

B.C. SUPREME COURT

Quadraplegic to get damages for hockey hit

LARRY STILL
Sun Court Reporter

When junior hockey player Bill Zapf testified in court against an opposing player whose illegal check rendered him a quadriplegic, he impressed the judge with his lack of bitterness.

"He does not suffer from depression or self-pity," B.C. Supreme Court Justice Mary Humphries recalled Tuesday. "His determination and outlook are extraordinary."

But Humphries, in a 60-page judgment, decided the outlook for Zapf, now 21 and confined to a wheelchair for the rest of his life, could stand further improvement.

The judge decided William Muckalt, the winger who checked defenceman Zapf from behind, was negligent in his conduct and liable for damages.

Humphries, who asked lawyers in the case to submit further argument on the question of damages, didn't state in her judgment the amount to which Zapf will be entitled.

Vancouver lawyer John Laxton, who represented Zapf along with lawyers Dwight Harbottle, Robert

\$4 million award predicted as judge asks lawyers to submit arguments

Gibbens and Maris McMillan, likened the case to an earlier suit brought by Mel Unruh.

Laxton recalled that Unruh, for whom he also acted, was struck from behind and rendered a quadriplegic. Unruh was awarded damages totalling \$4 million, an amount upheld by the B.C. Court of Appeal.

"Although the judge in the Zapf case has invited counsel to submit further argument on damages, I think it unlikely the award will be any less than the amount received by Mel Unruh," Laxton said in a telephone interview. He said he is confident the damages will be covered by insurance carried by Muckalt's team, the Merritt Centennials.

Zapf was injured on Nov. 2, 1992, when he was hit during a game between two Junior A teams — the Centennials and the Nanaimo Clippers. Zapf played for Nanaimo.

During the trial in Vancouver, Zapf claimed he was projected forward into the boards at such a speed and

so unexpectedly, he was unable to get his hands up to protect himself.

The defence said the evidence indicated the hit was one in which both players mutually engaged, shoulder-to-shoulder, and was a legal hit. Alternatively, it was an unintentional move by Muckalt.

The judge, although she noted similar play is common in the National Hockey League, said different rules apply in junior hockey.

"This league is a dangerous one; young players are trying to establish their reputations for the NHL draft, and fast aggressive play is important," she said.

"That is, however, the very reason that skill and care must be taken, and that is the reason that (certain rules) and the automatic icing rules were initiated."

Humphries, in an extensive analysis of the evidence, said both players were skating toward the end boards very fast, Muckalt coming up behind Zapf at high speed.

Although the judge said Zapf was expecting to be hit, she said he was not expecting to be hit from behind with a force that would send him forward at such a speed that he was unable to get his hands up.

"I conclude that any reasonable competitor, approaching another from the rear at high speed near the boards, would not administer a check that he knew or ought to have known was likely to hit a portion of Zapf's back," the judge said.

"Given the standard of play expected in this league, and the overwhelming emphasis placed on the prohibition against checking from the rear in the area of the boards, it is unacceptable to make contact in the manner in which it was done."

The judge conceded that her decision — in which she said carelessness and recklessness are equal grounds for a finding of negligence — may restrict the fast-moving and physical nature of junior hockey.

Noting "roughness and violence" appears to be a large part of hockey's appeal, she said anyone who watches NHL hockey knows contact of the type used against Zapf is common and rarely penalized.



GLENN BAGLO/Vancouver Sun

INJURED PLAYER: lawyer John Paxton talks to client Bill Zapf outside court