



# Claim Case Studies & Legislation

## Home Run Baseball Hits a Pedestrian

### Background

On a clear spring morning, a woman was walking her dog in a municipal park. She walked along a paved pathway that took her behind the outfield of a baseball park while a men's league game was taking place. While she was passing by the left field, a home-run baseball was hit over the 1.8 metre high fence. The ball travelled an extra 20 metres over this fence and struck her in the head. She could not be seen by the batter because the path was lower than the field but the accident was witnessed by one of the outfielders. The woman did not lose consciousness but required many stitches to close her head wound and sustained a concussion.

The walkway was open to the public and was owned and maintained by the municipality. The baseball league had the proper permits in place and had a liability policy which named the municipality as an additional insured. There was protective netting found behind the fence that covered most of centre field and right field but left field did not have any protective netting. The existing netting was there to protect cars in a parking lot adjacent to the right field.

The injured person later provided a statement to the investigator. She stated that she saw there was a baseball game going on when she was walking her dog. Her dog stopped to sniff the ground and she had her back to the ball diamond when she was hit. She also said that another ball had been hit over the same fence, past where she was hit, and into a backyard of a house later that day. A civil lawsuit was launched against the municipality as well as the baseball league.

### Civil Court Action

In the statement of Claim that was served on the municipality and the baseball league ("the league"), the injured person (plaintiff) alleged that the municipality was the owner and occupier of this property, including the paths and baseball diamonds. The municipality was also allegedly responsible for the design, construction, maintenance and signage at this location. The plaintiff also stated that the league was an owner and occupier of the premises with the same responsibilities as the municipality.

The plaintiff also noted that her injuries were caused by the defendants' negligence, breach of duty and/or breach

of the *Occupiers' Liability Act*, R.S.O. 1990. The other allegations included the defendants' failure to keep the premises reasonably safe, failed to install the net around the diamond near this incident and failed to warn the plaintiff of the danger of walking along this path.

The plaintiff's damages sought included a head injury, psychological and emotional trauma and chronic pain. She sought damages over \$1,000,000.

### Issues

1. Were the premises kept reasonably safe?
2. Was the municipality liable for the plaintiff's damages?

### Analysis of the Case

Our defence counsel determined that the field where the game was being played was smaller than what was the standard for men's league baseball diamonds. This diamond was more appropriate for Tyke or Peewee leagues. According to the municipality's guidelines that had been instituted about 15 years before, this diamond was not the size intended for men's league play.

In our defence counsel's opinion, the municipality was an occupier of this park and baseball diamond as per the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2, at the time of this incident.

The league also was an occupier because they had control over it's players and how the game was being played at the time. They should have also realized that the players were too powerful for that diamond and there was a risk of hitting balls well over the 1.8 metre left field fencing.

The applicable sections of this Act read as follows:

"3. (1) An occupier of premises owes a duty to take care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

3. (2) The duty of care provided for in subsection (1) applies whether the danger is caused by the condition of the premises or by an activity carried on the premises.

4. (1) The duty of care provided for in subsection 3 (1) does not apply in respect of risks willingly assumed by the person who enters on the premises, but in that case the occupier owes a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property."

The lawyer assessed that it was reasonably foreseeable of the teams involved to hit baseballs over the home run fence and there were a couple of questions that were raised:

1. Was it reasonable to have a pedestrian walkway located about 20 metres from the fence?
2. Was there adequate fencing or screening in place to protect pedestrians utilizing this walkway?

Our lawyer reviewed case law and found a similar case in which a minor plaintiff was struck by a home run ball while at a playground. The right and left field fences were found to be too short for adults or seniors players but adequate for minor players. That judge determined that there were a considerable number of baseballs being hit over the fence and the municipality knew of this. Therefore, it was reasonably foreseeable that an injury could occur at the playground. That municipality was found liable because the home run ball was not considered an unusual danger.

In our situation there was a contract between the municipality and the league. It contained a clause in it that the municipality would not accept responsibility or liability for injuries or damage and the permit holder would waive any claims against them. The applicant of the permit (the league) would also indemnify and hold harmless the municipality in connection to the agreement or the use of the facilities. The league did maintain liability insurance and they named the municipality as an additional insured on their policy.

In his final assessment of the matter, our defence counsel found that the municipality was aware that the existing nets were blocking balls from hitting cars in the parking lot and so they were aware of this issue. Therefore, it was also foreseeable that by not installing a net in left field they had liability exposure. However, the league was also exposed to liability because they should have been aware of the situation.

## Outcome of the Claim

Both the municipality and the league recognized that they had liability exposure so they both contributed to a settlement to resolve this matter and avoid a trial.

## Risk Management Considerations

- The location of the baseball diamond needs to be well thought out.
- Don't locate the baseball diamond too close to a parking area, sidewalk, or roadway, because errant balls could strike cars or pedestrians.
- Consider putting up protective netting or fencing for areas vulnerable to errant balls.
- If you rent the playing fields out to baseball leagues, make sure you have a written rental agreement in place.

- Depending on the amount of use by the associations or leagues, they may be required to take part in some of the maintenance of the fields.
- Inspection and maintenance are crucial in safeguarding a municipality against negligence claims.