Case Alert: Campbell V. Bruce (County), 2016 ONCA 371

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The Ontario Court of Appeal has upheld the Trial Judge's decision in *Campbell v. Bruce (County)*, 2015 ONSC 230.

The plaintiff's claim arose from a mountain biking accident on August 7, 2008. The plaintiff and his family were visiting the Bruce Peninsula Mountain Bike Adventure Park (the "Park"). The Park was made up of a series of bike trails, along with an "Obstacles Area" with various wooden obstacles where riders could practice skills. The Park was unsupervised and open to the public with no admission fee.

Two of the obstacles in the Obstacles Area were "teeter-totter" type structures called "Pee Wee" and "Free Fall." Pee Wee was low to the ground but Free Fall had a higher elevation. A rider would ride their bike to ascend the structure to its pivot point, at which point the teeter-totter would dip down and the rider would descend down to the ground. Free Fall was located directly behind Pee Wee so that riders could try the obstacles consecutively.

Upon his arrival at the Park, the plaintiff and his family went to the Obstacles Area. The plaintiff successfully rode over Pee Wee and continued to ride onto Free Fall. He did not have enough speed to make it over the pivot point and began to fall. He attempted to control his fall by "popping a wheelie" to the right of the obstacle. He went over the handlebars of his bike and landed on his head on the ground. This injury rendered him a quadriplegic.

The trial proceeded on the issue of liability only, which was focused on section 3 of the *Occupiers' Liability Act*. The Trial Judge held that the County breached its duty of care in a number of ways, each of which contributed to the plaintiff's accident. The Trial Judge also found that the plaintiff was not contributorily negligent. The County appealed on all issues. The Court of Appeal dismissed the appeal in its entirety.

The County argued that the Trial Judge failed in assessing the inherent risk of the activity. The Court disagreed. While there was no doubt that the plaintiff, as an experienced mountain biker, assumed the risk of riding on the trails in the Park, the Trial Judge appropriately drew a distinction between the trails and the Obstacles Area where the accident occurred. The Trial Judge was "troubled by how novice riders or riders with

trail experience but not features experience, can self-assess when they may not be aware of all of the skills required...".

With respect to breaches of the standard of care and causation, the Court upheld the following findings made by the Trial Judge:

1. Its failure to post proper warning signs: the County "could have and should have placed warning signs regarding risk of serious injury and the level and type of expertise required to ride this feature without serious injury." The Trial Judge found that the plaintiff's injury would not have occurred if more detailed signage had been posted.
2. Its negligent promotion of the Park: the promotional brochure "should have contained more detailed warnings about the skill level required to use the features as well as the risks of injury from being off the ground."
3. Its failure to adequately monitor risks and injuries at the Park: several riders had been seriously injured in the Obstacles Area before the plaintiff's accident. The Trial Judge found that before the plaintiff's accident, the County had no mechanism to collect and assess ambulance calls and that employees of the County were not aware of earlier incidents at the Park. The Trial Judge found that had the County been aware of the number of accidents occurring in the Obstacles Area, they would have taken steps that would have prevented the plaintiff's injury.
4. Its failure to provide an "adequate progression of qualifiers." The Trial Judge found that Pee Wee and Free Fall were built in such a way that the "next logical progression" after coming off of Pee Wee was to proceed to Free Fall. The Trial Judge concluded that had Free Fall not been the next logical progression after Pee Wee, the plaintiff wouldn't have attempted the feature or sustained the injury.

Finally, with respect to the issue of contributory negligence, the County argued that the Trial Judge incorrectly focussed his inquiry exclusively on the plaintiff's actions in attempting to exit Free Fall. The County argued that the Trial Judge ought to have considered the plaintiff's decision to try and ride the obstacle. The Court of Appeal disagreed, holding that the Trial Judge had already concluded that the risks of Free Fall were not readily apparent. It was therefore appropriate for the Trial Judge to focus on the plaintiff's actions once he was in danger on Free Fall, and not on his prior decision to attempt to ride it.

The Court of Appeal's decision is a helpful reminder to municipalities of the onus on them as occupiers when providing members of the public with sporting and recreation venues.

By

Kevin McGivney, Natalie D. Kolos

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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