

Gymnastics: personal injury claims by young gymnasts

Terry Stern, Sydney

Gymnastics, at an advanced competitive level, is a spectacular and exciting sport with interest for both the participant and the spectator. It is also dangerous particularly for young gymnasts..

The paper addresses the existing case law, the range of injuries suffered by gymnasts and the avenues open for legal redress.

The existing case law

Gymnastic injuries, as you would expect, are governed by the ordinary principles of the law of Negligence.

The courts have considered a number of gymnastic and trampolining injury cases which provide some guidance in this area:-

- the equipment which trampolinists and gymnasts use is, potentially, dangerous and "careful safety standards need to be observed";
- it does not necessarily follow that there must be constant supervision, merely because the equipment is potentially dangerous. This will depend on the nature of the activity;
- in any event, proper instruction in the use of the equipment must be given and suitable protective matting provided.

Product liability

Defective equipment may contribute to the cause of the injury and, where applicable, consideration should be given to the cause of action in product liability².

Gymnastic injuries

There is a significant literature examining the nature and extent of gymnastic injuries, their prevention, recognition and management.

The extent of the prevailing knowledge, obviously, gives rise to obligations on the part of gymnastic instructors and

coaches³. The young gymnast who has been identified as talented and placed in an elite programme will have an intensive training schedule, placing rigorous demands on the young gymnast's body frame.

Competition, itself, allows ample scope for injury.

The injuries which, typically, a gymnast may sustain includes "split and sprained toes, arch and plantar fascia, heel bruise, sprained ankle, achilles tendon, anterior ankle, Sever's disease, snapping peroneal tendon, 'shin splints', Osgood Schlatter disease, quad and hamstring (injury), groin (injury), high hamstring



Grace and beauty of the young gymnast - but at what risk to her current and future health?

and hip flexor (injury), elbow sprain, elbow tendonitis, wrist, finger and thumb sprains.....(and) rips on the hand and wrist"⁴

The injuries referred to above are common and, no doubt, the elite gymnast is likely to suffer one or other of the above injuries in the course of a gymnastic career.

No doubt, injuries such as the above can occur without negligence on the part, either of the coach/trainer or the gymnast.

The question arises, however, of the obligation of the coach/trainer to warn of the risk of injury and its consequences and what flows, if anything, from the failure to warn.

It is submitted that considerations of the Rogers & Whitaker type are as applicable in this context as in the context of medical negligence⁵.

Abdominal injury in a female gymnast

Apart from the sort of injuries referred to above, which will not cause any surprise, a female gymnast suffered a rather unusual injury reported in 1989 while practising on the uneven bars.

The mechanism of this sort of non-penetrating injury is:

- the "compression of the proximal jejunum against the anterior lordosis of the lumbosacral spine" or
- "a tearing force applied to the proximal jejunum at [the area of the] ligament of Treitz.

Unless the injury is diagnosed at an early stage, it is said to be difficult to manage⁶.

While the young gymnast may be aware of the possibility of rips on the hand and wrist, which happen frequently, and the minor sprains and bruising injuries, it is highly unlikely that she is aware of the risk of a significant abdominal non-penetrating injury.



Terry Stern

Dying to win⁷

The talent identification programmes and the hype associated with elite sport and, even Olympic participation, can potentially lead to serious injury and disability and damaging psychiatric sequelae.

The young gymnast is required to make major sacrifices during a formative period of her life and at a time when she has little ability to consider and fully understand the possible long-term consequences on her.

"As female artistic gymnasts tumble faster, higher and rotate more, demands on their bodies are becoming increasingly similar to those traditionally preserved for their naturally more powerful male counterparts.

.....their bodies are having to resemble the male form,.....no breasts, no hips and most of all, no fat.

Recent research has indicated that.....an alarming number of female gymnasts.....are experiencing amenorrhoea.....osteoporosis and.....eating disorders which could lead to anorexia and bulimia."

Ibid at page 16

The article refers to the death of Christy Henrich, a former USA gymnastics champion dying from anorexia and bulimia thought to be induced by the sport's demanding physical requirements.

An Australian Institute of Sport dietitian, Liz Broad, is quoted as stating that:-

"As they reach puberty it is natural for the body to start to store fat and put on weight, which is when the girls start to struggle and fight what their hormones are doing.

It isn't healthy to fight puberty....."

Absence of menstruation is noted as being due to low oestrogen levels, which actually causes the young gymnast's body to simulate menopause - and all in a girl of teenage years.

The author notes that oestrogen contributes to the body's ability to maintain bone density and "without it, bone mineralisation leads to the onset of osteoporosis. Peak bone mass development occurs from the mid-teens to the early 20s⁸".

The combination of oestrogen deficit, bone mineralisation, osteoporosis and the risk of stress fractures is said to give rise to bone fractures to gymnasts in their third decade where you would not normally find those injuries until the sixth or seventh decade⁹.

Implications for tort law

The author submits that there is a clear obligation, particularly in the context of the very young athlete, to give a clear explanation and warning. ■

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Notes:

- ¹ Robertson v Hobart Police & Citizens Youth Club Inc. (1984) Australian Torts Reports 80-629 [the article by Dr Keith Tronc in Australian Plaintiff - June 1998 is a convenient source of reference and starting point for the case law in a number of areas of sporting injury including gymnastics and trampolining]
- ² For a discussion of product liability implications in the context of aerobics

injuries, see "Issues in Aerobics Liability" Vo.34 Law Society Journal No. 1 Feb. 1996 P.40 at P.42

- ³ "Gymnastic Injuries: Prevention, Recognition and Management of Common Problems" K. Maguire, Sport Health 8 Feb. 1990, 7-9
- ⁴ Video Cassettes by Larry Nassar 1992 United States Gymnastics Federation
- ⁵ High Court of Australia Full Court judgement delivered 19 Nov. 1992 [1992 ATR 81-189]
- ⁶ Case report: Unusual Intra-Abdominal Injury In A Female Gymnast. Vaos, Maridaki & Eston Australian Journal of Science & Medicine In Sport Vol.21 1 March 1989 Pgs 20-21
- ⁷ This is the title of an article in the Journal - Active (Canberra), Spring 1994 at P.16-17 (University of NSW Sq 796.019405/2)
- ⁸ Ibid P.17
- ⁹ Ibid

Mother wins compo after 16-month wait for justice

STEFANIE BALOGH

SARAH Prosser wants her \$1 million compensation payout to jolt doctors into taking better care of their patients.

After a decade-long ordeal, Mrs Prosser yesterday won her battle against Sandra Eagle and the NSW North Coast Area Health Service after Justice Vince Bruce finally delivered a ruling in the case after a 16-month delay.

After the birth of her second "exceptionally large" baby in September 1988, Mrs Prosser went from being a fit and healthy mother to permanently disabled.

Justice Bruce yesterday ruled that all Mrs Prosser's injuries — including a fractured pelvis — were caused by Dr Eagle's bad medical advice.

Dr Eagle repeatedly assured Mrs Prosser she did not need a caesarean birth.

"I was a perfectly normal woman who trusted her doctor and went into to have a baby and came out like this," Mrs Prosser said yesterday from Canberra.

Her pelvis fractured during the birth of her 4.5kg son, Jordan.

Despite complaining about agonising pain hours after labour, Dr Eagle told her there was nothing wrong and she had to expect being sore because she "just had a big baby".

Justice Bruce said that during birth: "Mrs Prosser felt a violent contraction and both heard and felt popping, snapping and tearing inside her, akin to the sound made when one's joints are popped".

The fractures went undiagnosed for six months.

Since the birth, Mrs Prosser has endured 17 operations including the insertion and removal of pubic plates.

Once a woman who "didn't even take Panadol", she is now crippled by pain and suffers from loss of bowel functions.

Welcoming the successful end to her legal battle, Mrs Prosser said her family had "lost a house over this, we've hocked ourselves to the hilt".

She hoped the ruling "jolts some doctors into being a bit more careful".

Her case had been listed as an expedited hearing, but did not get to court until February last year. Mrs Prosser blames the initial delay on the medical defence team, not Justice Bruce.

But after hearing the case, Justice Bruce reserved his decision on February 25 last year. Mrs Prosser does not blame the judge, instead she believes the judicial system needs an overhaul.

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