

Legal Liability

This document outlines the common legal obligations and liabilities of sports clubs and recreation organisations in New Zealand, and outlines possible ways to minimise liability. This report is general in nature and is intended as a preliminary guide only ; sport and recreation organisations should obtain their own legal advice where appropriate.

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Checklist to reduce potential liability

By way of summary, the following checklist outlines the basic steps sport or recreation organisations can employ to reduce potential liability. The focus needs to be identifying and minimising or eliminating any potential risks to spectators, participants, officials and property.

1. Consider your own regulations and safety procedures. Make yourself aware of overseas and national trends or developments in your sport, and where appropriate, implement them into your own regulations and safety procedures.
2. Consider any relevant council bylaws or regulations that may affect the event.
3. Implement and maintain regulations and safety procedures at a local and national level. This requires a set of clearly defined procedures (guidelines and standards) being put in place for particular sports or events.
4. Identify who will be involved, (participants, spectators, officials, media and volunteers) and assess the potential duties you may owe different individuals and groups.
5. Develop an appropriate risk management strategy.
6. Warn participants and spectators of any possible risks and hazards through as many means as possible.
7. Ensure that organisers of events, operators, volunteers, as well as participants are fully aware of the guidelines and standards that apply to them and ensure that these are applied and observed.

Liability of Sport and Recreation Organisations in New Zealand

Sport and recreation organisations owe a range of responsibilities to employees, volunteers, officials, participants, spectators, and sometimes other members of the public. When these responsibilities are not properly addressed liability may result for the organisation and/or individuals associated with the organisation. Liability in this context is being held legally responsible for an act or omission.

This document attempts to provide a practical guide to liability for sport and recreation organisations. Accordingly, there are sections covering: (1) who may be liable; (2) the various forms of liability; (3) the implications of being found liable; and (4) ways to reduce liability.

A series of examples are also outlined to provide a guide as to how the New Zealand and overseas Courts have looked at various issues and to demonstrate how these issues may apply in practice. The New Zealand cases that are set out as examples represent the law in New Zealand. The overseas cases assist in demonstrating the nature of the duties that are owed by sports and recreation organisations. However, New Zealand's Accident Compensation scheme will bar most of these cases from being brought in New Zealand. In the event that the scope of the exclusion under the Accident Compensation scheme change, they may become increasingly relevant.

Definitions

<i>Civil Proceedings</i>	proceedings which are not criminal, ecclesiastical (church related) or military
<i>Crown:</i>	the Queen as Head of State of New Zealand, acting through Ministers and Government departments
<i>Common Law:</i>	the body of law arising from tradition and judicial decisions, as distinguished from law created by Parliament
<i>Damages:</i>	money awarded to a party in civil proceedings as reparation for the loss or injury for which another is liable
<i>Defendant</i>	the person who defends the civil or criminal proceedings brought against him or her
<i>Duty of care:</i>	the duty that a person owes to someone else in circumstances where the first person should have contemplated that their acts or omissions could harm the second person
<i>Indemnity:</i>	an undertaking that, if a claim is made against Party A by a third party or loss is suffered by Party A, due to Party B's actions or omissions, then Party B will compensate or reimburse Party A for the costs, loss and damage incurred by Party A. An indemnity does not waive Party A's liability to the third party, it only allows Party A to claim compensation from Party B for Party A's liability to the third party
<i>Negligence:</i>	a tort which protects and compensates people who can prove that they have suffered reasonably foreseeable harm that was caused by another person who owed them a duty of care and that other person failed to exercise the degree of care expected of a reasonable person in similar circumstances

<i>Plaintiff</i>	the person who institutes civil proceedings
<i>Reasonable person:</i>	a fictional person with an ordinary degree of reason, prudence, care, foresight or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something
<i>Tort:</i>	a legal civil wrong, such as negligence and nuisance, for which remedy can be sought in a court, except that which involves a breach of contract or a breach of trust
<i>Volunteer:</i>	a person who does not expect to be rewarded for work to be performed as a volunteer; and receives no reward for work performed as a volunteer; and does not include a person who is in a place of work for the purpose of receiving on the job training or gaining work experience (as outlined in the Health and Safety in Employment Act 1992)
<i>Waivers:</i>	the act of intentionally relinquishing or abandoning a known right, claim, or privilege; <i>also:</i> the legal document evidencing such an act.

Who may be liable?

Sport and recreation organisations

Sports and recreation organisations or promoters are most at risk of liability being attached to them due to their roles in organising events or providing oversight of particular sports or recreation activities. This is the group most likely to be able (and expected) to implement safe procedures because of their control over the event or code.

Example 1: Evans v Waitemata Pony Club [1972] NZLR 773 (NZ)

In this case, a horse which was tethered to a branch broke free causing injury to a group of spectators, due to the inadequate provision of hitching rails and no separate enclosure for competing horses. The organisers were found liable for damages because they did not meet their responsibility to ensure the area and mode of operation were reasonably safe.

Sports and recreation organisations or promoters may have vicarious or secondary liability for the acts or omissions of other people. Vicarious or secondary liability is a legal principle that is most commonly found in employment law, however, it can be translated to apply to volunteers, participants, officials or sporting bodies. This form of liability arises when an employee commits an offence or wrong in the course of his or her duties and the employer is held liable for the actions of their employee. It can also mean that an employer is held liable for an employee's negligence, unless the actions committed by the individual were outside of their duty or role or well beyond normal behaviour. Likewise, sports and recreation organisations could be liable for the actions of volunteers, participants and officials.

Individuals

Individuals, such as participants, officials, security personnel, or volunteers, can be liable for their acts or omissions in conjunction with the activities of a sports club or organisation. Individuals are likely to be liable where an incident is caused by a particularly reckless act or omission on the part of the individual (such as not following the safety procedures set out by the club or organisation) or where the individual acts outside of their duty or role or well beyond normal behaviour. Whether an individual will be liable will depend on the facts of the case, such as the knowledge and intent of the individual.

Example 2: 2000 Sydney Olympics

The Head Judge of the gymnastics vault may have been liable in negligence as a result of the vault being set five centimetres lower than specified in the rules. This omission resulted in many of the gymnasts misjudging their vaults and, in some cases, falling heavily.

Example 3: Smoldon v Whitworth & Nolan [1997] PIQR P133 (England)

Here a referee of a Rugby Union match was found liable for the injuries suffered by a rugby player as the result of a collapsed scrum. The referee had failed to enforce the rules of the International Rugby Board as applied to a rugby game, in which there were more than 20 collapsed scrums. There had also been complaints from certain players, a warning from one of the touch judges and shouts from spectators.

There is also a duty of care owed by one sports person to another. In these circumstances it has generally been held in that reckless disregard must be shown to have occurred before liability will be confirmed. In other words, there must be more than a mere lapse of skill or error (with the level of skill differentiated depending on the level of the game). This means a higher degree of care is required of a player in a first division rugby match than a player in a local social club match. At the very least, there will need to have been a breach of the rules of the game, although that will not in itself be enough. The injured sports person needs to prove that the other player acted unreasonably in the particular circumstances.

Example 4: Cordon v Basi [1985] 1 WLR 866 (England)

In this case Mr Basi, an amateur soccer player, was held liable for breaking his opponent's leg in a tackle during a local league match. The sliding tackle was adjudged to constitute "serious foul play" and to have been made in a reckless and dangerous manner and to have been worthy of a sending off.

Local authorities

In some situations local authorities can attract liability if they sanction a sub-standard operation. Whilst the authority may be held liable, the liability of the operator will not be absolved completely. In other words the liability will be held concurrently with that of the operator.

Example 5: Queenstown Lakes District Council v Palmer [1999] 1 NZLR 549 (NZ)

Mr Palmer sought damages for mental injuries suffered as a result of witnessing his wife drown in a river rafting accident. Despite the Accident Compensation scheme, it was determined that Mr Palmer could seek compensatory and exemplary damages against both the Council and the rafting company on the basis that the Council had approved the consent to the rafting operation.

Sporting organisations or event promoters can also be held liable by local authorities if they breach local bylaws or regulations. When planning events or activities sports clubs or organisations must consider, and comply with, relevant council requirements.

Police and Security Organisations

Security organisations and police could be held liable if they fail to follow safety standards and procedures. However, the onus still remains on event organisers to advise police and security staff of the safety standards and procedures that they need to follow in respect of a particular sporting event.

Example 6: Alcock and others v Chief Constable of South Yorkshire Police [1992] 1 AC 310 (England)

In England, the Chief Constable of South Yorkshire Police was initially successfully sued in negligence as a result of the Hillsborough stadium disaster for failure to follow appropriate safety standards. However, the decision was reversed on appeal on the basis that the relationship between the plaintiffs and the defendant was not sufficiently proximate (ie. close) to give rise to a duty of care.

What are the various forms of liability?

Civil Liabilities

Civil liability is where legal action is taken by a private individual or corporation as a result of a serious act or omission by another person. It is determined by a Court exercising its civil jurisdiction, which is based on the principle of liability on the balance of probabilities.

Common examples of where civil liabilities arise are breaches of contract, or torts (see the discussion of the torts of negligence and nuisance below). Civil liability can also arise where the Crown sues for a private wrong. In civil actions, the main remedy is financial compensation in damages, although courts can also award exemplary damages (damages to punish for high-handed conduct) or an injunction ordering another party to do something or to refrain from doing something.

Tort of negligence

In many situations the Injury, Prevention, and Rehabilitation Act 2001 and the Crimes Act 1961 cover injury caused by negligence, however, there are situations that are outside this legislation. A failure to take reasonable care, measured against how a fictitious “reasonable person” would have acted in similar circumstances, can give rise to liability in negligence. To prove negligence, it is necessary for the plaintiff to prove that:

- the defendant owed the plaintiff a ‘duty of care’;
- the defendant breached that duty of care;
- the plaintiff suffered a reasonably foreseeable harm or a loss; and
- the harm or loss was caused by the defendant’s breach of the duty of care.

Example 7: Woods v Multisports Holdings (2002) 186 ALR 145 (Australia)

In this case the Plaintiff suffered an eye injury whilst playing indoor cricket and claimed the organiser of the event breached the duty they owed him by not providing a safety helmet with a face guard or by not warning of the potential dangers of the sport. While the Court did find that there was a duty of care to take reasonable steps to avoid the risk of injury to players, it rejected the allegation that the duty of care had been breached because the risk of injury was considered to be “so obvious” that there was no duty to warn the participants. This case highlights the fact that each case is looked at on its own particular merits. It also shows the weight that a Court gives to how obvious the risk is to everyone and the seriousness of the misconduct.

Example 8: Watson v British Boxing Board of Control [2001] 2 WLR 1256 (England)

In this case the British Boxing Board of Control was found negligent for failing to provide adequate emergency facilities at a World Middleweight title fight. The Court held that there should have been a ringside doctor present with the ability to administer a diuretic drug. By failing to institute such a system, the Board was found to be in breach of its duties. This case shows that governing sports bodies are under a duty to take reasonable care to ensure that

participants are not exposed to unnecessary risks to their health and safety, and that if an injury results, to ensure that they are properly treated. It is advisable for professional sporting bodies to undertake risk assessments with a view to determining whether medical cover is required for a sporting event. If so, they should ensure that persons with the requisite skill and experience are engaged.

Case law in New Zealand indicates that a general test for whether a duty of care is owed is to ask whether a reasonable person would foresee harm to another person or the property of that person if reasonable care were not exercised.

The risk must be foreseeable by the defendant. The deemed knowledge of the defendant goes further than what they were consciously aware of at the time, and includes issues they should have known about or had reasonable opportunity to learn. This means that sports or recreation organisations need to consider and identify all the possible risks, no matter how remote they may be. Once the risks have been identified, appropriate steps can be taken to eliminate or reduce them.

Public policy is another factor that will be considered by the courts in deciding whether a duty of care is owed, in particular - is it just and reasonable for a duty of care to be imposed? In this regard, sports and recreation organisations need to ensure that they comply with their own rules, regulations and safety procedures (and any other legal obligations). Failure to comply or a breach of the sports own rules, regulations or safety procedures may provide evidence of negligence.

One possible defence to negligence could be to argue that the person who has suffered the loss has voluntarily assumed the risk of that loss or injury. This may apply to a number of sports where there is a potential danger, involving both spectators and competitors, and people still decide to participate. In fact, potential danger may be implicit in the event, which may add to the spectacle or entertainment value, and be expected by the public and participants. However, sports clubs and organisations still need to take all reasonable precautions to minimise risk.

Example 9: Agar v Hyde (2000) 173 ALR 665 (Australia)

In this case it was determined that the IRB did not owe a duty of care to two rugby players who had been severely injured in scrums, despite their power to make or alter the rules of rugby. The High Court of Australia held that the IRB only "influenced" the rules and the playing of the game and that they did not "control" the game. There was also a focus on the concept of the player voluntarily assuming the risk or danger. The High Court was also weary of a flood of litigation around the world if they held that a duty of care existed in relation to these two players.

If the injured party proves a claim of negligence, the Courts may decide that the injured person was the author of his or her own misfortune and therefore relieve the defendant of some (but not all) of the responsibility for damages. This is called contributory negligence.

Injury Prevention, Rehabilitation, and Compensation Act 2001

New Zealand's accident compensation regime is a statutory based no fault scheme to compensate people who suffer personal injury. It has largely removed the right of individuals to sue and claim compensatory damages for personal injury. However, as mentioned earlier affected persons can still seek exemplary damages under this regime and the scope of the prohibition for suing for personal injury is challenged from time to time.

Further, the Act does not cover mental injury, which allows people to seek compensation for mental injuries that have resulted from a breach of a duty or a serious omission which did not result in personal injury.

Example 10: Queenstown Lakes District Council v Palmer [1999] 1 NZLR 549 (NZ)

In this case Mr Palmer sought damages after he witnessed his wife drown as a result of a river rafting accident. Damages were sought for mental injuries suffered as a result of the alleged breach of the duty of care by the defendants. Mr Palmer did not seek damages in respect of the fatality, which was seen as part of the factual background to the case, but mental injury as a result of being a witness to an incident. This case illustrates the potential for secondary victims to claim damages against sports and recreation organisations.

For more information contact ACC directly or visit their website, <http://www.acc.org.nz>

Tort of nuisance

An unreasonable annoyance or inconvenience that interferes with another person's use or enjoyment of their land may give rise to liability for the tort of nuisance. Sporting and recreation organisations therefore need to show due consideration and minimise risk to their neighbours and others that may be effected by their activities in order to avoid liability. This is also important when temporary venues are being used.

Example 11: Miller v Jackson [1977] 3 All ER 678 (England)

A cricket club was held liable for negligence and nuisance for the cricket balls hit by its members into the plaintiffs' property. The club could not prevent accidents from happening, as it could not reasonably expect the plaintiffs to consent to living behind shutters and staying out of their garden on summer weekends on account of the cricket. It was no defence that the plaintiffs had been the authors of their own misfortune by buying a house so close to the club's ground that the cricket would invariably affect them.

Breach of Contract

Sports and recreation organisations need to ensure that they comply with the terms of the contracts that they have entered into with third parties. If a sports or recreation organisation breach the terms of a contract, the other party will assess the scheme for breach set out in the contract (if one exists). Depending on the severity of the breach, the contract may allow the other party to terminate the contract. The other party may then sue the sports or recreation organisation for damages.

Where there is no scheme for breach set out in the contract the Contractual Remedies Act 1979 sets out the default position. Under that Act, a party to a contract has the right to cancel for breach where the other party actually breaches a term of the contract or makes it clear that a term of the contract will be broken (known as "repudiation"). For the right to cancel to apply, an essential term of the contract must have been broken, or the breach must significantly alter the benefits or obligations of the contract, or make the benefits or obligations substantially different to those contracted for (ie. it must be a serious breach").

The effect of repudiation is that the innocent party immediately acquires a course of action and can sue immediately or wait until the date of performance arrives and then sue. There must be clear proof of repudiation (beyond a reasonable doubt).

What if a person is found to be liable in civil proceedings?

General Damages

General damages are recoverable for those losses that cannot be objectively quantified in money terms – for example, pain and suffering, indignity and humiliation, and mental distress and commercial losses not objectively quantifiable. Awards of general damages in personal injury cases are not available in cases covered by the Accident Compensation scheme.

Special Damages

In the most common use of the term, “special damages” are those that are capable of being objectively quantified in money terms. Special damages may include, for example, damage to property, loss of profits and interest payments.

Exemplary damages

For exemplary damages to be awarded, the defendant must have acted with outrageous, flagrant or high-handed disregard for the plaintiff’s rights. It is not necessary for the wrongdoer to have acted deliberately or with conscious recklessness, although awards of exemplary damages when this element is not present will be particularly rare. In situations where the plaintiff seeks exemplary damages, the behaviour of the wrong doer is looked at to determine the level of damages. The focus is generally to punish and make an example of the wrongdoer.

Example 12: A v Bottrill (2002) 7 NZBLC 103,796 (NZ)

The Privy Council ruled that, in negligence, exemplary damages could be awarded only in “exceptional” cases where the Court considers that the level of negligence was so high that it amounted to a high-handed disregard for the plaintiff’s safety, meriting condemnation and punishment.

Whilst insurance policies can be used to protect potential defendants from large payouts, a deterrent remains in the form of the higher premium levels.

Criminal Liabilities

In extreme cases serious omissions or misconduct may constitute a criminal offence. For example the Crimes Act 1961 places a duty of care on people who undertake dangerous acts or are in charge of dangerous things. People may be criminally responsible if their conduct is a major departure from the standard required of a reasonable person in those circumstances. That means that the police may bring an action against those people in the criminal Courts, and if the person is found guilty (applying the criminal threshold of “beyond a reasonable doubt”), this may result in a criminal conviction and potentially, a fine, imprisonment or other penalty.

Criminal Nuisance

Committing an unlawful act or omitting to discharge any legal duty, knowing that such an act or omission could endanger the lives, safety, or health of the public or any individual may constitute criminal negligence under section 145 of the Crimes Act 1961. This charge requires proof of an unlawful act, or omission of a legal duty, and evidence that the person charged knew this would endanger individuals or the public.

Example 13: Queenstown street race crash (NZ)

A charge of criminal nuisance was brought against Motor Sport New Zealand after a crash

during a Queenstown motor race where a car left the temporary street circuit and hit a group of spectators killing two of them. The media reported that Motor Sport New Zealand issued a permit for the event despite it not complying with motor sports rules.

Consent as a defence to a criminal proceedings

In most cases, consent is available as a defence to criminal proceedings, due to participants assuming certain risks and hazards when participating in a sport, but consent has its limits. Actions outside the scope of a participant's consent could result in a criminal prosecution for assault, manslaughter or murder. The organisers may also face criminal procedures if they fail to limit risk to competitors and the public.

Example 14: R v Tevaga [1991] 1 NZLR 296 (NZ)

A rugby player was convicted of a criminal assault for deliberately punching an opposition player and breaking that player's jaw. The case illustrates that, while participating in a game of rugby necessarily involves consenting to certain types of contact (such as tackling) that would constitute an assault if done on the street, there are limits on the scope of that consent.

Other relevant Regulatory Codes and Regimes

Health and Safety in Employment Act 1992

This Act requires employers to provide safe environments and workplaces for all employees and volunteers engaged in work activities. This includes minimising any risks and hazards within workplaces and preserving the well being of volunteers. The legislation also gives the Department of Labour the power to bring prosecutions against persons who fail to meet the legislative requirements. For example, an infringement fine structure has recently been added with fines ranging from \$100 to \$500,000 and imprisonment of up to two years can be handed down to sports and recreation organisations that employ people or their agents depending on the type of infringement and a range of factors including the size of the sports and recreation organisation.

However, volunteers who are: (1) fundraising; (2) assisting with sport or recreation; (3) helping schools etc outside their own premises; and (4) providing care for someone in the volunteer's own home are excluded from the operation of the Act. The Act provides that the person responsible for these volunteers **should** take all practical steps to ensure the health and safety of the volunteer, in recognition of the vast contribution that volunteers make to the sport and recreation sector in New Zealand, but the duty is not enforceable. Nevertheless, the scope of the exclusion has yet to be tested in the Courts. A likely interpretation is that the exclusion will only apply to volunteers involved in amateur or local sports clubs and sports club fundraisers. Volunteers involved in competitive events, provincial or national sporting organisations and promoters may not be excluded. Despite the unclear legal position, sports and recreation organisations are strongly encouraged to take all practical steps to ensure the health and safety of their volunteers.

Industries outside of the sporting context may provide good examples of programmes to preserve the welfare of any volunteers (and employees). For example, event organisers using temporary venues or sports grounds may want to take into consideration the steps taken by the construction industry. Of particular relevance are strict safety guidelines, clearly identified hazards and secure areas, and restricted access to sites to protect the public, site visitors, and employees.

In order to assist people with complying with this legislation, Occupational Safety and Health (OSH) are producing guidelines for employers to provide a safe working environment for volunteers. For more information contact OSH directly or visit their website <http://www.osh.dol.govt.nz>

Land Transport Act 1998

This Act is concerned with the general use of roads within New Zealand. Criminal liability may arise under this legislation for the driver or the owner of the vehicle. Sport and recreation organisations should ensure that vehicles they use in their activities are:

- safe, registered and have a current warrant of fitness;
- driven only by people who hold an appropriate driver's licence for that type of vehicle (for example, a passenger service licence is required for vehicles that are capable of seating 13 or more people); and
- driven safely and not in a manner that is careless, reckless or dangerous.

The Land Transport Act contains a range of criminal fines and penalties for breaches of the Act (including imprisonment). In addition, sport and recreation organisations may incur civil liability for a breach their duty of care if, for example, they provided an unsafe vehicle for use by a team.

Minimising Liability

Planning Standards and Regulations

Sport and recreation organisations need to continually review and update their current planning standards and regulations. In particular, it is important to implement any advancements and developments in the procedures and rules governing the sport. In this regard, consideration should be given to any procedures adopted by similar international or national clubs and organisations.

Of perhaps greater importance, sports and recreation organisations need to look at incidents or problems that have arisen overseas and take steps to avoid them happening in New Zealand. It is recommended that sport and recreation organisations fully consider and apply the lessons learnt by others. For example in motor sport a lot of modifications have been made to tracks to make them safer for both drivers and spectators. Those involved in motor sport in New Zealand need to assess any crashes and changes that occur in other jurisdictions and seek to apply them in New Zealand so that continual improvements are made. The general test that will be applied is that of a reasonable sports body or organisation. In other words, "what steps would a reasonable sports body take, and what risks should they guard against as applicable to their particular sport?"

Once the appropriate regulations have been updated, sport and recreation organisations need to ensure that any event operators, together with the participants, are fully aware of and comply with the rules and expectations governing an event. Requirements must be known **and** applied to be effective in reducing any potential liability.

Risk Management Plans

Risk management plans are important in reducing the likelihood of injury or accidents

occurring, and in so doing, reducing the potential liability of the organisations and people involved. Whilst it is impossible to eliminate all risk from sport and recreation activities, it is important to identify any potential risks and take the appropriate steps to minimise these risks.

Standards Australia has produced *Guidelines for Managing Risk in Sport and Recreation Organisations*, which serves as a useful reference in this area. SPARC's *Legal Issues and Risk Management for Sports Officials* contains a useful risk analysis and management system template. It is available at <http://www.sparc.org.nz/officials/resources.php>

Corporate structure

Another way of managing the risks associated with running a sports or recreational organisation is through the choice of legal structure for the organisation, specifically by incorporating the organisation. Organisations can be incorporated under the Companies Act 1993, the Charitable Trusts Act 1957 or the Incorporated Societies Act 1908.

The most common structure for sporting organisations is an incorporated society under the Incorporated Societies Act 1908. An incorporated society is a group or organisation that has been registered under the Incorporated Societies Act and, when incorporated, is authorised to run its affairs as though it were an individual person. Incorporated societies are able to do anything, provided that its activities are:

- lawful;
- within the "objects" of the society as set out in its rules; and
- not for the financial gain of its members .

While each organisation should obtain legal advice on the most appropriate legal structure for that organisation, advantages of incorporating a society are that:

- the society becomes a separate legal entity from its members. As a result, it can lease, rent, buy or sell property, borrow money and enter into contracts in its own name. In addition, the society is capable of "perpetual succession" (meaning that it continues despite changes in its members) ;
- members will generally have no personal liability for the debts, contracts or other obligations of the society. The exceptions to the general rule are that, if the debts or obligations are incurred from operations involving financial gain or from unlawful activities, the members involved in the financial operations or unlawful activity become personally liable for the debts and obligations ;
- the Incorporated Societies Act requires that societies have rules that meet certain requirements, which provides some certainty regarding the way in which the society will be run; and
- members have no individual claim on the property of the society, except where the rules state that surplus assets are to be distributed to members when the society is put into liquidation. As a result, the property belongs to the society and no individual member has personal interests or rights in the property.

Disadvantages of incorporating a society are associated with the more complicated structure and rules of the society, the prohibition on financial gain for the members, and the need to prepare annual financial returns. However, the disadvantages need to be compared with

the problems faced by an unincorporated organisation (for example, individual members bear the risks associated with having to hold property and enter contracts in their own name).

Procedures

Sport and recreation organisations need to establish and clearly define procedures for particular sports or events. This set of procedures should be modelled on those developed in workplaces for identifying hazards or risks. Once developed the procedures need to be enforced in a practical sense otherwise they will not have the appropriate effect.

Controlling Access

It is important to control access to events, especially for media, dignitaries, or anyone who has special access which may expose them higher levels of risk of harm than the public. Appropriate measures need to be put in place to account for and protect these people.

Warnings

Any risks or hazards should be clearly identified and an appropriate warning displayed, regardless of how obvious the risk or hazard may be. A relevant example occurred in a stockcar event where a spectator was killed whilst he was in a restricted area without permission. Liability was avoided due to the organisers displaying prominent warning signs, verbally warning of the danger areas, and removing the spectator from the area previously. Here the organisers had done everything reasonably expected to ensure the safety of spectators.

Indemnities and Disclaimers

Sport and recreation organisations may be able to reduce their exposure to risk through the use of indemnities and disclaimers of liabilities. The existence of a clause clearly advising participants and spectators in writing of the terms of the disclaimer, may allow a negligent or responsible party to escape liability, if the clause is specifically brought to the participants' or spectators' attention at the time a contract is entered into, before an activity is undertaken or a person enters a premises. The best approach of bringing a disclaimer to someone's attention is to require that person to sign a disclaimer of liability as a condition of entry to an event. However, it is sufficient that the disclaimer is adequately brought to the other person's attention at the appropriate time, such as by a leaflet or a sign.

Due to the practical difficulties of bringing disclaimers to the attention of participants, the benefits of disclaimers are limited and organisers should still take reasonable care in minimising or eliminating any elements of risk by planning properly.

Contracts

Most contracts presented to a sport or recreation organisation have been drafted to reflect the interests of the other party to the contract (usually by the other party's lawyers). It is for the organisation to consider proposed contracts from its own point of view. Sports and recreation organisations are strongly advised to seek legal assistance in developing and negotiating contracts with sponsors, employees, athletes, officials and any other persons or agencies.

The key ways that a sport or recreation organisation can minimise its liability in contracts are:

- Address liability in the contract. This can be done by limiting the organisation's liability to direct losses only or capping liability to an appropriate monetary limit. The organisation should look to not allow the other party to limit its liability ;
- Avoid giving indemnities to the other party to the contract . However, if an indemnity is provided by the organisation , it should be clearly worded (and preferably limited) in terms of its scope. The organisation may also consider seeking an indemnity from the other party to the contract for losses arising out of any act or default of that party ;
- Consider deleting any warranties or confirmations sought by the other party to the contract from the organisation . If the organisation is not able to warrant some of the other party's requirements, the organisation should avoid warranting that it will do so (otherwise the organisation will breach the contract which could result in the early termination of the contract and possibly claims for damages) . Instead, consideration might be given to restricting the undertaking to do no more than to use "reasonable endeavours" to provide certain things . The organisation should also consider what warranties should be sought from the other party ;
- Determine the duration of the contract. The term of the contract should reflect the period of time over which the outcomes or results expected of the sporting organisation are to be obtained. The organisation should also consider incorporating a clause that allows the organisation to terminate the contract on a specified period of notice (without any breach by the other party). This type of clause will give the organisation the flexibility to get out of a contract that is not working to the organisation's expectations; and
- Set out in the contract the precise nature and extent of each party 's obligations and benefits.

Insurance

Insurance provides sport and recreation organisations with a device to minimise or remove the likelihood of a large financial loss or payout. However, the premiums may be high depending on the safety record of the sport or event. Further, insurance does have its limitations in that it does not provide indemnity from fines or infringement fees relating to the Health and Safety in the Employment Act. Nevertheless, insurance would cover payments of reparation and legal costs and it is advisable for organisations to obtain it .

Insurance packages vary in the cover they provide. A non-exhaustive list of insurance cover that may be used is outlined below:

Professional Indemnity: This covers legal liability for negligence in the conduct of professional duties, such as instructions and decisions.

Public Liability: This covers accidents that occur on the premises or at venues involving third parties such as spectators and visitors.

Directors' and Officers' Liability: This is part of particular importance for officers of sporting clubs, especially if the club is not incorporated.

Participants' Insurance: This provides cover for injuries to athletes or officials. It may only provide cover for serious injuries or death, and should be carefully checked to ascertain its limits. Such insurance may provide cover during organised training as well as competition. Cover can extend to provide benefits such as loss of income.

Legal Expense Cover: This is designed to cover any legal costs incurred in defending certain criminal or civil court actions brought against sports organisations, administrators or participants.