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MOUNTAIN BIKE PARKS: BEST PRACTICES TO PREVENT LIABILITY

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Who is to blame after a plaintiff is disabled from an accident at a mountain bike park? Two recent cases when analyzed together provide the best practices an occupier can follow to avoid liability.

1. **Occupier 100% liable** in Campbell v. Bruce (County), 2016 ONCA 371

In Campbell, the court found the occupier was 100% liable when a plaintiff was rendered a quadriplegic after being injured in an accident at the county's mountain bike park. The plaintiff was an experienced mountain biker. He attempted the obstacles in the county's park. The plaintiff misjudged his skill level and broke his neck after falling off an advanced skill-testing feature. Both the trial judge and court of appeal found the county 100% liable. The county:

- negligently promoted the park by not properly advertising the required skill level,
- placed inadequate warning signs,
- had an inadequate difficulty rating system,
- had an inadequate system of monitoring and reporting injuries, and
- failed to provide access to easier features before more advanced features.

2. **Occupier not liable** in Jamieson v. Whistler Mountain Resort, 2017 BCSC 1001

In Jamieson, the court found the occupier was not negligent and dismissed the plaintiff's action. The plaintiff, also an experienced mountain biker, was restricted to a wheelchair after injuring his spine at a mountain bike park. The occupier required the plaintiff to sign a release which waived all claims. Notwithstanding the release, the court found the occupier was not negligent because the park:

- had extensive warning signs,
- had an extensive difficulty rating system (5-tiers),
- kept records of reported accidents,
- implemented daily inspections, and
- provided access to easier features before difficult features.

RECOMMENDED PRACTICES FOR OCCUPIERS OF MOUNTAIN BIKE PARKS:

1. Have participants sign a release
2. Post adequate warning signage
3. Use an adequate difficulty rating system
4. Implement an accident/injury monitoring system
5. Perform daily inspections, and
6. Arrange a gradual progression of features from easy to difficult



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Nabeel Peermohamed is in his fifth year of practice with

Brownlee LLP and was recently named as one of the Lawyers to Watch in Alberta by Lexpert. He focusses on insurance defence litigation. Nabeel is also a member of the first national Board of Directors for the Canadian Bar Association serving a two-year term. In that capacity of community service, Nabeel works with a team to improve the profession and the association. Nabeel also sits on the national CBA Finance Committee and the Enterprise Risk Sub-Committee. Nabeel recently had the honour and privilege of attending the annual CBA/Supreme Court of Canada dinner with all nine justices of the Supreme Court.

Nabeel recently completed the Harvard Law School Program on Negotiation, taught by the world's leading negotiators, some of whom had worked on ending Apartheid in South Africa. In his professional capacity, Nabeel has achieved

several recent successes at the

Alberta Court of Appeal and

Court of Queen's Bench. His

decisions have been reported

in numerous journals and

articles. Most recently, Nabeel

was successful at the Alberta Court

of Appeal in *Stefanyk v Sobeys et al*,

2018 ABCA 125. That case involved a plaintiff who was injured

from falling backwards after being startled by a leashed

dog on a sidewalk. Nabeel was successful in restoring the

original decision of a master dismissing the claim that had

been overturned by a justice which was overturned again by

the Alberta Court of Appeal. The decision from the Court of

Appeal has redefined the test for summary judgment and

the duty of care for occupiers in Alberta. Nabeel was also

successful in *Reichert et al v Home Depot et al*, 2017 ABQB

184, where the Alberta Court of Queen's Bench outlined the

standard of care for an occupier in a slip and fall case, further

clarifying the law on occupiers' liability and the fact that an

accident can happen on premises without the occupier being

liable if they implement and adhere to a reasonable system of

maintenance and inspection.



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