

Adequate supervision a must when watching others' children

By AdvocateDaily.com Staff



In a world full of backyard pools, play structures and trampolines, parents need to be more careful than ever to protect themselves against lawsuits due to other people's children injuring themselves during a play date, says Toronto personal injury lawyer **Jasmine Daya**.

That means providing an adequate level of supervision at all times, says Daya, managing partner with **Fireman Daya & Co.**

Accidents happen, but if children are closely supervised the chances of ending up in court after a fall or other mishap are much lower, she says.

"Many people don't realize that if you are watching a young child there's a legal responsibility on that party doing the supervision," Daya tells **AdvocateDaily.com**.

She recently represented the family of a five-year-old girl who broke her arm while playing in a neighbour's backyard.

"Her parents felt very comfortable — they knew the neighbour, it's a good neighbourhood," Daya says. "The parents understood that the child and her little friend would be playing on a structure in the backyard. But what they didn't know was that the parents would not be in the backyard — they'd be staying in the house.

"When the little girls started jumping from the top of the play structure there was no one to say, 'Girls, you shouldn't be doing that. It's dangerous.' My client fractured her arm and was screaming and in pain, and this other young child had to go and find help."

As a result, the host parents are being sued for pain and suffering.

There is no outline in legislation of what constitutes providing adequate supervision but rather, common law principles are followed, Daya says.

"If a daycare or school doesn't have the appropriate ratios of students to teachers, that's a negligence issue, and it's failing to meet the ratios pursuant to the governing legislation that would be applied," she says. "But when it's your neighbour, failure to provide adequate supervision is what is often considered."

While kids are resilient and often bounce back quickly from broken bones, some will have lifelong issues due to plates or screws inserted to help with healing, but settlements often aren't enough to fully compensate for that, Daya says.

"If they've had hardware put in them at such a young age, there's no way to know what the ramifications will be in the future. Unfortunately, our system is not adequately equipped to compensate for the future because no one wants to pay damages for what *may* happen. There has to be evidence that it *will* happen or that it is likely to happen. Once a case is settled, you can't go back for more if additional issues arise that weren't initially considered."

Daya herself has a backyard pool and her children's friends come to swim in it. She makes sure she or her husband are present at all times.

"If someone's child is hurt when I wasn't there to say 'Don't do cannonballs or dive in the shallow end' I would expect them to sue me," she says.

She cites another recent **case** involving a teenaged minor who was drinking at a friend's home. The parents were in the house. They did not serve them, but they also didn't stop them. The boy was later behind the wheel.

"This kid lost control of his vehicle and sustained a catastrophic impairment," Daya says. Now, the parents are being sued for social host liability despite not serving the minor alcohol.

"If a child sustains an injury such as paraplegia, you have to go to every pocket possible, because you must make sure the child is taken care of for the rest of their life," Daya says. "When a parent sues it's not necessarily out of malice, but out of necessity."