

COUNTY LIABLE FOR MOUNTAIN BIKE TRAINING PARK ACCIDENT

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In Canada, municipalities face liability as occupiers when plaintiffs are accidentally injured on their property. These accidents include slip and falls on icy sidewalks or motor vehicle collisions on poorly designed roads. However, it is difficult to imagine such liability being found when a plaintiff voluntarily assumes the risk of using a municipality's mountain bike training park despite being warned.

In *Campbell v. Bruce (County)*, the Ontario Court of Appeal upheld the trial judge's decision that a bicyclist who injured himself using a mountain biking training Park was not contributorily negligent. Rather, the County was found 100% liable. On August 7, 2008 Mr. Campbell and his family visited the County's Mountain Bike Adventure Park. The Park consisted of a series of bike trails, as well as a skills development area with various wooden obstacles where riders could test their skills. The Park was open to the public with no admission fee and was unsupervised. Within the skills development area were two wooden "teeter-totter"-type structures. They were called "Pee Wee" and "FreeFall". Mr. Campbell successfully completed Pee Wee without issue. As his family watched, Mr. Campbell continued onto FreeFall. However, he did not have enough speed to make it over and started to fall. He tried to control his fall by "popping a wheelie" to land on the bicycle's back wheel. Unfortunately, Mr. Campbell landed on his head and broke his neck. He was rendered a quadriplegic.

A great deal of evidence was presented at trial to support the County's argument that Mr. Campbell voluntarily assumed the risks of using the obstacles in the Park and was contributorily negligent for his injuries. The day before the Accident, Mr. Campbell saw his wife attempt Pee Wee; she fell off her bike. The Park's brochure indicated that using the obstacle course was a risky activity and warned cyclists that they used the Park at their own risk. Signs posted in the Park also indicated the obstacle course was risky and that helmets were mandatory. A difficulty rating similar to those of ski hills, with which Mr. Campbell was familiar, was implemented. Freefall was labelled with black diamond. Despite all this evidence, the Court found the County had failed to meet the standard of care and was thus 100% liable for Mr. Campbell's injuries.

Given the Park was unsupervised, the Court found the County implemented a signage methodology requiring self-assessment and self-instruction. The County also promoted the Park as a family venue which suggested riders may be new and inexperienced. This Accident was also foreseeable since there had been seven previous accidents, including one resulting in a broken neck. Given the obstacle course was promoted as a training area, failure was a foreseeable risk. Accordingly, the County should have ensured riders could fail the obstacle structures and fall safely. Instead, there

were no user instructions posted, no requirements to complete easy structures first before attempting more difficult structures, no warning of the severity of potential injury, and no instructions for an exit plan.

The Court did address contributory negligence but found none existed. Mr. Campbell could not be held liable for "popping a wheelie" in the agony of the moment. Voluntary assumption of risk only applied to inherent risks. Mountain biking has an obvious inherent risk, but using the obstacle structures presented an unexpected danger given the lack of warning signage and supervision. While the obstacle course represented a hazard, not all the risks were readily apparent.

A similar case has not yet been litigated before the Alberta Courts. Those municipalities with parks that have training areas with obstacle structures would do well to employ a supervising attendant and adequate/instruction signage to avoid findings of no contributory negligence and the dismissal of the voluntary assumption of risk defence.