



## Sport Risk and Insurance Discussion

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The following is a short outline of the importance risk management/insurance for a Sports Club.

Risk is an integral element of sport. Sport without risk would cease to be sport. This unique aspect of sport must be factored into any discussion of risk management within sport facilities, programs and events. A second unique aspect of risk management in sport is that the overwhelming majority of opportunities to participate in sport in Canada arise out of the efforts of private, voluntary organizations. Governments may fund sport and may provide facilities, and private businesses may own professional teams and operate pro sport facilities, but participation in sport in this country is almost entirely the domain of the non-profit sector .

Some of us fondly remember the “kitchen table” days of amateur sport when decisions were made informally and little attention was paid to risk management. Today, the business of amateur sport takes place around the boardroom table. Voluntary sport organizations have greater responsibilities towards their participants and members than ever before, and today’s sport managers need knowledge and skills that they didn’t used to need, including knowledge and skills about the law, insurance, information technology, marketing, contracts and risk management.

In today’s non-profit organization risk management means more than locking away valuables and taking steps to keep participants from physical harm – it also means managing financial and human resources wisely, governing effectively, making decisions soundly and projecting a positive image towards sponsors, government funders and the community. Most sports club are typically governed by a voluntary board, its programs are overseen by committees and its day-to-day operations are directed by a small but dedicated staff.

### THE SPORT ORGANIZATION’S RISKS AND RESPONSIBILITIES

From the perspective of risk management, there are three important areas of responsibility for the sport organization:

- The sport organization’s first responsibility is **to provide a safe environment** for participants. This means having policies and standards that promote safe programs in safe facilities, overseen by qualified personnel and trained volunteers.
- The sport organization’s second responsibility is **to make decisions fairly**, especially decisions that affect members. This means having and following proper policies and procedures when making important decisions and handling disputes among members.
- The sport organization’s third responsibility is **to properly care for and protect its assets and resources**, including money, equipment, facilities and intangible property such as data, corporate image and marketing rights.

Failing to meet any one of these responsibilities can lead to unwanted consequences, some of which have a legal aspect:

- An **injury to a participant** can lead to a lawsuit that will cost the organization money and time and very possibly higher future insurance costs.



- **Poor conflict management** can lead to lawsuits that will take an emotional toll on individuals as well as cost money and take time. Even if legal action isn't the result of bad decisions, these disputes will harm important relationships, burn out volunteers and tarnish an organization's goodwill and public image.
- Finally, **failure to take care of assets** (whether tangible assets such as physical property or intangible assets such as intellectual property) is simply bad business management, and this in turn can have harmful financial and legal consequences.

Any one of these incidents – whether an injury, a dispute about decision-making, or a loss of property – will cost a sport organization money and other valuable resources, which means that fewer of these are available for the sport organization's most important business: providing program opportunities to participants.

The three main *types of risk* for a sport organization are:

1. *Physical injury* – this is the risk that a participant will be seriously hurt
2. *Wrongful actions* – this is the risk that an individual will experience a loss of rights or opportunities for which there is a legal remedy and for which the sport organization is responsible
3. *Property loss or damage* – this is the risk that property owned or controlled by the sport organization, or for which the organization is responsible, will be stolen or damaged and will need to be replaced

One way to mitigate the risks noted above is for the Sports Club to consider commercial insurance:

- Commercial General Liability
- Property
- Directors & Officers Liability

The following are some general recommendations regarding the sport organization's insurance program:

- Carry a limit of at least \$2 million of general liability insurance.
- "Named insured" and "additional insured" should include the directors, officers and employees (which are standard in most policies) as well as volunteers, members, athletes, players, coaches, instructors and officials.
- Ensure the policy includes a *severability of interests* clause (also known as cross-liability clause). Without such a clause, an insurance policy covers liability to third parties — that is, those outside the organization. Liability to other parties within the organization (your club's own members, volunteers, directors and players) would not be covered, even though such liability situations could, and do, occur in sport.
- Consider purchasing directors and officers liability insurance. Some general liability policies will also include errors and omissions coverage for the wrongful acts of directors and officers, which provides similar protection.
- In addition to the insurance clause described above, ensure that rental agreements for use of another operator's facility contain an appropriate indemnification clause, whereby the facility operator promises to indemnify the renting organization for losses it might incur as a result of their actions, or as a result of events that are their responsibility and not the responsibility of the renting organization. Conversely, if the sport organization rents out its



facility, ensure that rental contracts contain appropriate indemnification and insurance clauses.

- Another very common risk management technique in sport programs is to transfer risks to participants through “waiver of liability agreements” (also called “waivers”). Most active people sign waivers at one time or another, and many sport organizations ask their participants to sign waivers. Despite their widespread use, waivers are nearly always misunderstood. Some people think that having participants sign a waiver protects their organization from lawsuits. Conversely, some people who sign waivers believe they are meaningless pieces of paper. The truth is a bit of both — in some cases, the courts *have* upheld waivers. In other cases, and for a variety of reasons, they have not.
- Just like insurance, waivers are not the solution to every risk management problem. Properly drafted, carefully executed and used in appropriate circumstances, these contracts can protect a sport organization and its directors from liability for negligence. However, waivers have many limitations including the fact that they have no legal value when used with minors. Nor can a parent or guardian of a minor execute a waiver of liability for negligence on the minor’s behalf. Yet the parents of hundreds of thousands of children involved in minor sport programs throughout this country are required to sign waivers.
- As well, waivers should not be confused with “informed consent”, “assumption of risk” or “participant” agreements – documents that ask the participant to accept responsibility for the known inherent physical risks of the sport activity, but do not ask them to accept responsibility for another party’s negligence. In fact, these documents through which a participant consents to the physical risks of an activity (but not the legal risk that organizers of the activity will be negligent) are the only documents that can be used with minors. Documents such as these are strongly recommended. Although such documents do not protect an organization from liability for negligence, they do ask the participant and the participant’s parent/guardian to consent to the physical risks and hazards that are inherent in a sport, to accept responsibility for injuries the participant may receive as a result of these risks and hazards, and to be responsible for losses or damages that the participant might cause to others.
- Agreements such as these are also valuable educational tools that forewarn participants of the risks they are accepting and the possible consequences. They have considerable legal value as well, as they show that an organization has taken reasonable steps to inform participants of the risks involved in the sport, and by signing it the participant has agreed not to hold the club responsible for injuries or losses relating directly to these risks

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The whole text of this document has been copied from an August 2017 email to Walter Knecht from:

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My sincere thanks to Ms. Brigola.