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Judge blows whistle to put a stop to checks from behind: $8,000,000 awarded to a quadriplegic hockey player

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On February 1, 2016, the Superior Court of Québec rendered a significant decision in the area of civil liability in the context of the practice of a sport[1]. The judgment was widely reported in the media due, on the one hand, to the importance of the amount granted by the judge (8 million dollars) and, on the other hand, because it is closely related to the practice of the national sport of Canadians. Will this judgment, through which a junior hockey player who became quadriplegic after receiving a check from behind has been allowed such an important amount as compensation, change the rules of the game?

The facts

The plaintiff, Andrew Zaccardo (hereinafter, “Zaccardo”), who was 16 years old at the time of the events, was a junior amateur hockey player. On October 3, 2010, his life took a turn for the worse when he received a check from behind from another player, defendant Ludovic Gauvreau-Beaupré (hereinafter, “Gauvreau-Beaupré”), who violently hit him from behind. Zaccardo became quadriplegic. The video clip, filed as evidence at the trial, shows a sequence resembling those routinely seen by hockey fans in sports information bulletins (at 0:15 to 0:30 more specifically).



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Zaccardo instituted civil proceedings against Gauvreau-Beaupré, his insurer, as well as Hockey Québec and Hockey Canada, claiming damages, particularly for the costs and expenses related to the care required by his physical condition for the remainder of his life.

Prior to the hearing, Zaccardo discontinued his action against Hockey Québec and Hockey Canada. The hearing showed that for many years both entities had systematically discouraged and condemned checking from behind.

At the time of the hearing, the parties agreed to an admission as to the quantum of damages for an amount of 8 million dollars. Mr. Justice Daniel W. Payette came to the conclusion that Gauvreau-Beaupré had committed a fault and found him liable for the damages suffered by Zaccardo.

The Judgment

At the outset, Justice Payette stated that players participating in hockey games are subject to the law as any other citizens: [TRANSLATION] “an ice rink is not a law-free zone”[2]. Justice Payette reviewed the relevant case law, both from Quebec and the common law provinces and concluded that strictly speaking, “sports liability” does not exist as a separate area of liability: players are subject to the usual rules governing civil liability and are thus required to act like [TRANSLATION] “reasonable players placed in the same circumstances”. The judge also confirmed that the practice of hockey involves inherent risks which a player accepts by participating in a game, but that by doing so, he is not however deemed to accept unreasonable risks which he is not aware of. Accordingly, the violent check suffered by Zaccardo did not constitute a risk which he should have foreseen when participating in the game. Moreover, the judge noted that a breach of the rules of the game, whether sanctioned by a penalty or not during the game, will not always constitute a fault within the meaning of civil law.

Therefore, the court ordered Gauvreau-Beaupré and his insurer to pay to Zaccardo the admitted amount of 8 million dollars. It must be noted that at the beginning of the hearing, Gauvreau-Beaupré’s insurer informed the court that it was not alleging the intentional fault of the insured and, accordingly, the judgment does not deal with this issue. In the circumstances, the court also ordered the insurer to indemnify Zaccardo for the damages he suffered.

The surgical precision with which the judge dissected the sequence of the check shows that he no doubt has experience of the practice of hockey and leads one to believe that this may have influenced the conclusions of the judgment. In addition, the legal reasoning put forward confirms that the efforts made by Hockey Québec and Hockey Canada to promote the safe practice of hockey are still encouraged.

Echoes beyond the legal sphere

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In addition to being the highest amount ever granted to a victim of an injury in such a context, at least in Canada according to our verifications, this judgment already echoes beyond legal circles.

For the time being, it is difficult to determine the scope that this decision will have and whether it will impact sports in general. Indeed, despite the magnitude of the amount granted to Zaccardo which, again, had not been contested, the judge noted that each case is dealt with on its own merits and only involves the application of general civil liability principles. In that sense, each situation is to be considered according to its own set of facts.

In an era where class actions are instituted by former professional athletes who suffered concussions[3] and following numerous other cases of violent actions with serious consequences[4]this decision may have an impact on the prevailing culture of hockey, which is more than ever called upon to change.

Lastly, it must be noted that on March 2 2016, Gauvreau-Beaupré and his insurer appealed the decision[5]. The conclusions reached by the judge regarding liability will therefore be reviewed in the following 18 to 24 months.

Conclusion

The judgment in favour of young Zaccardo and the impressive monetary compensation he was granted attest to the numerous efforts made during the last few years to raise players' awareness to the risk of serious harm associated to the practice of contact sports. The often critical attitude of Justice Payette toward the aggressor also demonstrates that this awareness had at least already entered the mind of the judge. Despite the fact that all the calls for prudence, by-laws and increased sanctions have not succeeded in actualizing the culture of hockey[6], it is to be hoped that the whistle blown by Justice Payette will accelerate the changes.

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1. *Zaccardo* v. *Chartis Insurance Company of Canada*, 2016 QCCS 398, appeal pending: 500-09-025937-160 and 500-09-025938-168.
2. Paragraph 10 of the judgment.
3. For illustration purposes, a group of over 100 former players of the National Hockey League filed an application to be authorized to institute a class action against the NHL for damages suffered as a result of repeated shocks received to the head while they played as professionals: http://www.cbc.ca/sports/hockey/nhl/grand-ledyard-nhl-lawsuit-1.3432273. Also see: http://www.nhlconcussionlitigation.com
4. For example we may think about the action of Todd Bertuzzi against Steve Moore, following which Moore was unable to continue his professional hockey career: https://www.youtube.com/watch?v=Fz9RE9RGrVY. The hockey stick hit given by Marty McSorely to Donald Brashear constitutes another example: https://www.youtube.com/watch?v=eTOfsoJAij4
5. 500-09-025937-160 and 500-09-025938-168.
6. Only a few days ago, another young hockey player from the Montreal region suffered an injury to the neck following a check from behind by another player. However, the young man has been "luckier" than young Zaccardo since his spinal cord was not damaged: http://montrealgazette.com/news/local-news/local-midget-hockey-player-suffers-broken-neck-after-illegal-hit

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