



# Claim Case Study

## Hussack v. Chilliwack School District No. 33

**D**evon Hussack, a Grade 7 student at Vedder Middle School in Chilliwack, was hit in the face with a field hockey stick while playing in a scrimmage during physical education class. He suffered a concussion which, overtime, developed into a more serious condition known as “somatoform” disorder. This is a condition that is described as a psychiatric illness where physical symptoms, including pain have no physiological basis.

An action was launched against the school. The trial judge ruled that the physical education teacher breached his duty of care and the Court awarded Devon \$1,365,000 in damages. The school appealed the judgement. Devon cross-appealed the decision of the trial judge for not allowing \$17,580 for a pain management program.

The Court of Appeal allowed part of the school’s appeal by reducing the past wage loss award from \$200K to \$150K and reducing the future income-earning capacity to \$785K. The Court of Appeal disallowed Devon’s cross-appeal.

The Court of Appeal upheld that the teacher had breached his duty of care.

This is an abbreviated summary of the case. To read the full case, please go to [www.canlii.org](http://www.canlii.org).

In this case the Court was asked to decide on many issues. This claim study will only focus on the following:

1. Was the Duty of Care Breached?
2. Was Devon Hussack contributorily negligent?

### Facts of the Case

The accident occurred on April 17, 1998. By the date of the accident, Devon had missed 51.5 of 136 school days (38%) and was late another 30 times. The school arranged a meeting with Devon to convince him to attend physical education classes. To entice Devon to return to these classes, the teacher told him that they were finishing a field hockey segment and Devon would enjoy the game. Devon had played ice hockey, roller hockey and floor hockey and the teacher felt his skills would carry over to field hockey. The students were playing at a basic level and the teacher felt there was no need for Devon to learn any progressive skills of the game.

Prior to the start of the game, the students engaged in warm-up exercises and were reminded of the teacher's four rules of the game which were:

1. Use the flat part of the stick and not the back part
2. Don't use your feet to touch the ball
3. Don't lift your stick above your knees
4. Don't check from behind

During the second game, a female student had a break-away play. As she neared the goal she raised her stick to take the shot. Devon ran behind her in an attempt to check her. On her backward swing she hit Devon in the face. Devon was diagnosed with a mild concussion and other soft tissue injuries along with lacerations and swelling over the bridge of his nose, forehead and both eyes.

### **Was the Duty of Care Breached?**

The Court used the following four-part test, established in *Thornton v Board of School Trustees of School District No. 57*, to determine whether or not the teacher breached his duty of care. The four major criteria are:

- a. Was the activity suitable to the age and mental and physical condition of the student
- b. Was the student progressively trained and coached to do the activity properly and to avoid danger
- c. Was the equipment adequate and suitably arranged
- d. Was the performance properly supervised in regard to its inherently dangerous nature

The Court ruled that the teacher failed to meet his duty of care because he allowed Devon to participate in the round robins played that day. Devon had missed all of the classes where the skills and rules of the game were taught and should not have been allowed to play without this training.

### **Was Devon Hussack Contributorily Negligent?**

The Court held that Devon was not contributorily negligent for attempting to check from behind. He had no previous field hockey experience and played in the round robin games because of the teacher's invitation.

## **Lessons Learned**

Expected standard of care in physical education

1. Exercise must be suitable to the student's age and condition (mental and physical)
2. Student must be progressively trained to do the exercise properly and to avoid danger
3. Equipment must be adequate and suitably arranged
4. Performance of the exercise must be properly supervised
5. If a student is injured, first aid must be administered
6. Consent of the student/parent must be obtained to administer first aid – usually done at the beginning of the school year
7. Parents should be informed of the injury as soon as possible
8. Have a risk management plan in place

### **Your Risk Management Plan should include:**

1. Inspect equipment on a regular basis and document all inspections and repairs
2. If equipment is in a state of disrepair, don't allow its use until it's fixed
3. Make sure the teacher's abilities are suitable for the activity
4. If certifications are required, make sure they are up to date
5. Have an emergency action plan in place
6. Make sure all students have returned their medical consent forms
7. Make sure all teachers/coaches engage in progressive training
8. Make the above part of your routine
9. Educate all teachers on your risk management plan and all your policies and procedures