File No: C19742
Registry: Nelson

In the Provincial Court of British Columbia

Civil Division

BETWEEN:

BILLY JAMES CHIRDARIS

CLAIMANT

AND:

THE BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 20 (KOOTENAY-COLUMBIA)

DEFENDANT

REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE SEAGRAM

COPY

Appearing on his own behalf:	**B. Chirdaris**
Counsel for the Defendant:	**D. Romanick**
Place of Hearing:	**Castlegar, B.C.**
Date of Judgment:	**April 6, 2018**

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[1] THE COURT: I am going to give you my reasons now.

[2] This is an action brought by Mr. Chirdaris for damages arising out of dental injuries he suffered when he was playing basketball in a physical education class at Stanley Humphries School in 2010. Mr. Chirdaris was 14 years old at the time, and was in grade 9. He was injured when a shorter player on the opposing team jumped and struck Mr. Chirdaris' teeth with the back of his head.

[3] The claim in this case is that the School Board is liable for the dental injuries suffered by Mr. Chirdaris. The claim is brought under the *Occupiers Liability Act* and the law of negligence.

[4] There is no issue as to causation or damages in this case. There is also no question that the School Board had a duty of care towards Mr. Chirdaris at the time of the incident in question.

[5] The sole issue to be decided concerns the standard of care, and whether that standard of care was breached by the Board.

[6] The parties have agreed, appropriately in my view, to limit the question of liability to the issue of whether the School Board breached its duty of care by failing to recommend to students the use of mouth guards when playing basketball in phys ed class.

[7] I need to make a few comments about the standard of care.

[8] The duty of care imposed by s. 3 of the *Occupiers Liability Act* is to take that care that in all of the circumstances is reasonable to see that a person will be reasonably safe in using the premises. In a case called *Deo v. Vancouver School*

District No. 39, which is reported at 2018 BCSC 133 -- so it is a very recent case, from January of this year -- the court found that in a case in which the occupier is a school board and the building in question is a school, the same standard of care is owed to students that is owed under the law of negligence, namely that school authorities must employ the same care that would be exercised by a careful or prudent parent.

[9] The Supreme Court of Canada, in *Myers v. Peel County Board of Education* made it clear that how the standard of the careful or prudent parent will be applied will vary from case to case, depending on the specific circumstances at play.

[10] In this case, the primary circumstance in question is the nature of the activity in question and the degree of risk of dental injury inherent in that activity.

[11] This leads to the issue of the foreseeability of harm. It is the foreseeability of the harm suffered by Mr. Chirdaris that is central to this case. A school board has a duty to take steps to prevent injury to students that is reasonably foreseeable.

[12] The onus in this case is on Mr. Chirdaris, as the claimant, to prove on a balance of probabilities that it was reasonably foreseeable that he would suffer injury to his teeth while playing basketball at the school, and that therefore the school ought to have recommended that he use a mouth guard.

[13] Mr. Chirdaris relies on Exhibit 1, which is an article published by the American Dental Association in 2007 about the incidence of dental injury in intercollegiate basketball and other sports, as well as the nature of the game of basketball itself, which involves one-on-one marking by opposing players in close proximity, to

support his claim that basketball presents a heightened risk of dental injury which is reasonably foreseeable.

[14] Reasonably foreseeable harm is not harm which is merely possible or statistically determinable. In a case called *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, the court described the degree of probability associated with reasonable foreseeability as a "real risk" of a sort that arise in the mind of a reasonable person. The standard is one of reasonableness, not perfection.

[15] I must say that I find there to be a significant difference between intercollegiate basketball and grade 9 co-ed basketball in a physical education class at school. I have heard evidence that there is significant contact and impact at the collegiate level. The evidence before me is that at the grade 9 level, basketball is not a contact sport and is considered, at least by the school board, as a low-risk, low-impact sport.

[16] Of course, how it is considered by the school board is not determinative of the issue. But the evidence before me, which I accept, is that the incidence of reports of dental injuries in high school phys ed class basketball is very low. In Mr. Bell's 26 years of experience in the school system, Mr. Chirdaris' incident is the first report of any dental injury from basketball that he has seen.

[17] I have no doubt that Mr. Chirdaris wishes that he had been wearing a mouth guard on November 4, 2010. It may well be that had he been wearing one, he would not have been injured and would not have incurred the significant cost of dental repairs that ensued, although this is not the issue before me.

[18] It is important to recognize that the fact that this injury happened to Mr. Chirdaris does not by itself establish that the injury was reasonably foreseeable. There is no evidence produced by Mr. Chirdaris in this case as to the actual number of dental injuries that in fact occurred in high school phys ed basketball, in this school district or in British Columbia. The only such incident that is found on the evidence is the one in which Mr. Chirdaris was hurt.

[19] I cannot find on the basis of the study published by the American Dental Association or on the basis of the nature of the activity itself that there is a -- to use Mr. Chirdaris' words -- heightened risk of harm that the School Board ought to have been aware of and taken steps to mitigate.

[20] I know this will offer little consolation to Mr. Chirdaris, but on the evidence before me, it appears that this incident was a rare and isolated accident. He has not established that it was reasonably foreseeable.

[21] Accordingly I must dismiss Mr. Chirdaris' claim. Those are my reasons.

([REASONS FOR JUDGMENT CONCLUDED)