

Risk Management for the Recreation Professional

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Recreation is an inherently risky business. In Canada, injury statistics show nearly thirty percent of all injuries to adults result from sport and recreation activities. This figure rises to 40 percent for injuries in the 15 to 24 age group. In Ontario, where sports-related injuries have at times been documented, fully half of these injuries could have been prevented through careful attention to risk management.

Why is Risk Management Important?

Besides injury prevention, there are other compelling reasons for managing risks in recreation facilities, events and programs.

Litigation is increasing. Quite likely Canadians will never be as litigious as Americans, but as a society we are more likely to sue today than we were five years ago. Every recreation organization faces the possibility of a lawsuit, and even the most frivolous lawsuits must be defended in court. Not only are lawsuits expensive, they also cost time, people, image and good will. Practicing risk management now can help your organization avoid lawsuits in the future.

Insurance costs are increasing. Between 1983 and 1986 the Canadian Ski Association saw its insurance premiums rise from \$7,700 to \$245,000, an increase of some thirty thousand percent. Many organizations find it difficult to obtain any insurance at all. At the time of writing, the Canadian Amateur Hockey Association was having difficulty purchasing affordable liability insurance coverage. Managing risks proactively helps an organization to be more informed about its insurance needs. Also, a comprehensive risk management program enables an organization to negotiate insurance terms with brokers and underwriters.

The client is changing. Participants are changing all the time, whether in terms of numbers, ages, preferences, or socio-economic background. For example, many older adults are becoming involved in organized recreation and sport programs, as are other special populations. These higher risk groups present new challenges for risk management.

Volunteers are crucial. Volunteers are no longer willing to expose themselves to personal liability. The shortage of volunteers has become so critical in the USA that some states have passed "little league laws" - legislation that protects little league coaches and officials who are sued for negligence. To keep good volunteers, organizations must take the necessary steps to manage risks in their facilities and programs.

Finally, **risk management is good business management.** It not only prevents injuries and saves money, it enhances image, public relations and customer service. It is also excellent marketing: remember, the injured participant will never return to a facility or program, nor will their family or friends. Successful recreation organizations are motivated to manage risks out of a desire to operate in a business-like manner, to serve customers well, to establish and communicate a positive image, and to meet a moral and ethical responsibility to participants, members, volunteers and the community.

Risk management is a planning process

There are very few practical sources of information for the recreation professional. Legal texts such as Carswell's new publication *Recreation and the Law* are complex and presume a certain understanding of law. On the other hand, safety reminders and checklists of "do's and don'ts" are far too simplistic. There is little in between these two extremes which clearly explains the legal concepts and provides the recreation professional with suggestions for practical action and problem-solving.

Perhaps even more important than this lack of basic information is that no single publication or agency advocates a broad process approach to risk management. Risk management is not an insurance policy, first aid kit, waiver form or warning sign (although these might be individual components of a risk management plan) - it is the identification and evaluation of risks and the selection and implementation of a number of risk management strategies. A risk management plan is the best defense an organization can have should it find itself in court defending a lawsuit.

Managing risks successfully requires:

- Understanding the legal principles which identify the standard of behaviour required by law;
- Going through a step-by-step risk management process; and
- Obtaining commitment of management, staff and volunteers to such a process.

Risk management is also an effort that is specific to each organization's needs, circumstances and resources. This means that risk management cannot be the sole responsibility of one person in your organization (a "risk manager"). It also means that one cannot "borrow" a risk management plan from another organization, nor can a plan be done and then parked on a shelf.

A risk management program must be constantly monitored - any time the facility, program, personnel or participants change, the risks management program may have to change. Similarly, any time the legal standard of care changes (either because written or unwritten standards change, or new cases are heard by the courts), the risk management program might need an adjustment.

There are a vast number of techniques that can be used to manage risks in a recreation facility, event or program. Many of these techniques become apparent only when a systematic inventory of risks is completed. Very often, organizations rely on just one or two techniques (such as insurance or a waiver form) and overlook other techniques which may be more effective and less costly. A good risk management program is a "mix" of appropriate, reasonable and affordable strategies suited to an organization's specific needs.

What About Waivers?

Waiver forms are used by practically every recreation organization in Alberta. Yet many organizations rely on waivers as a risk management tool without fully understanding what a waiver is and does.

Briefly, a waiver is a legal contract by which the party signing it, in exchange for the opportunity to participate in an activity, gives up the right to seek legal recourse in the event of an injury however caused, including injuries resulting from the other party's negligence. In other words, a waiver asks a participant to accept legal as well as physical risks. It asks them to sign away a very basic legal right - the right to be compensated for injury caused by another person's negligence.

There are many cases where courts have upheld waivers. Ethically, however, waivers present a dilemma. The organization which uses waivers is asking participants to condone their negligence.

For this reason, the courts examine waivers very carefully because they are such an onerous contract. Although not a Canadian ruling, it is interesting to note that the Supreme Court of Virginia recently declared that waivers went against public policy, with the result that waivers are no longer enforceable in that state.

Because a waiver is a contract, it must meet all the requirements of a contract. Children cannot sign either contracts or waivers, nor can a parent or guardian sign a contract or waiver for a child. (Exceptions are contracts relating to the necessities of life such as shelter or food). The person signing a waiver must also have the mental capacity to voluntarily waive a legal right: mentally handicapped adults and intoxicated adults do not have this capacity.

Risk Management is Not Difficult or Costly

This confusion about waivers is just one example of some common misconceptions about risk management in recreation. Many initial concerns about risk in recreation programs were in response to the liability insurance crisis of the 1980s. While rising insurance premiums were a good incentive for reducing risks, they had the effect of creating a false impression of what risk management is all about. A comprehensive risk management plan must be based on at least two related goals - reducing risks and avoiding negligence, not on simply saving money.

Risk management need not be difficult or costly. Most recreation professionals are practicing some amount of risk management, whether by design or by intuition and common sense. One can also do a risk management for one or a few programs, or even one part of a facility, before attempting a plan for the entire organization. A successful risk management program involves going through a thoughtful and deliberate process of identifying, measuring and controlling risks in a facility and program. A risk management plan is also the best way to show a court that you are striving to meet the "reasonable standard of care" required by law.

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