

New Liability Trends, Potential New Risk for Sports Associations

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Author: Larry Reimer

The legal tests for liability in the sports world have evolved. The new, less-predictable standards may mean increased risks for the associations which govern. So what has changed, and what can organizations do to protect themselves?

From ‘volenti’ to the ‘reasonable player’—two ends of the liability spectrum

Liability for injuries suffered in sports used to be judged by a different standard than injuries caused by, say, a car accident. The idea was that many sports, especially contact sports, carried with them an implied assumption of risk. The determination of whether defendants were liable included a discussion of ‘Volenti non fit injuria’—‘to a willing person, injury is not done.’

In short, while competitors may not follow the rules, they do have to stay within the ‘code’ of the sport. For instance, collisions, and indeed fighting, happen in hockey. That’s generally an assumed risk. But vicious stick-swinging with intent to cause serious harm is over the line. It isn’t deemed to be part of the sport, isn’t expected, and may indicate liability.

Recently, however, some courts in other provinces, and even in Ontario, have applied a general negligence standard that now blurs the line between liability in sport and in other ordinary endeavours. Proof of intent or recklessness is no longer as important. Instead, courts are starting to ask more nuanced questions about liability. For each individual case, they seek to determine, ‘What would a reasonable competitor have done?’ – a much less predictable test and potentially more plaintiff-friendly than the traditional standard.

What does this mean for sports organizations?

That unpredictability makes it harder for associations to identify and manage their liability risk. But the best organizations effectively reduce their exposure by improving their performance in five key areas:

1. Implement a strong waiver process. Make the waiver as simple and clear as possible. Make sure everyone reads it. Explain what it means. And make sure everyone signs.

2. Continue to improve education, for players and sports officials, around injury risks and the legal issues associated with them.
3. Continue to modify rules to reduce risk of harm and encourage reasonable player behavior.
4. Continue to refine referee training and coaching certification in support of those rules.
5. Optimize medical training and injury protocols to increase player safety.

The last word

Voluntary assumption of risk is still part of the analysis when determining liability, but the courts are moving towards a less predictable, 'reasonable competitor' standard. To reduce their exposure, associations need to see that potential risks are clearly understood by all and should continue to improve the rules and processes that might reduce those risks.

To find out more about your liability risks, and what you can do to reduce them, contact me at Ireimer@blaney.com.