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Torts committed in sports: Potential liability

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Law360 Canada (February 10, 2025, 11:57 AM EST) -- Many people participate in recreational sports, including sports that expose a participant to risk of injury from falls or accidental contact with other participants. In some cases, participants can be injured as a result of deliberate contact by another participant. This can result in the other participant being charged criminally for their deliberate actions and lead to potential civil liability for any damages sustained by an injured participant.

However, as seen by the decision in *Cox v. Ball*, 2025 ONSC 199, the potential for liability is not limited to the participant who acted deliberately to injure another participant. Liability might fall on an arena operator, a tournament organizer or a restaurant, particularly where the participant who caused the injury was under the influence of alcohol.

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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.

The hockey game was part of a tournament organized by S, and RC and TB were on opposing teams. The game was also officiated by two experienced referees and was being monitored by others.

Notwithstanding the presence of the on-ice officials and monitors, the game was chippy and aggressive. One player from TB's team was ejected from the game, and after the ejection S met with others to consider whether the game should be stopped. However, the game was allowed to continue and within minutes of play resuming, TB 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 Leisureplex, the tournament organizer, S, and a restaurant that was located in 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.

Facts showed that before the hockey game, TB had been in the restaurant and that he had started drinking alcohol early in the day. In addition, TB was involved in a physical altercation with another patron at the restaurant before the game. It was alleged that TB had removed the patron from the restaurant.

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

While the motion judge accepted that, in general, the law does not hold one party liable for the intentional torts of another, and that the liability of commercial host or a sports league for the intentional torts of another required a consideration of reasonable foreseeability and the standard of care that a defendant may owe to the plaintiff, the motion judge dismissed the summary judgment motions for a number of reasons.

First, the motion judge noted that were exceptions to the general rule concerning a party's liability for the intentional torts of another, and that cases such as *Murphy v. Little Memphis Cabaret Inc*., [1996] 20 O.T.C. 313, affirmed *Murphy v. Little Memphis Cabaret Inc.,* [1998] O.J. No. 4752, and *Olinski v. Johnson*, 32 O.R. (3d) 774, affirmed *Olinski v. Johnson*, [1997] O.J. No. 926, had respectively found a commercial host and a sport league liable for the intentional acts of a respective patron and participant.

Second, with respect to reasonable foreseeability, 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.

Third, with respect to the standard of care, the motion judge explained that a restaurant owes a duty to third parties to protect them from alcohol-related injuries caused by intoxicated patrons. Similarly, the motion judge stated that sporting tournament organizers could owe a duty of care to a participant.

In each circumstance, the standard could vary depending on the level of intoxication and what either 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.

Importantly, the court also found that summary judgment was not available to Fort Erie, S and the restaurant because insufficient evidence had been placed 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. As well, there was a dispute over the admissibility of an expert report about the effects of alcohol on aggression.

The motion judge was also concerned with the credibility of a witness, who had contradicted himself with respect to TB's level of intoxication during the day, and the restaurant's dispute over evidence which contended that TB was very intoxicated at the time he removed the patron from the restaurant before the hockey game.

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.

Given the factual matrix and the evidentiary disputes, the motion judge concluded that were genuine issues in dispute, and that a trial was necessary to determine liability. The motion judge noted that even though there were cases where summary judgment was granted against commercial hosts, there were other cases where summary judgment was declined.

Although the dismissal of the summary judgment motions does mean that Fort Erie, S, and the restaurant will eventually be held liable for the intentional actions of TB, this case demonstrates that

the intentional actions of an individual tortfeasor can, under certain factual circumstances, result in arena owners, tournament organizers and restaurants being exposed to liability. Restaurants are reminded that they must be careful and diligent to ensure that patrons are not overserved, and tournament organizers must act decisively to halt games that get out of control or ensure that an overly aggressive participant is ejected.

This case also serves to remind all litigants that on a summary judgment motion they must file a complete evidentiary record before the court or risk losing.

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