaviour. In the absence of any publicly promulgated rules of conduct on the ice, the only such curb consisted in vigilant personal enforcement of the Defendant's rules and regulations by the skate patrol and supervisory staff.

11 To adopt the words of Macfarlane J., (as he then was) in ***Niblock*** v. ***Pacific National Exhibition and City of Vancouver*** (1981), 30 B.C.L.R. 20 (S.C.) at page 28:

> I do not think that an occupier can be relieved of responsibility for a failure to keep his premises reasonably safe by saying that he turned a blind eye to the danger because no one had yet been hurt and no one else had warned him of the danger. If the unsafe condition was there to be seen by someone who was applying his mind to the relevant risks, then it was a duty of that occupier to take reasonable steps to remedy the problem.

12 That is not to say that the Defendant was a guarantor of the Plaintiff's safety. The law does not go so far. But the Defendant was required to take reasonable care for her reasonable safety and failed to do so.

13 In terms of causation, I am persuaded beyond the balance of probabilities that the Defendant's negligence in failing to adequately control the boys' behaviour on the ice contributed significantly to the occurrence of the collision and the resulting injuries and loss suffered by the Plaintiff. Being obliged to make a finding as to the relative fault of the Defendant, as compared to that of the boy or boys responsible for the occurrence, I assess the Defendant's fault at 25% as against that of the boy or boys in question at 75%.

14 Judgment may be entered accordingly with costs to the Plaintiff on scale 3 of the tariff.

New Westminster, B.C.

3 September 1996 "de Weerdt J."