



# ROUND TABLE DISCUSSION

November 9, 2021

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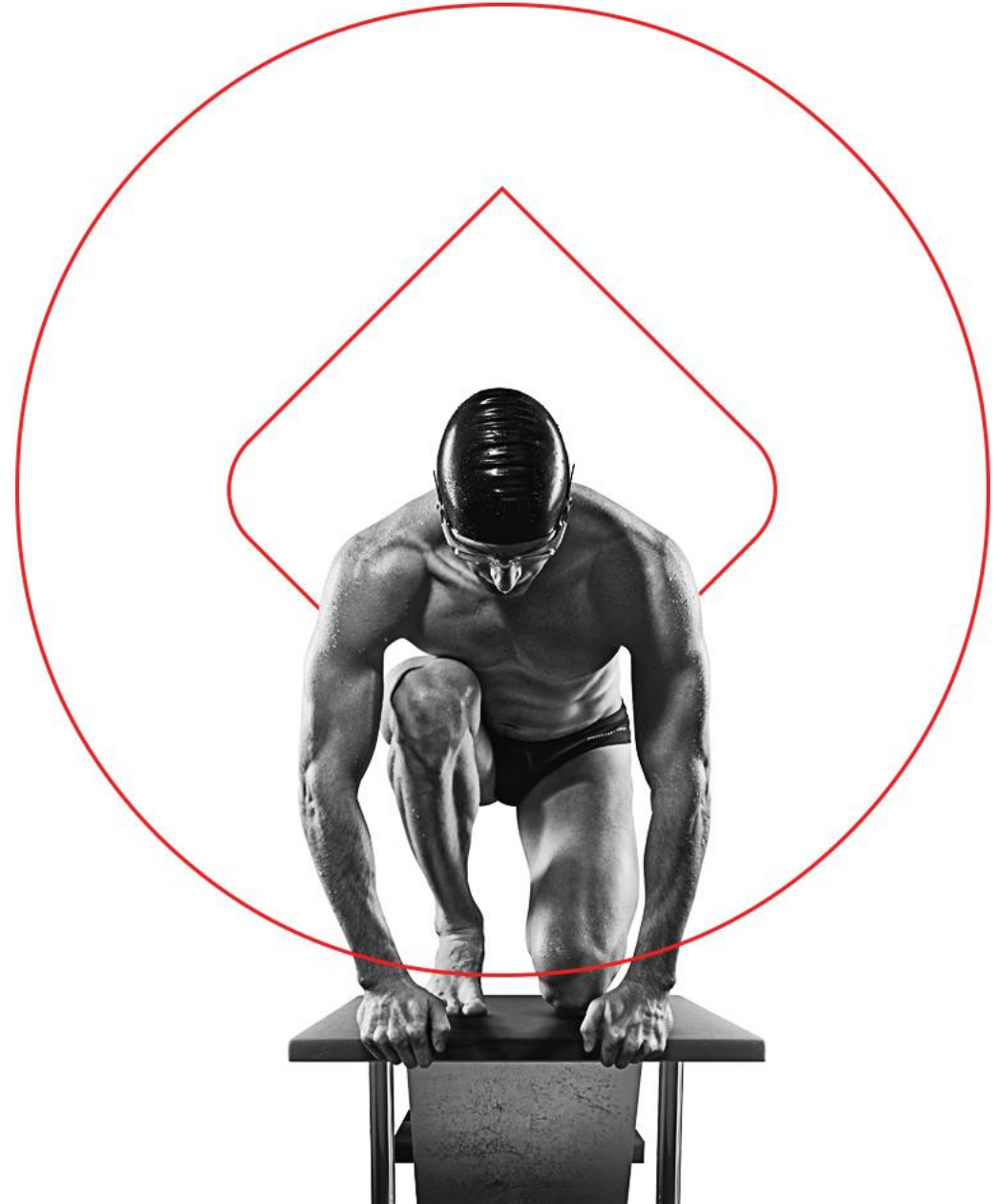
**SPORT LAW**

We know sport.

# WHO WE ARE: SPORT LAW

Our team loves working with sport leaders and organizations to help you achieve clarity and purpose.

- ◊ Leadership, Integral Coaching and Human Relations
- ◊ Legal Services
- ◊ Governance and Risk Management Solutions
- ◊ Planning and Financial Solutions
- ◊ Communications and Marketing Solutions
- ◊ Inclusive Solutions



# NEGLIGENCE



# NEGLIGENCE/ACCIDENTS

Negligence occurs only when:

- ◊ A Duty of Care is owed,
- ◊ The Standard of Care is breached,
- ◊ Harm or Loss occurs,
- ◊ The breach of the Standard causes or substantially contributes to the Harm or Loss.

# DUTY OF CARE

**To whom do you owe a duty of care?**

*“To anyone who you ought to know could be affected by your actions”*

# STANDARD OF CARE



- **Written/published standards**
  - Standards
  - Organization policies & rules
  - Manuals
  
- **Unwritten/unpublished standards**
  - New developments and Trends
  - Network
  - Pursue and Participate in Professional Development.
  
- **Case law**
  
- **Common sense**
  - Intuition
  - Knowledge
  - Experience
  - Gut

# STANDARD OF CARE



**Highest possible level of care**  
- risk is eliminated

**Reasonable standard of care in the  
circumstances** - risk is appropriately  
managed

**Failure to exercise any care**  
- risk is ignored

# INSURANCE





# WHO'S COVERED

- ◊ All registered participants or members:
  - Players
  - Coaches
  - Manager
  - Officials and referees
  - Directors and officers
  - Staff
  - Volunteers

# WHEN?

- ◊ **During all regular sanctioned activities – Under supervision**
  - Lessons
  - Programs
  - Practices
  - Camps
  - Clinics
  - Games
  - Tournaments
  - Meetings
  - Fundraisers
  - Gala/ Year End party

# EXCLUSIONS

- ◊ Contagious diseases (including COVID-19, SARS, ebola, Bird Flu, Legionnaire's Disease) are now excluded from general liability insurance policies, errors and omissions policies and travel policies
- ◊ Organizations will be responsible for legal defence fees, damages (if any) and cost awards in the case of litigation

# Risk Management Techniques



# RISK MANAGEMENT 101



- ❖ **Identify risks** – ask, what are the things that can go wrong?
- ❖ **Measure and evaluate risks** – ask, what is the chance it will go wrong, what are the consequences if it does?
- ❖ **Control risks** – ask, what can I do about it?

# IDENTIFY RISKS



## COVID Related Risks:

- ✓ Compliance Risks
- ✓ Financial Risks
- ✓ Communications Risks
- ✓ Operational/Program Risks
- ✓ Reputation Risks

# WAIVERS

A close-up photograph of a hand holding a dark pen with a gold nib, signing a document. The document has a red dashed line and some text, including "On behalf of the Client (author..." and "...of the Developer (authorized by...". The word "WAIVERS" is overlaid in large, bold, red capital letters in the upper left corner.

**An intentional, informed and  
voluntary agreement to give up  
a known legal right**

# 2 TYPES OF RISK IN SPORT

## PHYSICAL RISK

The risks, dangers and hazards that are inherent in the sport activity. These risks are unavoidable, reasonable and in many cases, desirable

## LEGAL RISK

The risk that the organizers of the sport activity will behave negligently. This risk is not inherent in the sport, nor is it desirable, reasonable or acceptable



# WAIVERS

**CONTEXT** – is the waiver being used in a setting that is appropriate for such use

**WORDING** - is the waiver easy to read and understand?

**CONTENT** - are all activities, all parties, all risks covered (including negligence)?

**EXECUTION** - does person have authority to sign a contract, did they have an opportunity to read and understand the contract, did they sign the contract voluntarily?

# WAIVERS - 3 ESSENTIALS

- Description of risks you are asking participant to accept - including both physical risks of the sport and legal risk of your negligence
- Participant's "release" or "waiver" of liability - the backbone of the waiver is the participant's knowing relinquishment of their right to sue you
- Participant's acknowledgement - that they have understood the terms of the waiver - and are signing it voluntarily

# INCORPORATION AND THE CORPORATE VEIL

## Limited liability

- ◊ The law recognizes people and corporations (societies)
- ◊ Corporations can sign contracts, purchase property, be sued and assume liability
- ◊ Individual members are legally protected from having to pay any of the liabilities or debts that the organization may incur. There are some limits to the extent of this protection and many organizations purchase both organizational liability and director's liability insurance.

# REALITY CHECK

The law does not cut you slack because you are **'volunteer-based'** or **'volunteer-led'**.

But Remember...

The law never expects perfection, it only expects reasonableness

# RETURN TO ACTIVITY

- Adherence to Provincial/Territorial government regulations and guidelines
- Develop and implement policies
- Precautionary Measures may include
  - Constant Communication and Education
  - System for regular cleaning, sanitization and inspection
  - Keep a record of steps taken
  - Post clear signs
  - Declarations/Attestations
  - Waivers/Assumption of Risk Documents

(Keep records)

# Litigation Matters



# COVID LITIGATION

- ◊ Personal injury lawyers usually work on contingency fee (they retain a portion of the award to be compensated for their fees)
- ◊ Without insurance, there is likely no money to be collected, therefore the lawyer would likely charge an hourly rate to the claimant making the process expensive
- ◊ It will be difficult to prove causation – how did the person contact COVID-19?
- ◊ Damages may be minimal

# FACILITY RENTAL AGREEMENTS





# SECTIONS TO CONSIDER

- ◊ Insurance
- ◊ Indemnity
- ◊ Cancellation, Termination and Remuneration
- ◊ Force Majeure

**ANY QUESTIONS?**



# CONTACT US

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