

Risky play, injury prevention & child development – public policy perspective

Louise Logan & Pamela Fuselli¹

¹Parachute, Toronto, ON, Canada

Injury Prevention

1. INTRODUCTION

According to the Canadian Institute for Health Information, more than 28,000 children are injured on playgrounds across Canada every year.[1] Approximately 10% of these injuries result in hospitalization. The Canadian Pediatric Society notes that children five to nine years of age have the highest risk of injury.[2] Falls are the leading cause of injury, and the types of injury sustained include head injuries, fractures, internal injuries, dislocation, and amputation.

The fact that children’s play and playgrounds can result in injury, even serious injury and death, is not news. Nor is the idea that measures should be put in place to prevent injuries and keep children safe from harm. Rather, the question under consideration is whether the measures put in place to keep play spaces safe also support optimal child development and health.

Balancing the need to provide environments where children can develop, and at the same time avoid injury raises important public policy issues. In this paper, we will briefly explore the current public policy landscape in Canada as it relates to children’s play spaces, and touch on policy considerations that have been identified in Canada as relevant to striking the “right balance” in the context of children’s play spaces.

2. CURRENT PUBLIC POLICY LANDSCAPE

Safety on playgrounds and equipment in Canada is governed by a patchwork of statutes, standards, provincial regulations, and duties at common law.

2.1 Legislation

Relevant statutory provisions can be found in provincial occupier liability statutes, which set out the general duty of care an occupier owes to persons coming on the premises. In general terms, an occupier owes a duty to take reasonable care in the circumstances, such as outlined in the Ontario’s *Occupier Liability Act* (RSO 1990, c. 0.2).[3] In Alberta, the *Occupier Liability Act* also includes provisions specific to children (RSA 2000, c. 0-4, s. 13) and provides that, in certain circumstances, the occupier owes a duty to take reasonable care to see children will be reasonably safe from danger. In determining whether the duty of care has been discharged,

consideration will be given to the age of the child, the ability of the child to appreciate the danger, and the relative burden on the occupier of eliminating the burden.

Provincial education statutes set out the duties of teachers and principals to maintain proper order and discipline, and to attend to the health and comfort of students.

2.3 Standards

The Canadian Standards Association has developed a nationally recognized standard under CAN/CSA-Z614 “Children’s Playspaces and Equipment”.[4] Its purpose is “to promote and encourage the provision and use of playspaces that are well-designed, well-maintained, innovative, and challenging, and, in so doing, contribute to the development of healthy children in the broadest sense of the word.”

The CSA Standard provides detailed information about materials, installation, strength of the equipment, surfacing, inspection, maintenance, performance requirements, access onto and off of equipment, play space layout and specifications for each type of equipment.

First issued in 1990 and last reaffirmed in 2012, this standard is not law, but it is widely used and referred to as the minimum acceptable standard that should be voluntarily complied with. The Standard applies to public use play spaces and play equipment found in schools, parks, childcare facilities, institutions, multiple family dwellings, private resort and recreation developments, restaurants and other areas of public use. It does not apply to home playgrounds.

Some jurisdictions have adopted this standard in regulation, policies, and guidelines. Quebec has made Z614 mandatory for daycare operators by referencing Z614 directly in their Education Childcare Regulation under the *Educational Childcare Act*. In Ontario, childcare settings that are licensed by the Ministry are inspected for compliance with the Z614 as a condition of licensure.

2.3 Case Law

Educators have a well-established common law duty to students. The leading case on this point is *Myers v. Peel County Board of Education* (1981), 123 D. L.R. (3d) [1981] 2 S.C.R. 21, which went to the Supreme Court of Canada. According to the courts, school authorities must conduct

themselves in the same manner as a “careful or prudent parent”, which includes a duty to guard against inherent and foreseeable elements of risk in the activities of the students.

[5] The application of the standard of care in individual cases is dependent on the facts of the case, and takes into account a variety of factors such as: the type of activity being undertaken, the location where the injury occurred, the age of the students, the condition of the equipment, and the number of students being supervised.

Interestingly, although the statistics indicate that there are lots of cases of children being injured, there is relatively little Canadian case law related to playgrounds. This does not, however, diminish the importance of legal duties, standards of care, and the risk of legal action as a policy driver.

3. DISCUSSION

Sandseter and Kennair[6] state that: “In modern western society there is a growing focus on the safety of children in all areas, including situations involving playing. An exaggerated safety focus on children’s play is problematic because while on the one hand children should avoid injuries, on the other hand they might need challenges and varied stimulation to develop normally, both physically and mentally.” Similar themes and concerns are explored in the 2012 paper by Brussoni et al[7] which raises important questions about the impact of restrictions on children’s outdoor risky play on child development and health, and proposes a new paradigm that includes a balancing of risky play and children’s safety.

In this section we briefly explore to what extent Canadian public policy balances playground safety with the need to provide stimulating play environments. We also consider whether the current standard of care could accommodate consideration of additional factors such as the importance of thrilling experiences to healthy child development.

3.1 Public Policy Focus

It is interesting to consider whether Canada’s current public policy environment reflects an “exaggerated safety focus” when it comes to children’s playgrounds and spaces.

Canada does have a nationally recognized standard for playground equipment and play spaces. The standard is voluntary, but one that has been relied on and incorporated by reference to become, in some contexts, a de facto minimum. But does having a standard necessarily imply an exaggerated focus on safety such that harm may result? The one does not necessarily flow from the other, and it is worth remembering that in addition to focusing on safety, the standard also explicitly recognizes the need for “innovative” and “challenging” play spaces that support healthy child development in the “broadest sense of the word”. (The question of whether or not it successfully achieves this

balance, or whether its implementation and enforcement have contributed to or detracted from the achievement of this balance is beyond the scope of this paper.)

Nonetheless, public policy debate on this matter does reflect a strong emphasis on the need to keep vulnerable children safe from harm. This is evident in the debate on a motion brought before the Ontario legislature relating to the CSA standards. The motion sought to have the standard recognized by the government of Ontario as the appropriate safety standards for playground equipment bought and sold in Ontario, and to urge all Ontario municipalities, school boards, childcare centres, and other provincially funded agencies to use playground equipment to adhere to the national standard when buying playground equipment. The motion was debated against a backdrop of a tragic death of a young boy who was strangled by a loop in a rope attached to playground equipment at a condominium complex.

The debate on the motion was relatively brief, focusing on the tragic event, the incidence of injury and death, and the credibility of the CSA guideline. There was some discussion about the need to reduce the costs of insurance and liability for property owners, and concern over the impact of the additional costs of meeting the standards. The legislators stated their belief that: “What we must do is ensure that the chances of children getting seriously injured are reduced as much as possible.”[8]

A similar focus can be seen in the implementation of playground safety policy in Ontario schools. The focus in this context is on risk management and harm reduction through the application of principles that “systematically identify, prioritize and address the issues related to CSA standard compliance and playground equipment safety.”[9] Insurance costs and the risk of legal action are dominant considerations, and appear to be a driving principle behind much of the dialogue and policy development process in school boards, daycares and municipalities.

When there is a consideration of the balancing of interests, the public debate on play space relies heavily on the traditional regulatory equation in the safety context: the relative need for protection versus the relative cost or burden of eliminating danger or hazards. An economic cost-benefit analysis is a standard consideration in the regulation of occupational health and safety and environmental protection, and a mandatory economic analysis of the impact of proposed regulations is fast becoming the norm.

A clear example of this equation in the context of child safety can be found in the Alberta Occupiers Liability Act, which states that in determining whether the duty of care to a child has been discharged consideration shall be given to: the age of the child, the child’s ability to appreciate danger,

and the burden on the occupier of eliminating the danger or protecting the child from the danger as compared to the risk of the danger to the child.

3.2 Standard of Care – the Careful and Prudent Parent?

When assessing negligence, the case law in Canada does not refer to the benefits of risky play or a balancing of priorities. However, it may be worth considering whether the current standard of a “careful and prudent parent” could conceivably incorporate a broader set of considerations such as whether an injury occurred in the course of age appropriate risky play. The standard is not one of “safety perfection” and as such it may be able to hold considerations such as whether a “careful and prudent parent” would encourage their child to engage in “thrilling experiences” that support normal development.

4. CONCLUSION

We started with the question of whether the public policy measures in place in Canada to keep play spaces safe support optimal child development and health, and how Canada has balanced the need to provide environments where children can develop and at the same time avoid injury.

Based on our preliminary review of the landscape, current public policy supports a strong focus on child safety, and legal risk mitigation. It does not address the balancing of risky play and child development, or explicitly consider whether public policy that has a strong safety focus may have secondary, negative impacts on child development.

The Canadian approach contrasts starkly with the explicit principles underlying public policy in at least one leading jurisdiction: Finland. The Finnish national action plan for injury prevention among children and youth published in the fall of 2009 includes guidelines for long term injury prevention for children and young people under the age of 25. The action plan explicitly states that safety, health and stimulation are the core elements of the future, and the vision is of Finnish children and young people living stimulating and safe lives.[10] Brussoni et al.,[7] cite similar emerging examples in the UK.

In our view, there is an opportunity to draw the debate into the public realm in Canada, explicitly identify the guiding principles, and shine a light on this important public policy issue.

REFERENCES

1. CBC News. Playground equipment involved in rising number of injuries. 2013.<http://www.cbc.ca/news/playground-equipment-involved-in-rising-number-of-injuries-1.1858497> (accessed 30 Sep2013).

2. Fuselli P, Yanchar NL. Preventing playground injuries. *Paediatr Child Health* 2012;**17**:328–30.
3. Government of Ontario. Occupiers’ Liability Act, R.S.O. 1990, c. O.2. Canada: 1990. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o02_e.htm (accessed 11 Mar2014).
4. Canadian Standards Association. CAN/CSA-Z614-14 - *Children’s playspaces and equipment*. 5th ed. Toronto, ON: Canadian Standards Association 2014.
5. Mackesy Smye. Playgrounds and structures: Liability of school boards and municipalities. Hamilton, ON: 2013. http://www.mackesysmye.com/wp-content/uploads/2013/04/Playgrounds_and_Structures_liability_of_school_boards_and_municipalities.pdf
6. Sandseter EBH, Kennair LEO. Children’s risky play from an evolutionary perspective: The anti-phobic effects of thrilling experiences. *Evol Psychol* 2011;**9**:257–84.
7. Brussoni M, Olsen LL, Pike I, et al. Risky play and children’s safety: Balancing priorities for optimal child development. *Int J Environ Res Public Health* 2012;**9**:3134–8.
8. Ontario Legislative Assembly. Official report of debates (Hansard). 1993.
9. Ontario School Boards’ Insurance Exchange. Risk management at a glance for Ontario Schools: Playground safety. 2013.<http://osbie.on.ca/risk-management/at-a-glance/playground-safety.aspx> (accessed 28 Oct2013).
10. Markkula J, Öörni E. Providing a safe environment for our children and young people: Finland’s national action plan for injury prevention among children and youth. Helsinki: 2010. <http://www.thl.fi/thl-client/pdfs/bcda07c2-aa23-4faa-a59d-55a60fdc6764> (accessed 28 Oct2013).