

## LEGAL PRECEDENTS

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### Schwab v. Mississauga (City)

(1995) 58 A.C.W.S. (3d) 408 (Ont.Gen.Div.); [1995] O.J. No. 2956

#### Issue

Did the City of Mississauga breach its duty of care to Eric Schwab to take reasonable care that he be reasonably safe while on the city's premises pursuant to s. 3(1) of the *Occupiers' Liability Act*?

#### Relevant facts

*The accident:* The plaintiff, Eric Schwab, who was nine years old in July 1991, attended the Cawthra Park Public Pool in the City of Mississauga on regular basis. The plaintiff had passed the requisite test to allow him onto the diving board. The test consisted of swimming two widths of the pool without stopping.

On July 5 the plaintiff slipped and fell off the diving board, hitting his left side on the board. Eric suffered from severely bruised ribs, shortness of breath, dyspnea, and a partially collapsed lung (pneumothorax). The court assessed damages at \$7500.

*City's actions:* The City of Mississauga's lifeguards promptly came to the plaintiff's rescue, filed appropriate forms, and advised the boy's mother to seek medical care. There were extensive daily checks of the diving board conducted by lifeguards / supervisors. These inspections included visual checks and touching of the board to ensure the gripping surface was intact. Checks of the handrails and fulcrum of the board were also performed.

The number of lifeguards on the deck at the time of the accident was pursuant to the Ontario Public Pools Regulation. Testimony was also presented regarding the qualifications required by Mississauga for its supervisors and lifeguards, and the quantity of mandatory training sessions – four times per year.

#### Decision

The court found that there was no breach of the standard of care provided by the City of Mississauga to the plaintiff, Eric Schwab. Therefore, the action against the City of Mississauga was dismissed.

## Reasoning

The court decided in favour of the defendant based on the following rationale:

Safety procedures set out by the city were extensive and followed by the appropriate staff.

The city had the appropriate number of lifeguards on deck at the time of the incident, pursuant to the Health Protection and Promotion Act.

“The officials of the City of Mississauga did not fail in their duty of care as set out in the *Occupiers’ Liability Act* and in particular in s. 3. The city is not the insurer of the safety of its pool users. Nevertheless, there is a high duty of care because of the possibility of drowning which must always be in the contemplations of the city and there is a higher duty of care on the city because of the very young age of the users of its pools. The City of Mississauga took reasonable care in all the circumstances to make the Cawthra Park Pool reasonably safe for all swimmers regardless of age.”

## Lessons learned

It was the records that provided the proof the court needed to conclude the city had done all it could to ensure patrons were safe.

The plaintiff was the author of his own misfortune. Short of holding the boy's hand to the end of the board, what else could the city do?

Since the court has ruled in favour of the City of Mississauga, because of the reasons listed above, the Lifesaving Society recommends that its affiliates:

- Establish an inspection procedure appropriate to the facility that ensures the safety of all amenities and equipment that are accessible to the users of the facility.
- Maintain appropriate record keeping of all inspections and maintenance of the above said equipment and amenities.