

STUDENT ATHLETES: CONTROLLING AGGRESSION



Facts

Walsh and Buchanan were nineteen-year-old students who were involved in a fist fight in school with very unfortunate results. Walsh was a below average student but he was president of the student council and an amateur boxer who earned a gold medal in the provincial championships. Buchanan had always maintained good grades even when participating extensively and aggressively in many sports, particularly football. He was later recruited to play football by several Canadian and American teams. Both students had good disciplinary records and had never been in trouble before.

In 1987, their school sponsored an early morning intramural floor hockey league. During a very intensive game, the boys engaged in a verbal altercation during a face-off, and then engaged in a pushing and shoving match which resulted in a penalty for both. As the boys were walking to the penalty area, the physical and verbal altercation between them continued. Walsh claimed that Buchanan struck him in the face and that he threw his left hand out to make a distance between himself and Buchanan, however, both boys were ejected from the game and sent to the change room.

As they walked toward the change room, the altercation continued and the boys were separated, Walsh being led to the gym while Buchanan went to the change room. As Buchanan left the change room, he

deliberately brushed against Walsh who was standing near the doors with the vice-principal. He also made intimidating comments to Walsh. The vice-principal attempted to calm Buchanan down and threatened suspension if the boys continued to fight. Buchanan then proceeded with his regular morning activities at school.

Walsh testified that he had a long discussion with the vice-principal while in the gym and that he expressed his concern that Buchanan would come after him again. He then proceeded to his locker and was approached by Buchanan who wanted to clear the air about the game. The Court found that Walsh initiated a verbal confrontation, pushed Buchanan and, when pushed back, struck Buchanan in the face. This escalated into a full blown fist fight with Buchanan gaining the upper hand and pummeling Walsh relentlessly in the head, face, and arm while holding him in a headlock. Walsh suffered facial lacerations, a broken tooth and a broken nose, requiring two surgeries. He suffered mild brain injury resulting in increased migraine headaches, lack of concentration and cognitive dysfunction. He suffered severe and long term reactive depression and post-traumatic stress disorder resulting in profound withdrawal from all activities of daily living with little improvement by 1992 and poor prognosis for recovery.

Buchanan was suspended for several days and criminal charges were laid against him. He managed to raise

\$3,000.00 for his defense but entered a guilty plea for expediency, to avoid the financial burden of a trial and to avoid physical and mental strain after suffering mononucleosis and considerable weight loss and having to withdraw from his first year of university. This plea was not considered to be an admission of liability when Walsh sued Buchanan and the School Board in damages.

Decision

Direct Liability of the School Board: The trial judge found that the School Board was not directly liable for the injuries sustained by Walsh and the reasons given may help our readers ensure that they follow appropriate measures when engaging students in similar activities:

1. The School had enacted a no-contact rule.
2. The referees were experienced and competent.
3. A system was in place for penalties and suspensions for fighting.
4. The league was under control and not unduly violent.
5. Walsh played the game voluntarily and reasonably prudent parents would have allowed their children to participate in this league.
6. Considering that only ten players played at any given time, one referee was sufficient.

7. The league was prudently and carefully organized and supervised. The school considered and implemented all precautions necessary considering the nature of the sport and the age, character and skill of the participants.
8. Hallway supervision was reasonable and adequate. Schools are not under any duty to keep students, particularly adult students such as these under supervision every moment while they are attendance at school.

Vicarious Liability of the School Board: The school was not vicariously liable for the injuries to Walsh:

1. The referee was not negligent. Teachers are the front lines of discipline and the referee did not have to seek out the assistance of the vice-principal in these circumstances. These “scraps” were frequent during games but the league had run for many years

without an assault or a fight outside the gym and these boys had never been involved in a school fight before.

2. The vice-principal was not negligent. At the time of his involvement, it was not reasonably foreseeable that a fight would break out. The boys had been penalized, they were good students who knew the consequences of breaching school rules against fighting and the potential negative effect on them of a fight of this nature. There was little time left before the beginning of morning classes and the vice-principal had reprimanded and cautioned them. In fact, both boys testified that they never intended to fight and it was pure coincidence that, in a large school, Walsh’s locker happened to be just outside Buchanan’s history class.

3. The teacher who broke up the fight was not negligent. He

followed the textbook method by proceeding to the altercation immediately and using his voice to gain control. He did not have to intervene physically, because the fighting stopped almost immediately upon his arrival.

Liability of the two students: Liability was apportioned evenly between the two students. Buchanan was responsible for compensating Walsh in the amount of \$246,435.85, representing half of the following award in damages:

General damages for loss of the amenities and enjoyment of life - \$90,000.00;
 OHIP subrogated claim - \$2,871.69;
 Cost of rehabilitation - \$100,000.00;
 Loss of past and future income - \$300,000.00.

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