

KEEPING CURRENT

January 16, 2025

Potential liability for torts committed in sports (*Cox v. Ball*)

By Stephen Thiele

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

Stephen Thiele
Partner
416.865.6651
sthiele@grllp.com

Participation in recreational sports is important for many people because it provides them with both positive physical and mental health benefits. However, some participants can be overly aggressive and commit criminal acts or acts that result in potential civil liability for not only the overly aggressive participant or tortfeasor, but for others, such as sports leagues, event organizers or restaurants and bars.

[*Cox v. Ball*, 2025 ONSC 199 \(CanLII\)](#) provides an important reminder for the potential liability that may fall on parties where a participant has allegedly been wrongfully injured by another participant.

In this case, the plaintiff, RC, was injured by the defendant, TB, during a three-on-three hockey game that was held at the Fort Erie Leisureplex. TB had struck RC in the head with his goalie stick.

In addition to TB, who was convicted of assault, RC sued the Town of Fort Erie, which owned the Leisureplex, the tournament organizer, S, and a restaurant that was located in the Leisureplex.

RC contended that Fort Erie and S were liable in negligence for the injuries he

sustained, and that Fort Erie was also liable under the [*Occupiers' Liability Act*](#).

With respect to the restaurant, RC contended that it was liable under the then [*Liquor Licence Act*](#) because it had served alcohol to TB, who was allegedly intoxicated when he assaulted RC.

On motions for summary judgment to dismiss RC's action against them, Fort Erie, S and the restaurant argued that the conduct of TB was not reasonably foreseeable and that even if the conduct was, they did not breach the standard of care required of them. The motion judge disagreed.

The facts showed that two experienced referees were present for the hockey game in which RC was injured and that the game was monitored by others. Notwithstanding the presence of the referees and monitors, the game was chippy and aggressive, with one player from TB's team being ejected from the game.

After the ejection, S met with others to discuss stopping the game. However, S permitted the game to continue and within minutes thereafter TB assaulted RC.

Other facts showed that prior to the hockey game, TB had been in the restaurant and that he had started drinking alcohol early in the day. As well, there was evidence that TB was involved in an incident with another patron at the restaurant before the game. It was alleged that TB had removed the patron from the restaurant.

In general, the law does not hold one party liable for the intentional torts of another. However, in cases such as *Murphy v. Little Memphis Cabaret Inc.*, [1996] 20 O.T.C. 313 (S.C.), affirmed [1998 CanLII 5806 \(ONCA\)](#) and *Olinski v. Johnson*, 32 O.R. (3d) 774 (S.C.), affirmed [1997 CanLII 603 \(ONCA\)](#), a commercial host and a sport league, respectively, were held liable for the intentional acts of a, respective, patron and participant.

Whether a commercial host or a sports league is liable for the intentional torts of another requires a consideration of reasonable foreseeability and the standard of care that a defendant may owe to the plaintiff.

The court found that there was no bright line with respect to foreseeability and that the facts of each case needed to be carefully considered.

With respect to the standard of care, a restaurant owes a duty to third parties to protect them from alcohol-related injuries caused by intoxicated patrons. Similarly, sporting tournament organizers can owe a duty of care to a participant. In each circumstance, the standard can vary depending on the level of intoxication and what the restaurant knew about other incidents involving the intoxicated patron or what tournament organizers knew about a participant's propensity to strike others or about bad conduct taking place in a particular game.

The court found that summary judgment was not available to Fort Erie, S and the restaurant because there was insufficient evidence before the court to determine the critical issues on potential liability. There was no cross-examination on some affidavits and some witnesses to

the assault had refused to provide affidavits. In addition, there was a dispute over the admissibility of an expert report about the effects of alcohol on aggression.

Credibility of a witness was also in issue. A witness contradicted himself with respect to TB's level of intoxication during the day, and the restaurant disputed evidence which contended that TB was very intoxicated at the time he removed the patron from the restaurant.

In addition, there was evidence that in a hockey game played the previous day in the same tournament, TB had slashed RC across the back of his legs. The nature of the slash (whether it was two-handed chop) was in dispute.

Lastly, S had the authority to stop the hockey game before the assault.

The court concluded that determining whether summary judgment was appropriate was dependent on the issues and the evidence provided on the motion. Although there were cases where summary judgment was granted against commercial hosts, there were other cases where summary judgment was declined.

The court was not satisfied that there were no genuine issues in dispute based on the evidentiary record, and accordingly a trial was necessary to determine liability.

Although Fort Erie, S and the restaurant may be successful at the end of the day, the key takeaway from this case is that arena owners, tournament organizers and restaurants can be held liable for an intentional tort committed against another by a user of the arena, a participant in a tournament or a restaurant patron. Restaurants must be careful and diligent to ensure that patrons are not overserved, and tournament organizers must make tough decisions to halt games that get out of control or ensure that an overly aggressive participant is not necessarily allowed to continue to participate.



With respect to summary judgment motions, this case also serves as a reminder to all parties that they should provide the court with a complete evidentiary record or risk losing.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** in our dispute resolution group at 416.865.6651 or via email at sthiele@grllp.com.

(This newsletter is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP.)