

Insurance

Being a reasonable parent: What does it mean?

By **Gemma Healy-Murphy**



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(May 6, 2020, 10:33 AM EDT) -- Parenting is challenging, particularly when you are dealing with a teenager, or worse again, a "three-nager." We cannot always be there to watch over their every move. They take the school bus. They ride bikes. They cross roads. They drive cars. And we, as their parents, can be held responsible for their actions in law if they hurt others or damage property while so doing. At least until they turn 18.

Now, we all strive to be the "perfect" parent, whatever that may be. But fear not, while you may hold yourself to this impossibly high standard, the court does not. All you must be is reasonable. So what is a "reasonable" parent?

We can look to the *Parental Responsibility Act* (the Act) for guidance. Under this provincial statute, parents can be sued for loss of or damage to property caused by their children and for economic loss suffered as a consequence of same. The monetary threshold for recovery is the limits of the small claims court, which is currently \$35,000.

The Act places a reverse onus on the implicated parent, which means that once it has been established that the damage was caused by the child, the parent is presumed to be responsible.

Parents can rebut this presumption, however, if they satisfy the court that the activity that caused the loss or damage was not intentional. Failing same, parents will need to prove that they provided "reasonable supervision" over the child at the time the offence was committed and that they made "reasonable efforts" to prevent or discourage the child from engaging in such an activity.

The court may consider a variety of factors in making its determination in this regard, including the age of the child, the child's prior conduct and the potential danger of the activity, among others.

In *Connolly (Litigation Guardian of) v. Riopelle* 2010 ONSC 7140, an 8-year-old boy was in the care of his grandfather while his mother was shopping. The child was playing in front of his grandfather's house unattended for between 30 and 45 minutes when he was struck by a vehicle driven by the defendant driver. The grandfather moved for summary judgment on the basis that the allegation of negligent supervision made against him did not constitute a genuine issue for trial.

In denying the motion, the court found that there was a rational basis for the trier of fact to conclude that there was negligent supervision by the grandfather. He failed to look out on the child from time to time. The child had played in the yard only a few times before, perhaps never before without adult supervision and it was unknown whether there were attractions in this new setting that could prove too difficult for the child to resist when adults were not around.

If parents have delegated supervision, the court will consider whether that was a reasonable delegation — not whether they arranged for the best type of supervision available.

The case of *Shannon v. Westman (Litigation Guardian Of)* [2002] O.J. No. 2339 involved two minors breaking into a neighbour's house during the summer holidays and stealing several items, including jewelry to the approximate value of \$20,000. The court commented that in the absence of any special circumstances, children are capable of supervising and caring for other children once they are 12 years of age.

As a result, it was reasonable for the parents in *Shannon* to leave the two minors, aged 10 and 14, respectively, without direct supervision while they were at work. Further, no untoward incidents had occurred in the past while the 14-year-old was left to supervise.

The Act does not apply to personal injury claims. The ordinary principles of negligence govern and there is no reverse onus. The burden of proof remains with the plaintiff to establish that the parents were negligent in the manner in which they supervised their child and that this negligence caused the plaintiff's loss.

In *Arnold v. Teno* [1978] 2 S.C.R. 287, the Supreme Court of Canada elaborated on the reasonable parent test in negligence cases. Rather than look to the standards of the larger community or society generally, the court focused on the character and habits of the particular neighbourhood where the accident occurred.

Most recently, in *Lever et al v. Katerberg* 2019 ONSC 48, a case involving a young child who was run over by a lawnmower, the court heard from several neighbours to determine the community standard regarding parental supervision of children playing in a neighbourhood. The main question was whether the parents exercised reasonable care to protect the young plaintiff from reasonably foreseeable dangers, in light of the standard of care in the immediate community.

So what does it mean to be a reasonable parent? Know that perfection is not the standard, but do keep up with the Joneses. As so eloquently put by the court (citing *Ibrahim v. McLenahan* [1996] B.C.J. No. 3128), "all parents can do is inform and instruct, shelter and sustain." Be prudent and lead by example.

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