Liability in Competitive Intramurals

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, struckBuchanan

in the face. This escalated into a full blown fist fight with

Buchanan gaining the upper hand and pummelling 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 andpost-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 in 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 rehabilation–$100,000.00; Loss of past and future

income–$300,000.00