

INFORMATION PACKAGE ON LEGAL ISSUES FOR COACHES

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1. REFERENCE MATERIAL ON COACH LIABILITY

More than ever before, coaches are aware of the risks and responsibilities they assume when they coach. These risks and responsibilities include those that are legal in nature. No matter what their certification level, experience, employment or volunteer status, sport discipline, or location of residence, coaches *at all times have a legal obligation to provide a safe environment for participants.*

To understand this obligation more fully, the coach must understand some key legal principles including negligence and liability. In order to fulfill this obligation, the coach must also understand concepts and techniques related to risk management. With this knowledge, the coach can determine the applicable standard of care, can assess his or her own coaching situation for risks, and can put in place appropriate measures to manage these risks.

These three topics – negligence, liability and risk management – are discussed below. This section concludes with a ten-point ‘personal risk management plan’ for the coach.

Negligence

Negligence is a legal term with precise legal meaning. The term relates to standards of behaviour that the law expects, and understanding the law of negligence is an essential first step for learning how to provide a safe environment for participants.

In general terms, negligence refers to behaviour or action that falls below a ‘reasonable standard of care’. The law in Canada demands that we behave in a particular way so that others who might be affected by our actions are not exposed to an unreasonable risk of harm. The standard of behaviour the coach is expected to meet is what is termed an ‘objective’ standard. As adults and as coaches, we are all credited with the same general intelligence and sensibility, and thus the law expects each of us to behave in a reasonable fashion when confronted with similar circumstances.

The law does not expect a coach to be *perfect* in his or her behaviour, only to be *reasonable* and to act as other reasonable coaches would act in the circumstances.

It is widely accepted that there is a certain amount of risk in many sport activities and that such risk is knowable, foreseeable, acceptable and, depending on the sport, even desirable. What is unacceptable in sport is behaviour that places participants in a situation of unreasonable risk or danger.

A coach's conduct is negligent when all four of the following conditions occur:

- a duty of care exists (such as that which exists between a coach and participant);
- that duty imposes a standard of care that is not met by the coach;
- a participant, or other person, experiences harm; and
- the failure to meet the standard can be shown to have caused or substantially contributed to the harm.

For the coach, the 'standard of care' is the most important of the above elements. The standard of care is what the coach *ought* to do in a given situation. Standard of care is difficult to define precisely because it is influenced by the risk inherent in the surrounding circumstances. Thus, the duty to act responsibly remains constant, but the specific behaviour required to fulfill that duty will change with the circumstances.

To determine what the standard of care is in any given circumstance involves looking to four sources:

- *Written standards* – these are government regulations, equipment standards, rules for a particular sport or facility, rules from a sport governing body, coaching standards and codes of conduct, and other internal risk management policies and procedures.
- *Unwritten standards* – these are norms or conventions in a sport, an organization or facility that might not be written down but are nonetheless known, accepted and followed.
- *Case law* – these are court decisions about similar fact situations. Where the circumstances are the same or similar, judges must apply legal principles in the same or similar ways. Prior decisions of the court are a guide, or precedent, for future decisions where the facts are similar.
- *Common sense* – this means simply doing what feels right, or avoiding doing what feels wrong. Common sense is the sum of a person's knowledge and experience, and trusting one's common sense is a good rule of thumb.

All four of these taken together provide a guide to the coach as to how to behave in a particular situation. The responsible and prudent coach is familiar with written policies that govern him or her, is aware of unwritten norms and practices, knows something of the case law as it applies to coaches, and has learned to trust his or her intuitive judgment and common sense.

Liability

Where all four conditions of the legal definition of negligence have been met, negligence of the coach may be established. What follows then is the question of liability. While negligence refers to *conduct*, liability refers to the *responsibility* for consequences of negligent conduct. Responsibility may lie with the coach who was negligent, or with another person or entity entirely.

For example, an insurance policy transfers the financial liability for negligence to an insurance company. A valid waiver of liability agreement eliminates liability entirely. An injured participant may be partially responsible for his or her injuries and thus may share liability with the negligent coach. Finally, a sport organization may be vicariously liable for the negligent actions of its coach, whether he or she is an employee or a volunteer.

Liability can also refer to responsibility for the consequences of conduct that fails to meet a pre-determined legal standard other than the standard of care in a negligence situation. In addition to the liability that can arise from negligence, liability can also arise when a law is broken or when a contract is breached. The prudent coach ensures that these types of liability are avoided by adhering to laws and complying with contractual agreements.

In summary, an understanding of the legal meaning of *negligence* answers the coach's question "how does the law expect me to behave?" The follow-up question is, "how can I be sure that my behaviour will meet this expectation?" The answer to this question lies in *risk management*.

Risk management

Risk management is defined as 'reducing the chances of injury or loss by taking steps to identify, measure and control risks'. This is not complicated and means that the coach spends time thinking about potentially risky situations, decides which situations might pose serious risks, and determines what practical steps he or she can take to minimize those risks. The common ingredient in all these tasks is common sense.

There are four strategies for controlling risks, all of which are important to the coach. These are:

- *Retain the risk* – the risk is minor and it is inherent in the sport activity, and the coach is willing to accept the consequences, so he or she does nothing about the risk. In sport situations, this is often a legitimate risk management strategy.
- *Reduce the risk* – the risk is moderately significant and the coach takes measures to reduce the likelihood of the risk occurring, or the consequences if it does occur through careful planning, supervision and education of participants.

- *Transfer the risks* – the risk is significant and it is transferred to others through contracts, including waivers and insurance.
- *Avoid the risks* – the risk is severe and the coach decides to avoid doing what it is that creates the risk in the first place.

A word of caution for coaches: there is no cookie cutter, template, formula or checklist for risk management. The law expects coaches to provide a safe environment for sport participants, but what that means for a coach's conduct will vary with the circumstances, including the age and skill level of participants and the environment in which the coaching activity occurs.

The competent coach is generally aware of the standard of care expected of him or her and meets or exceeds this standard by anticipating risks and taking steps to manage risks in all coaching activities.

Putting it all together – the coach's personal risk management plan

The informed and prudent coach protects himself or herself by implementing a personal risk management plan. This plan helps the coach on two fronts: firstly, it will promote a safe program and help to prevent injuries from occurring in the first place, and secondly, when an injury cannot be prevented, it will help to protect the coach from liability claims.

Coaches can, and should, practice their own personal risk management by following this ten-point plan:

1. Be familiar with and adhere to applicable standards, both written and unwritten, as well as internal policies and rules governing the facility, the sport and your program.
2. Monitor your participants' fitness and skill levels and teach new skills in a progressive fashion suitable to the age and skills of your participants. Never leave participants unsupervised!
3. If you do not have access to medical personnel or a qualified trainer, keep adequate first aid supplies on hand: ideally, you should be trained in administering first aid.
4. Develop an Emergency Action Plan for the facility or site where you regularly practice or compete. Carry with you at all times emergency contact numbers and participants' personal and medical information.
5. Inspect facilities and equipment before every practice and game and take steps to ensure deficiencies are corrected immediately. If they cannot be corrected immediately, adjust your activities accordingly to avoid the risk.

6. Work with your employer or sport organization to use appropriately worded 'assumption of risk' agreements in your programs, and where appropriate in settings involving adult participants, 'waiver of liability' agreements.
7. You should be covered by the liability insurance policy of your employer (if you are a paid coach) or your organization (if you are a volunteer coach). Confirm that this is the case. If it is not, obtain your own insurance.
8. Do not be afraid to stop or withdraw from any activity that poses unreasonable risks, including stopping a practice or removing your team or your athletes from a competition.
9. Trust your common sense and intuition!
10. Lastly, actively pursue your own training, professional development and coaching certification.

2. DEALING WITH LEGAL AND ETHICAL SITUATIONS

The main areas of Canadian law that apply to the activities of coaches include criminal law, contract law, administrative law, tort law (also known as the 'law of negligence'), human rights law as well as laws relating to the welfare of children.

A coach may find him or herself in a situation that has legal consequences. That is, the actions of the coach, or of another person with whom the coach interacts, may be in contravention of the law. Examples of such actions include:

- Actions that are criminal or quasi-criminal (these are wide-ranging and could include theft, assault, sexual assault, other sexual offenses, possession of narcotics, underage drinking, driving without a license or insurance, forgery, fraud, vandalism, etc.)
- Actions that breach a contract (these could include someone acting outside the scope of their delegated authority, violating agreed-upon rules relating to the use of a facility or equipment, or failing to meet other contractual obligations)
- Actions or information that indicate reasonable grounds that a child may be in need of protection
- Actions that are discriminatory (actions of a government, organization or individual that are contrary to the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, or any provincial human rights legislation)
- Actions that constitute harassment (harassment is a form of discrimination and is contrary to human rights laws: in its extreme form, harassment may be a criminal offense)
- Actions, even those that are not intentional, that could constitute negligence, as legally defined

A coach may also encounter a situation where a person has violated an organization's internal policies, such as a code of conduct, a risk management policy or a safety rule. While such actions may not have legal consequences, they nonetheless represent a violation of established standards and norms and should be brought to the attention of the entity that is responsible.

A coach occupies an important position of authority and accordingly, has important legal responsibilities. Where a coach is confronted by a legal situation such as those described above, he or she has a duty to do something about it. This would involve:

- Reporting the situation to police, where the coach is aware of or reasonably suspects criminal or quasi-criminal activity;

- Reporting the situation to child protection authorities, where a coach suspects that a child has suffered physical or emotional harm, or is in circumstances where there is the risk of such harm;
- Reporting the matter to the employer or to the organization having authority over the persons involved in the conduct, for all other legal matters.

The coach may also encounter ethical situations. Ethical conduct can be described as behaviour that meets accepted standards or principles of moral, professional or just conduct. Unethical behaviour is that behaviour that is immoral, unprofessional or unjust.

Law and ethics are related and overlap, but they are not identical. Conduct that is illegal is always unethical. Yet some forms conduct will be unethical even though they are legal. The law represents an absolute minimal standard of behaviour, while the standard for what is ethical behaviour is somewhat higher.

When the coach encounters a situation that does not violate any law but nonetheless raises ethical questions, he or she must make decisions about how to respond. The following decision-making framework may assist the coach in evaluating and acting upon an ethical situation:

Look at the situation from both perspectives

There are two sides to every story. Do you understand both sides of the issue? Consider discussing the situation with the affected parties to better understand their perspective.

Understand the ethical dimension of the situation

Have you fully understood the issues raised by the situation? How does the situation relate to the 3M NCCP Code of Conduct, and to your coaching values and philosophy? Look critically at the situation from the perspective of morality, professionalism and fairness.

Reflect on your loyalties, values, intentions and possible outcomes

To whom do you owe a duty (to the participant, a colleague, the employer, the organization)? Are your loyalties in conflict, and can you resolve such conflict? What do you want to achieve by your decision? What is the likely outcome? Might your decision result in a different outcome than you intended? Who could be harmed or hurt by your decision and its outcome (whether intended or not)? Can you live with that result?

Consolidate your decision based on ethical principles

Take time to review your decision before putting it into effect. Reflect on its ethical dimensions. Is your position consistent with your values and loyalties? Is it consistent with the 3M NCCP Code of Ethics? Would you be comfortable disclosing your position to your colleagues, employer, family, to the public? Would there be any exceptions to the position you are considering? Why?

3. QUESTIONS AND ANSWERS

1. What are the major differences between provinces regarding the law and how does this impact me as a coach?

Laws in Canada can be divided into *public* laws (those laws that govern relations between the state and individuals) and *private* laws (those laws that govern relations between and among individuals and private entities – this area of law is also referred to as civil law). In Canada, public laws are generally in federal jurisdiction while private laws are generally in provincial jurisdiction.

The most well-known body of public law in Canada is the Criminal Code: this applies to everyone, regardless of province of residence. Civil law varies from province to province, but not greatly. Examples of civil law relevant to coaches and varying slightly from one province to another include human rights law, occupier's liability and the law of defamation.

An important distinction between criminal law and civil law is that there is a different 'standard' of proof, where the standard of proof refers to the certainty with which something must be proven. In criminal matters, guilt must be proven 'beyond a reasonable doubt' (a fairly high standard), while in civil matters, fault must be proven 'on a balance of probabilities' which means with a certainty that is greater than 50 percent. This is a lower standard of proof than the criminal standard. Thus, a person charged with a criminal offense could be found not guilty, while the same allegation made under civil law might be upheld.

In criminal law penalties are imposed and may include fines, restrictions on activities, restitution (paying back the person harmed) or imprisonment. In civil law, the penalties take the form of monetary compensation. The amount of compensation will depend on the cost to reimburse the harmed person for their expenses and lost income, and will also attempt to place a monetary value on any injury that the person sustains. The courts can also require a person to perform a certain service (such as following through with a contractual promise) or to refrain from doing something in the future.

2. Are paid/contracted coaches subject to a different standard than are volunteer coaches?

Yes and no. Paid and volunteer coaches of equivalent knowledge, skill and certification, performing equivalent duties within a sport setting, will likely be held to the same legal standard of care. They will, however, have different entitlements and privileges in other areas of the law – for example, a volunteer does not have the rights an employee has under employment standards legislation.

Depending upon the circumstances of a coaching activity, paid and volunteer coaches could be held to the same or similar standard. However, coaches who are paid and coaches who are not paid will usually have different duties, obligations and

scope of authority. This will influence the standard of care to which they will be held. This standard is not dictated by whether or not they receive payment for their services, but rather is dictated by the scope of the coach's responsibility and the nature of the relationship between the coach and the participant. The standard of care is constant in that it is always a reasonable standard: however, what is reasonable will vary depending upon the circumstances in which the paid coach and the volunteer coach find themselves.

3. Are coaches who are also physical educators held to a different standard?

Yes and no. Children are required by law to go to school and when in school they are under the authority and care of school officials, including teachers. Thus, a teacher has a statutory duty to stand 'in loco parentis', a legal term meaning that he or she stands in the place of a parent with respect to his or her students. As such, teachers have duties and responsibilities equivalent to that of a 'prudent parent', and must behave as a parent would behave in caring for their child. Coaches who are not in a school setting do not stand 'in loco parentis' in the same way that teachers do, and are not required to meet this statutory duty.

However, both coaches and teachers have specialized skills and knowledge and have a responsibility to provide a reasonable standard of care. The standard of care for anyone is determined by written standards, unwritten standards, case law and common sense. The coach who is also a teacher will be held to written and unwritten standards that govern coaching (such as coaching manuals, rules of the sport, coaching code of conduct) as well as written and unwritten standards that apply to teachers (such as teacher's manuals, school board policies, and duties imposed by statute upon teachers). The coach in the school setting must fulfill both roles and must adhere to standards that apply to both coaching and teaching activities.

4. How would a judge describe a "reasonable and prudent person" when referring to a coach?

A coach will be held to an objective standard of behaviour that is what an average and reasonable coach would do, or not do, in the same circumstances. Black's Law Dictionary defines 'reasonable care' as 'that degree of care which a person of ordinary prudence would exercise in the same or similar circumstance'. A coach has special skills and knowledge and is not the same as a 'person of ordinary prudence', thus the reasonable standard for the coach will be that standard expected of a reasonably prudent coach having similar knowledge and skill and finding themselves in similar circumstances.

Keep in mind that the standard is 'objective', meaning that it is determined not by what a coach *did* or *did not* do in a situation, but by what a coach *ought* to have done, or *ought* not to have done, in a situation. It might be tempting to believe that if a coach obtains less training and gains less knowledge, he or she will be held to a lesser standard. This is not the case, as the circumstances may well require a coach

of greater knowledge and skill, and that will form the benchmark against which the coach's conduct will be measured.

5. Are there differences if you are a head coach or an assistant coach?

Yes. The head coach and assistant coach have different degrees of responsibility and authority. The behaviour required to meet the standard of care is influenced by this.

6. What is jurisprudence?

Technically, jurisprudence is defined as the "philosophy of law" or the "science of law". For everyday purposes, jurisprudence refers to legal principles and how they have evolved over time. The law is not static: it continually evolves to reflect changing community standards. Jurisprudence refers to the principles that are reflected in our laws, both in legislation and in common law (also referred to as "judge-made" made or the accumulated body of court decisions).

7. If I am required to sign multiple Codes, to which will I be held, or will I be held to all?

You will be held to all of the Codes you execute, within the specific jurisdiction in which they have been signed. In other words, if you sign a Code with your provincial sport body it may hold you to it for the activities you undertake for it or within its jurisdiction. If you sign a Code for a local sport club, it may hold you to it for activities you undertake with and for the club.

There may also be situations where your activity is subject to two or more Codes at the same time, such as if you are coaching at the Canada Games. Unless the Codes specify clearly which one might take precedence, or "trump" the others, then all may apply simultaneously. This can create difficulties if any of the terms in different Codes are contradictory.

8. Is special liability insurance a requirement or is it highly recommended for coaches?

Special liability insurance is not a requirement for coaches, but is highly recommended as a risk management measure. Ideally, organizations that employ or engage coaches should include the coach as an insured party under their general liability insurance policy. Coaches should confirm this is the case, and if it is not, the coach should insist that the policy be revised accordingly. As a last resort, an individual coach can purchase his or her own insurance, but this may be difficult to obtain and expensive.

9. What happens if I am uninsured? Are my personal assets at risk?

The purpose of liability insurance is to cover the costs that an individual might have to pay in the event they are sued, or are required to compensate another person for loss or damage. Insurance may also cover the costs to defend oneself or to otherwise respond to an allegation of wrongdoing, even where such an allegation may prove to be untrue.

The vast majority of coaches never find themselves in situations where they need insurance. However, if they do and they are not covered by an insurance policy, then they will be personally responsible for paying these costs. This could mean tapping into savings and other personal assets.

It is also important to note that insurance policies and coverages vary widely and a given insurance policy may not cover all of the coach's circumstances or all financial obligations.

10. What are my responsibilities if an accident occurs and must I accompany an athlete to the hospital?

The coach's responsibilities begin long before an accident occurs. The coach should have an Emergency Action Plan that identifies who does what in the event of an accident, and should have on hand all the necessary information to contact emergency and medical authorities as well as parents/guardians, and to inform medical professionals of the medical history of the injured person.

A coach does not necessarily have an obligation to accompany an athlete to the hospital – it will depend on the nature and severity of the injury, whether or not there is another responsible person available to accompany the athlete, and whether the remaining athletes can be properly supervised should the coach be required to leave. The coach will have to make informed decisions about these matters depending on the circumstances: the Emergency Action Plan provides guidance for this decision-making, which is why it is so important to have prepared in advance.

12. What are the most commonly occurring cases of coaches who require legal assistance?

Coaches most frequently need legal assistance to deal with employment matters such as employment contracts and termination. They also seek assistance to deal with allegations of harassment and misconduct matters. On occasion, coaches require legal assistance when implicated in a lawsuit from a person who has been injured and is seeking compensation.

13. What are the key preventative measures a coach can take to protect himself/herself?

The competent, informed and prudent coach practices his or her own 'personal risk management' as described in the NCCP materials. A ten-point plan is presented there that lays out an array of risk management techniques accessible to all coaches. A coach protects himself or herself through gaining knowledge about negligence and liability, and applying techniques to identify and control risks in the coaching environment.

4. EMERGENCY ACTION PLAN (EAP)

An Emergency Action Plan (EAP) is a plan designed by a coach to assist him or her in responding to emergency situations. The idea behind having such a plan prepared in advance is that it will help the coach, and others, respond in a professional and clear-headed way under stressful circumstances.

An EAP should be prepared for the facility or site where you normally practice and for any facility or site where you regularly host games. For away games, ask the host team or host facility for a copy of their EAP.

An EAP can be simple or elaborate, but should cover off the following seven items at a minimum:

- Designate in advance who is in charge in the event of an emergency (this may very well be yourself, the coach).
- Have a cell phone with you, with battery fully charged. If this is not possible, know exactly where a telephone that you can use is located. Have spare change in the event you need to use a pay phone.
- Have emergency telephone numbers with you (facility manager, fire, police, ambulance, public safety) as well as contact numbers for your participants (parents, guardians, next of kin, family doctor).
- Have on hand a medical profile for each participant, so that this information can be provided to emergency medical personnel. Include in this profile a signed consent from the parent/guardian to allow medical treatment in an emergency.
- Have a first aid kit accessible and properly stocked at all times. All coaches are strongly encouraged to pursue first aid training.
- Designate in advance a 'call person" (the person who makes contact with medical authorities and otherwise assists the person in charge)
- Be sure that your call person can give emergency vehicles precise instructions to reach your location or site.