

Lasby v. **Royal City Chrysler Plymouth***
59 O.R. (2d) 323
Also reported at 37 D.L.R. (4th) 243

ONTARIO
HIGH COURT OF JUSTICE
DIVISIONAL COURT
SAUNDERS, HOLLINGWORTH AND SUTHERLAND JJ.
18TH FEBRUARY 1987

*Leave to appeal to the Ontario Court of Appeal was refused (Blair, Goodman and Cory JJ.A.) April 17, 1987.

Consumer protection—Trade practices legislation—Rescission available for misrepresentation unless restitution impossible—Seller of automobile refusing buyer's demand for rescission—Buyer retaining car for 22 months and driving it 40,000 kilometres—Rescission not impossible—Business Practices Act, R.S.O. 1980, c. 55, s. 4 (1) (b).

The plaintiff bought a used car after material misrepresentations were made to her by the seller. On discovering the true facts, she demanded her money back, but the seller refused. She brought an action claiming rescission under the Business Practices Act, R.S.O. 1980, c. 55, and by the time it came to trial she had had the car for 22 months in which time it had been driven 40,000 kilometres. Section 4 (1) (b) of the Business Practices Act provides that “where rescission is not possible because restitution is no longer possible” the court may award damages. The defendant argued that rescission should be denied because restitution was no longer possible. At trial the judge held that the plaintiff was entitled to rescission and to the return of the purchase price without interest; the plaintiff's rights should not be defeated by a wrongful refusal by the seller to rescind. On appeal to the Divisional Court, held, dismissing the appeal, the disposition made by the trial judge, though favourable to the plaintiff, was not unreasonable, and should be supported.

Cases referred to

Addison v. Ottawa Auto & Taxi Co. (1913), 30 O.L.R. 51, 16 D.L.R. 318; affg O.L.R. loc. cit., p. 52, D.L.R. loc. cit., p. 319; F. & B. Transport Ltd. v. White Trucks Sales Manitoba Ltd. (1964), 47 D.L.R. (2d) 419; affd 49 D.L.R. (2d) 670, 51 W.W.R. 124

APPEAL from a judgment of McNeely D.C.J. in favour of the plaintiff in an action for rescission of a contract for the sale of a car.

James W. Sloan, for appellant.
M. Donald Mitchell, for respondent.

The judgment appealed from is as follows

October 31, 1985.

MCNEELY D.C.J.:—The plaintiff claims a declaration that a contract for the purchase of a used 1983 Dodge 600 from the defendant has been rescinded and damages in the amount of \$10,906.25. The basis of her claim is that when she purchased the car in December, 1983, she did so only because of false and deceptive representations as to the car made to her by the plaintiff's salesman.

The plaintiff is a 50-year-old factory worker with a grade 8 education. Her husband is 76 years old and his only income is from his pension and Old Age Security. In the fall of 1983, the plaintiff was driving a 1976 Valiant with about 100,000 miles on it and was toying with the idea of replacing it. With her husband she visited the defendant's car lot and met salesman Bill MacDonald. They told him they were thinking of another car and wanted another six-cylinder car. He asked whether they would be interested in a K car and they said no. They found nothing that interested them and left.

Later in the fall salesman MacDonald telephoned to say that he had a nice car for them. The plaintiff's husband went to the lot and found that the car was a K car. He was not interested. On December 6, 1983, salesman MacDonald telephoned again. He told Mrs. Lasby that he had a good used car, an executive-driven six-cylinder with not too many miles. Mrs. Lasby and her husband went to the car lot.

They were shown a gray Plymouth with a 2.6 litre engine and test-drove this car. Mr. MacDonald who was well aware that they wanted a six-cylinder engine and were concerned about engine size, told them that they would notice that the car did not have as much power as their Valiant but that it was equal to the Valiant because the Caravelle was a lighter car. The test drive was satisfactory and according to Mrs. Lasby they "dickered on it" but Mrs. Lasby finally decided not to purchase because of the colour of the car which she did not like.

Mr. MacDonald then said he had another car which was being worked on and which was identical to the Caravelle except for the name. It was the 1983 brown Dodge 600 which the plaintiff eventually purchased. The question of a test drive was raised and salesman MacDonald told them there was no point in test-driving the Dodge because the car was the same as the Caravelle they had already test-driven. He said the engine was the same engine as in the Chrysler New Yorker which was on the showroom floor. Mrs. Lasby said that Mr. MacDonald convinced her the car was a good buy. She said she felt that if the engine was the same as that in the New Yorker which she considered their top car, she would buy. She says she would not have bought if she had known that the car was a leased car and had a four-cylinder engine. The 1983 Dodge which the plaintiff purchased had, in fact, a four-cylinder, 2.2 litre engine and was not an executive car. Both the Caravelle which she had driven and the New Yorker on the salesroom floor, had 2.6 litre engines.

The day following the purchase the plaintiff's husband lifted the hood of the car and noticed that there was only four spark plugs and that the engine was a four-cylinder engine. The plaintiff telephoned salesman MacDonald because she believed she had purchased a six-cylinder engine. Mr. MacDonald told her that Chrysler did not make six-cylinder engines and that the four-cylinder engine in the Dodge was the biggest four-cylinder engine made. Mrs. Lasby did not pursue the matter further. Three months later she had a problem with the car and took it to her mechanic. She mentioned that she had a "big engine" but the mechanic upon opening the hood told her that she had the small 2.2 litre engine rather than the larger 2.6 litre engine, which salesman MacDonald told her was in the car.

Mrs. Lasby again telephone salesman MacDonald. He assured her again that she had the bigger engine. She drove to the defendant's place of business with her friend Mrs. Teeter and told MacDonald that she wanted what she had paid for. He asked if she wanted her money back. She said yes. He told her she would have to see the sales manager. She and Mrs. Teeter saw the sales manager and the sales manager advised her that she had bought a used car and "that was it." Her lawyer then wrote to the defendant enclosing an election signed by Mrs. Lasby rescinding the contract. The defendant refused to take the car back and refused to return Mrs. Lasby's purchase money. Without the refund of the purchase money the plaintiff was not able to buy another car. Financial necessity compelled her to continue to drive the car until trial.

The choice between the evidence of the plaintiff and her witness Mrs. Teeter as to what went on, and the evidence of Mr. MacDonald and the sales manager Mr. Dom must be made on the basis of credibility. According to Mr. MacDonald, he never told Mrs. Lasby that she had a six-cylinder car; he never told her that the car was an executive car, but rather told her that it was one of a number of cars which had been bought at an auction. He said he explained that the car only had the balance of a two-year warranty because only executive-driven cars have a five-year warranty. He said he pointed out this warranty clause in the contract on December 6th although an examination of the document which was in existence on that date shows that the clause was not included in it. It appears only in a rewritten copy of the contract made at a latter date.

Mr. MacDonald denied that he ever said the engine in the Dodge 600 was identical to the engine in the Caravelle and the New Yorker. On virtually every factual issue of consequence he denied making the statements relied on by Mrs. Lasby and with respect to some of the matters he says that he in fact told her the exact opposite. I believe that Mrs. Lasby, supported as to part of her evidence by the witness Mrs. Teeter, is a truthful and accurate witness and I accept her evidence in preference to that of Mr. MacDonald on all essential matters.

I find as a fact that Mrs. Lasby purchased the car only because of the following representations made by the salesman MacDonald, which representations were false and were known to be false by him when they were made:

- (1) that the engine was identical with the engine of the Caravelle and the New Yorker, both of which had a 2.6 litre engine;
- (2) that the car was an executive-driven car and carried the balance of a five-year warranty.

I find further that the representations were made by Mr. MacDonald for the purpose of having Mrs. Lasby rely on them in purchasing the car and that she did purchase the car as a result of the said representations and would not have purchased the car had the representations not been made.

Deceived as the plaintiff was, the evidence at trial discloses that the car she purchased was a good, reliable used car. It did not have the large 2.6 litre engine and did not have the balance of a five-year warranty which an executive car would have had. The plaintiff found that the car “lacked guts” in comparison with her 1976 Valiant but the evidence at trial suggests that the performance characteristics of cars with the 2.2 and 2.6 litre engine do not differ greatly. The plaintiff has had a relatively trouble-free experience with the car since she acquired it in December, 1983. She has had the car for some 22 months and in that period has driven it some 40,000 kilometres.

But the plaintiff is not content. She bought the car only because of the deception practised on her. She did not want and would not have bought a car with a smaller engine and without the warranty which she was told the car had. It is of no consequence to her that other people think the 2.2 litre engine is a good or almost as good as the 2.6 litre engine. Other people were not buying a car. Mrs. Lasby was. As Boyd said of the lady who purchased a car that was represented as new only to find that it was second-hand in *Addison v. Ottawa Auto & Taxi Co.* (1913), 30 O.L.R. at p. 52, 16 D.L.R. at p. 319 (at p. 54 O.L.R., p. 321 D.L.R.):

. . . the witnesses say that it was made as good as new. Well, she was the person to judge whether that was so or not, having been told these facts. She did not want something as good as new; she wanted a new machine. She did not want an equivalent for the machine she was getting; she wanted one that was quite absolutely new, did not want something that was equivalent to a new one.

The plaintiff in the present case on learning that she had been deceived into buying a car which she never would have bought rescinded. She did so pursuant to the Business Practices Act, R.S.O. 1980, c. 55. Section 4 of this Act reads as follows:

4(1) Subject to subsection (2), any agreement, whether oral or implied, entered into by a consumer after a consumer representation that is an unfair practice and that induced the consumer to enter into the agreement,

(a) may be rescinded by the consumer and the consumer is entitled to any remedy therefor that is by law available, including damages; or

(b) where rescission is not possible because restitution is no longer possible, or because rescission would deprive a third party of a right in the subject-matter of the agreement that he has acquired in good faith and for value, the consumer is entitled to recover the amount by which the amount paid under the agreement exceeds the fair value of the goods or services received under the agreement or damages, or both.

(2) Where the unfair practice referred to in subsection (i) comes within clause 2 (b) the court may award exemplary or punitive damages.

It is to be noted that the Act confers a right to rescind on the consumer. The consumer need not commence an action for rescission or indeed any action at all. Section 4 (5) states that:

4 (5) A remedy conferred by subsection (1) may be claimed by the giving of notice of the claim by the consumer in writing to each other party to the agreement within six months after the agreement is entered into.

The plaintiff in the present case gave such notice in writing on April 25, 1984, within the six-month period.

The nature of the remedy of rescission is that the contract is cancelled and the parties are restored to the position they occupied before the contract. But it is not necessary that the restitution of the parties be complete or exact. In *F. & B. Transport Ltd. v. White Trucks Sales Manitoba Ltd.* (1964), 47 D.L.R. (2d) 419, a plaintiff purchased a 1956 truck from a dealer who fraudulently represented it as a 1958 model. The purchaser used it for nine months and drove it some 30,000 to 40,000 miles before discovering the fraud and suing for rescission. Dickson J. of the Manitoba Court of Queen's Bench, as he then was, confirmed the plaintiff's right to rescission, directed the defendants return the purchase money plus financing charges and repair costs, less an amount which he assessed for the use of the truck by the plaintiff in the interval before trial. In *Addison v. Ottawa Auto & Taxi Co.* the lady who purchased the car that was represented as being new when it was, in fact, only "as good as new" was found entitled to rescind despite having driven the car in the interval before trial. Chief Justice Meredith speaking for the Appellate Division of the Ontario Supreme Court in affirming the decision of Boyd C. [O.L.R. loc. cit., p. 51, D.L.R. loc., p. 318], in that case provides a useful insight as to why anything like exact restitution is no longer required before rescission is granted. He said [at pp. 58-9 O.L.R., p. 324 D.L.R.]:

The cases cited by Mr. Henderson on this branch of the case have, in my opinion, no application now that both law and equity are administered in the Court and the rules of equity prevail. The reasons for the decisions in the cases cited are pointed out by Lord Blackburn in *Erlanger v. New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218, 1278-9, where he says: "It would be obviously unjust that a person who has been in possession of property under the contract which he seeks to repudiate should be allowed to throw that back on the other party's hands without accounting for any benefit he may have derived from the use of the property, or if the property, though not destroyed, has been in the interval deteriorated, without making compensation for that deterioration. But as a Court of Law has no machinery at its command for taking an account of such matters, the defrauded party, if he sought his remedy at law, must in such cases keep the property and sue in an action for deceit, in which the jury, if properly directed, can do complete justice by giving as damages a full indemnity for all that the party has lost: see *Clarke v. Dickson*, E.B. & E. 148, and the cases there cited. But a Court of Equity could not give damages, and, unless it can rescind the contract, can give no relief. And, on the other hand, it can take accounts of profits, and make allowance for deterioration. And I think the practice has always been for a Court of Equity to give this relief whenever, by the exercise of its powers, it can do what is practically just, though it cannot restore the parties precisely to the state that they were in before the contract."

In *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392, 456-7, Rigby, L.J., referring to this statement of the law with approval, says (p. 457): "The obligation of the vendors to take back the property in a deteriorated condition is not imposed by way of punishment for wrongdoing, whether fraudulent or not, but because on equitable principles it is thought more fair that they should be compelled to accept compensation than that they should go off with the full profit of their wrongdoing. Properly speaking, it is not now in the discretion of the Court to say whether compensation ought to be taken or not. If substantially compensation can be made, rescission with compensation is *ex debito justitiae*."

The right of the plaintiff to rescission referred to as "*ex debito justitiae*" if substantially compensation can be made is now further strengthened by the express statutory provisions of the Business Practices Act.

CONSUMER & PROPERTY LAW SAMPLE CASE STUDY (continued)

LGS3010-1

On occasion courts have been reluctant to recognize rescission as a remedy available to the purchaser who has continued to use the car after a vendor's failure to acknowledge his right of rescission: see *Hillis v. Ross Wemp Motors Ltd. et al.* (1984), 47 O.R. (2d) 445). There are, however, cogent reasons why the purchaser's right of rescission should be recognized and enforced by the courts in cases such as the present where financial necessity obliges the purchaser to continue use of the vehicle in the face of the defendant's wrongful refusal to acknowledge the rescission and return the purchase price. The statute intends to confer on the purchaser an effective remedy which the purchaser himself can exercise. Rescission would be an oddly ineffective and meaningless remedy if the vendor by a wrongful refusal to accept rescission could deprive the plaintiff of the remedy and invoke the aid of the courts to hold the purchaser to a contract obtained by means of the very unfair and unconscionable business practices which the legislation was intended to prevent. A refusal by the courts to recognize and enforce a purchaser's right of rescission would encourage vendors to wrongfully resist legitimate acts of rescission in hopes that the alternative remedies set out under s. 4 (b) would be less onerous on them as they would be in many cases. It seems to me that an interpretation of the Act which gives meaning and effectiveness to the remedy conferred by the statute and which thereby encourages prompt resolution by the parties themselves without the necessity of recourse to the courts is to be preferred to a view of the law which works to the opposite effect.

Accordingly, there will be a declaration that the contract was properly rescinded by the purchaser in accordance with the Business Practices Act as of April 25, 1984. The purchaser shall have judgment against the defendant for \$10,512.25 being a refund of the purchase price including sales tax and transfer fee. The plaintiff upon receiving the said refund shall deliver up the car to the defendant. The plaintiff shall have her costs of this action against the defendant. There will be no pre-judgment interest.

The defendant has had use of the plaintiff's money since December of 1983, and the plaintiff has had the use of the car, such use having been forced on her by the refusal of the defendant to recognize her rescission of the contract and return the purchase price. In the circumstances I am satisfied, as was the court in *Addison v. Ottawa Auto & Taxi Co.*, that no further adjustment is needed to satisfy the requirements of equity, particularly in view of the fact the defendant is in the business of obtaining and selling used cars and can readily resell the car when it regains possession of it.

Had I arrived at the conclusion that rescission was not a remedy available to the purchaser, I should in that event have awarded substantial exemplary damages in addition to the other damages to which the plaintiff would have been entitled.

[An appeal to the Ontario Divisional Court was endorsed on the appeal record as follows:]

February 18, 1987.

We are not persuaded that the findings of liability should be disturbed. There was evidence to support the conclusion of the learned trial judge that misrepresentations were made by the defendant entitling the plaintiff to the remedy of rescission.

Faced with the circumstances before him, the learned trial judge fashioned a solution, which, although on balance might have favoured the plaintiff, was not, in our view, unreasonable in the context of the situation which he was called upon to resolve.

The appeal is dismissed with costs.

Appeal dismissed.

End of document.

(Using Tool LGSCSTDY)

CASE IDENTIFICATION

Case Name: Lasby v. Royal City Chrysler Plymouth
Parties Involved and Their Roles: Mrs. Lasby, Plaintiff; Royal City Chrysler Plymouth, defendant
Court that Ruled on Case: High Court of Ontario
Decision Date: 1987

FACTS

Who Did What to Whom: Lasby the plaintiff sued the car dealer, Royal City Chrysler Plymouth.

Where: Ontario

When: 1983

Plaintiff Facts:

- wanted a six-cylinder engine
- was told it was an executive-driven car
- was told she had the balance of a five-year warranty
- was told vehicle was identical to the one test-driven and that she did not need to test-drive the one she bought
- found out it was the wrong size engine (four-cylinder and not a six-cylinder)
- found that it was a 2.2-litre engine and not a 2.6-litre

Defendant Facts:

- plaintiff knew what she was buying
- should only get a portion—the difference between the cost of a 4-cylinder and a 6-cylinder model
- only entitled to a money credit
- went past the 6-month deadline

LEGAL ISSUES

Legal Issues or Principles in Initial Trial Are Presented: *Ontario Business Practices Act*

Decision based on the fact that the notice had been given within the six-month period. To rescind the contract, she had to notify (or write) to the defendant within six months of the transaction that she wished to rescind the contract. The *Ontario Business Practices Act* lists three remedies for consumer complaints and one of them is to give a six month notice.

LEGAL ARGUMENTS

Plaintiff:

- defendant induced plaintiff into the agreement and therefore rescission is appropriate

Defendant:

- rescission isn't possible—six months deadline was exceeded

Grounds for Appeal: n/a

DECISION

Verdict/Ruling of the Court is Given: Decision is for plaintiff

Significance of the decision for the particular person in the case was explained. She would receive her full purchase price back even though she had possession of the vehicle for a longer period than six months and can now buy the car she wants.

COURT REASONINGS

Reasoning on Main Issue or Legal Principle: The court found that misrepresentation took place based on engine size and the fact that the car was leased and not an executive-driven vehicle. There was also not any warranty. The court felt she was entitled to compensation, even though the restitution was not exact. In other words, since she had the car for 22 months, the parties could not be restored exactly to their same condition as before. The defendants would receive back a car that was 22 months older and she would get back her original purchase price since she used the car out of necessity.

Dissenting Opinion and Reasoning Given: n/a





Major Significance of Case Is Discussed: Unfair business practice as stated under the *Ontario Business Practices Act*. Plaintiff was induced to enter into an agreement.

Legal Standard On the Issue Was

Established/Settled/Developed: established that consumers are protected by law from being misrepresented/misinformed by a seller

Precedents Were Cited/Continued/Changed/Overtaken: n/a

The Four 'Tions

	NEGOTIATION	MEDIATION	ARBITRATION	LITIGATION
1. HOW IT HAPPENS	<ul style="list-style-type: none"> - By agreement - By contract 	<ul style="list-style-type: none"> - By agreement - By contract 	<ul style="list-style-type: none"> - By agreement - By contract - By legislation 	<ul style="list-style-type: none"> - Either party may initiate - By agreement
2. WHO IS INVOLVED	 <ul style="list-style-type: none"> - 2 parties communicate with each other and make decisions. 	 <p>Third party neutral acts as communicator and facilitator as parties make decisions themselves.</p>	 <p>Third party neutral acts as decision maker.</p>	 <p>Judge acts as decision maker.</p>
3. HOW DOES THE PROCESS WORK	<ul style="list-style-type: none"> - 2 parties determine the process 	<p>Third party neutral takes the parties through stages:</p> <ol style="list-style-type: none"> 1) Opening statements, 2) Defining the issues, 3) Developing understanding of issues, 4) Developing solution. 	<p>Arbitrator receives statement of issues from both parties. In hearings, takes parties through stages:</p> <ol style="list-style-type: none"> 1) Opening statements, 2) Argument/evidence, 3) Examination in chief, 4) Cross examination, 5) Summation. (Unless parties agree to a less formal process.) 	<p>Judge takes parties through stages:</p> <ol style="list-style-type: none"> 1) Opening statements, 2) Argument/evidence 3) Examination in chief 4) Cross examination 5) Summation.
4. OUTCOME	Contract which is final and binding	An agreement to which the parties are morally committed.	A decision by the arbitrator which is final and binding.	A decision by the Judge which is final and binding.

(Alberta Arbitration and Mediation Society)

DISPUTE RESOLUTION SAMPLE SCENARIOS

LGS3020–2

Module Learner Expectation: The student will differentiate between traditional and alternative dispute resolution methods

Criteria and Conditions: Assessment of student achievement will be based on given cases/scenarios related to dispute, identifying the most appropriate method(s) used by the parties to resolve the dispute; discussing benefits and limitations of the method(s) chosen; suggesting alternative ways of handling the dispute, if appropriate.

Note: Use Tool LGS3020-1 to assess student’s competency.

Case/Scenario	Method of Resolution	Advantage(s)	Disadvantage(s)	Alternate Method	Advantage	Disadvantage	Conclusions
Worker fired for refusing to work under unsafe conditions	Negotiate with the employer	Quick resolution	No Solution	Labour Standards Hearing held. Arbitrator appointed and renders a decision binding upon both sides	<ol style="list-style-type: none"> 1. Possible re-instatement after working conditions improved 2. Compensated but not re-hired 3. Compensated and re-hired 4. Cheaper than suing 	Decision binding even if not in your favour	Check the working conditions before you start work
Sexual harassment in the workplace	Go to person in authority to act as mediator	Quick	May not be believed. May result in being fired, embarrassed	Adjudication (litigation) - <ol style="list-style-type: none"> 1. Go to police 2. Go to lawyer 3. Take it to Human Rights Commission 	<p>The case will be taken seriously</p> <p>Harassment may stop</p>	<ol style="list-style-type: none"> 1. The amount of time and money involved 2. Being a witness is distressing 	There is no satisfactory conclusion but it might bring closure

Thornton et al v. Board of School Trustees of School District No. 57 (Prince George) et al (1978), Supreme Court of Canada 83 D.L.R. (3d) 480

**Thornton et al. v. BOARD OF SCHOOL TRUSTEES
OF SCHOOL DISTRICT No. 57
(PRINCE GEORGE) et al.**

73 D.L.R. (3d) 35

British Columbia Court of Appeal, Branca,
Taggart and Carrothers, JJ.A.
July 22, 1976.

Negligence—Standard of care—Physical education instructor—
Student injured while performing gymnastics—Equipment set up in
dangerous way—No instructions given—Supervision casual—
Whether instructor negligent.

Schools—Liability of school board—Student injured while
performing gymnastics—Equipment set up in dangerous way—No
instructions given—Supervision casual—Whether physical
education instructor negligent.

The respondent, 15 years old, was rendered irreparably a quadriplegic when during a class in gymnastics at his school he jumped from a vaulting horse on to a springboard, vaulted forward into the air gyrating slowly head over heels in an attempted somersault, overshot the thick landing mats and landed on his head on a thin mat at the far end of the landing pit. The trial Judge found the accident to be the result of negligence on the part of appellant physical education instructor for whose negligence the appellant school board was held responsible. The trial Judge held that contributory negligence on the part of the respondent had not been

established. On appeal by the instructor and the school board as to their liability and the respondent's contributory negligence, held, the appeal should be dismissed.

There is an inherent, foreseeable risk in gymnastics, particularly in performing aerial front somersaults off a springboard. Both the school authorities and the respondent were aware of it. Although respondent participated in the gymnastics group and in this particular exercise of his own free will, he did not assume the risk to the absolution of the school authorities nor were the school authorities relieved of their common law duty to take care of this pupil in the manner of a reasonable and careful parent, taking into account the judicial modification to allow for the larger-than-family size of the physical education class and the supraparental expertise demanded of a gymnastics instructor. It is not negligence or breach of the duty of care on the part of the school authorities to permit a pupil to undertake to perform an aerial front somersault off a springboard: (a) if it is suitable to his age and condition (mental and physical); (b) if he is progressively trained and coached to do it properly and avoid the danger; (c) if the equipment is adequate and suitably arranged; and (d) if the performance, having regard to its inherently dangerous nature, is properly supervised. However, although the equipment was in good condition and reasonably satisfactory for use in high school gymnastics, the "configuration," i.e., the use of the vaulting horse to avoid the run up, to gain height when flexing off the springboard to give more time in the air to complete the somersault and land safely, was dangerous. The instructor should have given the respondent and the other boys instruction on the use of the "configuration," which they had never used before. In addition, the performance was not properly supervised. As part of the training programme the boys were encouraged to use their own initiative in a responsible fashion. They obtained permission to attempt this particular exercise and to set up the equipment in this particular manner. They did some practice

NEGLIGENCE SAMPLE CASE STUDY (continued)

LGS3040-1

jumps (feet first) to get the feel of the equipment and to make sure that the landing pit was correctly positioned. But apart from consenting to what the boys were about, on the day in question, the instructor was busy doing paper work at the nearby desk and gave no instructions or cautions, no training, no demonstration and no immediate supervision. The emphasis on individual responsibility and initiative displaced instruction and supervision.

[Winnipeg Electric Co. v. Schwartz (1913), 16 D.L.R. 681, 49 S.C.R. 80, 5 W.W.R. 1298, 17 C.R.C. 1; Butterworth et al. v. Collegiate Institute Board of Ottawa, [1940] 3 D.L.R. 466, [1940] O.W.N. 332; Murray et al. v. Board of Education of City of Belleville, [1943] 1 D.L.R. 494, [1943] O.W.N. 44; Gard v. Board of School Trustees of Duncan, [1946] 2 D.L.R. 441, [1946] 1 W.W.R. 305, 62 B.C.R. 323; McKay et al. v. Board of Govan School Unit No. 29 of Saskatchewan et al. (1968), 68 D.L.R. (2d) 519, [1968] S.C.R. 589, 64 W.W.R. 301, refd to]

Damages—Personal injuries—Quadriplegic—Cost of future care—Standard of care to be used as basis for determining damages—Ideal level of care in own home—Much more expensive than care in auxiliary hospital—Fairness to both plaintiff and defendant dictating reasonable approach in fixing amount of compensation.

[Andrews et al. v. Grand & Toy Alberta Ltd. et. al (1975), 64 D.L.R. (3d) 663, [1976] 2 W.W.R. 385; varg 54 D.L.R. (3d) 85, [1974] 5 W.W.R. 675, refd to]

Damages—Personal injuries—Pecuniary damages—Cost of future care and loss of future income—Inappropriateness of once-for-all award.

[Taylor v. Bristol Omnibus Co. Ltd. et. al., [1975] 2 All E.R. 1107, refd to]

Damages—Personal injuries—Special damages—Plaintiff becoming quadriplegic as result of defendant's negligence—Mother providing plaintiff with nursing and orderly services—Plaintiff entitled to appropriate amount to compensate mother for services rendered—Plaintiff holding amount (\$1.5 million awarded) as trustee for mother.

[Cunningham v. Harrison et al., [1973] 3 W.L.R. 97; Donnelly v. Joyce, [1973] 3 W.L.R. 514, refd to]

APPEAL (British Columbia Court of Appeal) by the defendants from a judgment of Andrews, J., 57 D.L.R. (3d) 438, [1975] 3 W.W.R. 622, in favour of plaintiffs in an action for damages for personal injuries (reduced the reward to \$600,000); CROSS-APPEAL by plaintiffs to Supreme court of Canada from certain aspects of the assessment of damages.

C.C.I. Merritt, Q.C., R.B. Wallace and B.M. McLachlin, for appellants.

Ronald G. Cummings and Donald J. Andrews, for respondents. (Final award of \$810,000 was made by the Supreme Court of Canada.)

CASE IDENTIFICATION

Case Name: Thornton et al v. Board of School Trustees of School District No. 57 (Prince George) et al

Parties Involved and Their Roles: Gary Thornton’s parents brought the action against the defendants, Board of School Trustees of School District (No. 57) and the teacher, David Edamura because Gary was a minor

Court that Ruled on Case: B.C. Supreme Court, January 1975
Appeal Court of British Columbia July 1976
Appeal Court of Canada made final award January 1978.

FACTS

Gary Thornton was on a springboard in the gym at Prince George High School. On a school day in 1971, he was using equipment whose arrangement was agreed to by the teacher, David Edamura. The teacher was not in a location to directly supervise the students using the equipment.

At the time of the accident to Gary mats had been installed because of an accident by a previous student. Gary performed a maneuver and overshot the thick landing mats and landed on his head on the thin foam mats. After being taken to hospital he was found to have a fracture of the spinal cord which left him almost completely paralyzed in all four limbs, a quadriplegic. He had minimal use of his hands and some use of his arms up to his shoulder, but he would require constant care for the rest of his life. His life expectancy was 54 years. While he was physically handicapped, his mental faculties were unimpaired.

LEGAL ISSUES

Gary’s parents claimed damages on behalf of Gary on the grounds the school authorities were negligent (breached the duty of care). The decision was appealed to the B.C. Court of Appeal by the school board on the grounds that there was contributing negligence by Gary. This was followed by an appeal to the Supreme Court of Canada by the Thorntons that the award for damages was too low.

DECISIONS

Supreme Court of B.C. decision was that Edamura and the school authorities were negligent. Damages were awarded to Thornton in the amount of 1.5 million dollars. Appeal Court of B.C. agreed that Edamura and the school board were negligent, but reduced the award to \$600 000.

Supreme Court of Canada increased the final award to \$810 000.

COURT REASONINGS

The significance of the decision by the B.C. Supreme Court was that the defendants were negligent and damages were awarded on the basis that the duty of care had been breached. The configuration of the equipment was dangerous. The instructor should have given the respondent instruction on the use of the “configuration” which he had never used before. In addition the performance was not properly supervised.

NEGLIGENCE SAMPLE CASE STUDY ANALYSIS (continued)

LGS3040–2

The finding of negligence indicates that the plaintiff, Gary, was owed a duty of care by the teacher, Edamura, an employee of the School Board and by the School Board itself. That the duty of care was broken and that Gary suffered injury as a result. If negligence is found then damages are awarded. In this case damages, non-pecuniary and specific damages were awarded.

The cases of Teno and Andrews were cited by the Appeal Court of British Columbia when the non-pecuniary damages were reduced.

Major significance of the case would be that teachers owe a duty of care to provide safe conditions with appropriate instructions and supervision.

CRITERIA	OBSERVATION/RATING					
Preparation and Planning	4	3	2	1	0	N/A
Content	4	3	2	1	0	N/A
Presentation	4	3	2	1	0	N/A

STANDARD IS 3 IN EACH APPLICABLE AREA

<p>Rating Scale: (italics are optional)</p> <p><i>The student</i></p> <p>4 exceeds defined outcomes. Plans and solves problems effectively and creatively in a self-directed manner. Tools, materials and/or processes are selected and used efficiently, effectively and with confidence. Quality, particularly details and finishes, and productivity are consistent and exceed standards. <i>Leads others to contribute team goals.</i></p> <p>3 meets defined outcomes. Plans and solves problems in a self-directed manner. Tools, materials and/or processes are selected and used efficiently and effectively. Quality and productivity are consistent. <i>Works cooperatively and contributes ideas and suggestions that enhance team effort.</i></p> <p>2 meets defined outcomes. Plans and solves problems with limited assistance. Tools, materials and/or processes are selected and used appropriately. Quality and productivity are reasonably consistent. <i>Works cooperatively to achieve team goals.</i></p> <p>1 meets defined outcomes. Follows a guided plan of action. A limited range of tools, materials and/or processes are used appropriately. Quality and productivity are reasonably consistent. <i>Works cooperatively.</i></p> <p>0 has not completed defined outcomes. Tools, materials and/or processes are used inappropriately.</p>

Module Learner Expectation: The student will examine the legal considerations involved in operating a small business

Criteria and Conditions: Assessment of student achievement will be based on acting as a consultant and providing advice to a client on the legal issues involved in starting, operating and ending his/her association with a small business.

<p>CRITERIA CHECKLIST</p> <p><i>The student:</i></p> <p>Preparation and Planning</p> <ul style="list-style-type: none"> <input type="checkbox"/> sets goals and describes steps to achieve them <input type="checkbox"/> uses personal initiative to formulate questions and find answers <input type="checkbox"/> accesses a range of relevant information sources and recognizes when additional information is required <input type="checkbox"/> interprets, organizes and combines information in creative and thoughtful ways <input type="checkbox"/> records information accurately using appropriate technical terms and supporting detail <input type="checkbox"/> plans and uses time effectively, prioritizing tasks on a consistent basis <input type="checkbox"/> assesses and refines approach to task and project status based on feedback and reflection <p>Content</p> <ul style="list-style-type: none"> <input type="checkbox"/> examines the legal considerations involved in starting, operating and ending a small business <p>Includes the following information about:</p> <ol style="list-style-type: none"> 1. starting a business: <ul style="list-style-type: none"> - the types of business organization and the legal advantages and disadvantages of each type - ways to protect your product, service or new idea, name - using space in the home, leasing or buying premises - the various methods of financing a business 2. operating a small business <ul style="list-style-type: none"> - listing the legal implications of the employee/ employer relationship 	<ul style="list-style-type: none"> - the various legal requirements, e.g., licencing, permits - legislation related to the sale of goods and services - methods of reporting, keeping records, and taxation procedures of a small business <p>3. failure of or ending a business:</p> <ul style="list-style-type: none"> - dissolving a business - transferring ownership - bankruptcy <p>Presentation</p> <ul style="list-style-type: none"> <input type="checkbox"/> demonstrates effective use of a variety of communication media: e.g., <u>Written:</u> <i>spelling, punctuation, grammar, format (formal/informal, technical/literary)</i> <u>Oral:</u> <i>voice projection, body language, appearance, enthusiasm, evidence of prior practice</i> <u>Audio-visual:</u> <i>techniques, tools, clarity, speed and pacing</i> <input type="checkbox"/> maintains acceptable grammatical and technical standards through proofreading and editing <input type="checkbox"/> provides an introduction that describes the purpose and scope of the project <input type="checkbox"/> communicates thoughts/feelings/ideas clearly to justify or challenge a position <input type="checkbox"/> states a conclusion by analyzing and synthesizing the information gathered <input type="checkbox"/> gives evidence of adequate research through a reference list that includes seven or more relevant information sources
<p>COMMENTS</p>	

CONTROVERSY & CHANGE

LGS3060–1

CRITERIA	OBSERVATION/RATING					
Preparation and Planning	4	3	2	1	0	N/A
Analyzing Issues	4	3	2	1	0	N/A
Evaluating Choices/ Making Decisions	4	3	2	1	0	N/A
Information Sharing	4	3	2	1	0	N/A

STANDARD IS 3 IN EACH APPLICABLE AREA

Rating Scale: (italics are optional)

The student

- 4 exceeds defined outcomes. Plans and solves problems effectively and creatively in a self-directed manner. Tools, materials and/or processes are selected and used efficiently, effectively and with confidence. Quality, particularly details and finishes, and productivity are consistent and exceed standards. *Leads others to contribute team goals.*
- 3 meets defined outcomes. Plans and solves problems in a self-directed manner. Tools, materials and/or processes are selected and used efficiently and effectively. Quality and productivity are consistent. *Works cooperatively and contributes ideas and suggestions that enhance team effort.*
- 2 meets defined outcomes. Plans and solves problems with limited assistance. Tools, materials and/or processes are selected and used appropriately. Quality and productivity are reasonably consistent. *Works cooperatively to achieve team goals.*
- 1 meets defined outcomes. Follows a guided plan of action. A limited range of tools, materials and/or processes are used appropriately. Quality and productivity are reasonably consistent. *Works cooperatively.*
- 0 has not completed defined outcomes. Tools, materials and/or processes are used inappropriately.

Module Learner Expectation: The student will describe how different views of people are expressed in controversial issues which may have legal implications

Criteria and Conditions: Assessment of student achievement will be based on preparing a research document on a controversial issue which describes different views of people but stating a position on the legal issue(s) and the reasons for adopting that position.

CRITERIA CHECKLIST

The student:

Preparation and Planning

- accurately describes an issue on which people disagree, explaining specific causes
- creates and adheres to detailed timelines
- plans and uses time effectively, prioritizing tasks on a consistent basis
- accesses a range of relevant information sources and recognizes when additional information is required

Analyzing Issues

- poses thoughtful questions regarding the controversial issues
- states opposing positions on the issue and thoughtful reasons for adopting each position
- determines legal elements of the issue e.g., historical perspective, current legislation
- states a position on the legal issue(s) and insightful reasons for adopting that position
- recognizes underlying bias/assumptions/values in information and ideas

Evaluating Choices/Making Decisions

- describes in detail important and appropriate legal alternatives regarding the issue
- selects an appropriate and useful legal alternative by showing differences among choices
- proposes form of legislation and assesses strengths/weaknesses of decisions by considering consequences and implications
- communicates thoughts/feelings/ideas clearly to justify choices/decisions made
- predicts the possible outcome(s) of the proposed legislation

Information Sharing

- demonstrates effective use of a variety of communication media: e.g., written, oral, audio-visual
- communicates thoughts/feelings/ideas clearly to justify or challenge a position
- maintains acceptable grammatical and technical standards
- gives evidence of adequate information gathering by citing relevant information sources

COMMENTS

CONTROVERSY & CHANGE

LGS3060–2

CRITERIA	OBSERVATION/RATING					
Preparation and Planning	4	3	2	1	0	N/A
Content	4	3	2	1	0	N/A
Presenting/Reporting	4	3	2	1	0	N/A

STANDARD IS 3 IN EACH APPLICABLE AREA

Rating Scale: (*italics* are optional)

The student

- 4 exceeds defined outcomes. Plans and solves problems effectively and creatively in a self-directed manner. Tools, materials and/or processes are selected and used efficiently, effectively and with confidence. Quality, particularly details and finishes, and productivity are consistent and exceed standards. *Leads others to contribute team goals.*
- 3 meets defined outcomes. Plans and solves problems in a self-directed manner. Tools, materials and/or processes are selected and used efficiently and effectively. Quality and productivity are consistent. *Works cooperatively and contributes ideas and suggestions that enhance team effort.*
- 2 meets defined outcomes. Plans and solves problems with limited assistance. Tools, materials and/or processes are selected and used appropriately. Quality and productivity are reasonably consistent. *Works cooperatively to achieve team goals.*
- 1 meets defined outcomes. Follows a guided plan of action. A limited range of tools, materials and/or processes are used appropriately. Quality and productivity are reasonably consistent. *Works cooperatively.*
- 0 has not completed defined outcomes. Tools, materials and/or processes are used inappropriately.

Module Learner Expectation: The student will describe the various methods used to bring about changes in the law.

Criteria and Conditions: Assessment of student achievement will be based on preparing an article that describes an event (real or fictional) in which people use various methods; e.g., lobbying, advocacy groups, public protests, court challenges, administrative appeals and petitions to bring about changes in the law.

CRITERIA CHECKLIST

The student:

Preparation and Planning

- sets goals and describes steps to achieve them
- uses personal initiative to formulate questions and find answers
- accesses a range of relevant information sources and recognizes when additional information is required
- interprets, organizes and combines information in creative and thoughtful ways
- records information accurately using appropriate technical terms and supporting detail
- plans and uses time effectively, prioritizing tasks on a consistent basis
- assesses and refines approach to task and project status based on feedback and reflection

Content

- identifies and describes the event selected
- describes a variety of methods which could be used by individuals and/or groups to effect change and discusses potential effectiveness

Content (continued)

- predicts the proposed or actual outcome of the methods utilized or suggested
- demonstrates an understanding of the political, social and legal dynamics

Presenting/Reporting

- demonstrates effective use of at least two communication media:
e.g., Written: spelling, punctuation, grammar, format (formal/informal)
Oral: voice projection, body language, appearance
Audio-visual: techniques, tools, clarity
- maintains acceptable grammatical and technical standards through proofreading and editing
- provides an introduction that describes the purpose and scope of the article
- communicates thoughts/ideas/feelings clearly to justify or challenge a position
- states a conclusion by analyzing and synthesizing the information gathered
- gives evidence of adequate research through a reference list including relevant information sources

COMMENTS

LANDMARK DECISIONS

LGS3070–1

CRITERIA	OBSERVATION/RATING					
Preparation and Planning	4	3	2	1	0	N/A
Content	4	3	2	1	0	N/A
Presenting/Reporting	4	3	2	1	0	N/A

STANDARD IS 3 IN EACH APPLICABLE AREA

Rating Scale: (*italics are optional*)

The student

- 4 exceeds defined outcomes. Plans and solves problems effectively and creatively in a self-directed manner. Tools, materials and/or processes are selected and used efficiently, effectively and with confidence. Quality, particularly details and finishes, and productivity are consistent and exceed standards. *Leads others to contribute team goals.*
- 3 meets defined outcomes. Plans and solves problems in a self-directed manner. Tools, materials and/or processes are selected and used efficiently and effectively. Quality and productivity are consistent. *Works cooperatively and contributes ideas and suggestions that enhance team effort.*
- 2 meets defined outcomes. Plans and solves problems with limited assistance. Tools, materials and/or processes are selected and used appropriately. Quality and productivity are reasonably consistent. *Works cooperatively to achieve team goals.*
- 1 meets defined outcomes. Follows a guided plan of action. A limited range of tools, materials and/or processes are used appropriately. Quality and productivity are reasonably consistent. *Works cooperatively.*
- 0 has not completed defined outcomes. Tools, materials and/or processes are used inappropriately.

Module Learner Expectation: The student will identify “landmark decisions” and analyze their subsequent effects.

Criteria and Conditions: Assessment of student achievement will be based on preparing a report detailing a case(s) considered to be a “landmark decision(s)” and explaining how the outcome of the case(s) had an impact on society.

CRITERIA CHECKLIST

The student:

Preparation and Planning

- sets goals and describes steps to achieve them
- uses personal initiative to formulate questions and find answers
- accesses a range of relevant information sources and recognizes when additional information is required
- interprets, organizes and combines information in creative and thoughtful ways
- records information accurately using appropriate technical terms and supporting detail
- plans and uses time effectively, prioritizing tasks on a consistent basis
- assesses and refines approach to task and project status based on feedback and reflection

Content

- identifies and describes the “landmark decision” selected
- provides the historical context
- describes the catalyst for change
- analyzes the external environment that led to the decision

Content (continued)

- describes the impact of the Court decision on the political, social and economic environment of the society in which it was made
- predicts future implications for change as a result of the decision

Presenting/Reporting

- demonstrates effective use of at least two communication media:
e.g., Written: spelling, punctuation, grammar, format (formal/informal)
Oral: voice projection, body language, appearance
Audio-visual: techniques, tools, clarity
- maintains acceptable grammatical and technical standards through proofreading and editing
- provides an introduction that describes the purpose and scope of the article
- communicates thoughts/ideas/feelings clearly to justify or challenge a position
- states a conclusion by analyzing and synthesizing the information gathered
- gives evidence of adequate research through a reference list including relevant information sources

COMMENTS