



Posted on: January 1, 2013

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*Originally published in Momentum Magazine*

One of the most common features of organized cycling events is the execution of a waiver by the cyclist before the event begins. The waiver is typically included as part of an enrollment package and is something many cyclists sign as a matter of routine.

Waivers have always been around in one form or another. However, in the last twenty years waivers and releases relating to recreational sports activities have exploded in popularity. In the past the courts were very reluctant to let a waiver get in the way of the delivery of justice. This has changed with the growth of organized recreational events and the corresponding need to protect event organizers from liability.

In a recent case called *Loychuk v. Cougar Mountain Adventures Ltd.*, the British Columbia Court of Appeal restated the law relating to the enforceability of a waiver. The case involved an action against Cougar Mountain Adventures Ltd. brought by two individuals who were injured while zip lining with the defendant. The defendant admitted the plaintiffs' injuries were caused by the negligence of its employees but asserted that did not matter because the injured parties had signed a waiver and the waiver was a complete defence to their claims.

The plaintiffs said the waiver was unfair, unconscionable, and contrary to public policy. The court defined the essential ingredients of a valid waiver in the process of dismissing their claims.

First, the defendant must demonstrate that the individuals knew what they were signing and were in agreement with its contents. Second, the waiver must be worded broadly enough to encompass the activity in question. Third, the waiver must not be unconscionable, in the sense that the defendant event organizer exerted undue pressure or unfairly took advantage of the signing individual.

If a cyclist is able to demonstrate that he or she did not read or understand the waiver, or that the harm occurred as a result of a risk outside of the scope of the waiver (for example, one of the cycling event organizer's dogs attacked the cyclist), or that the waiver is deeply offensive to the rules relating to unconscionability (it strikes the judge as simply wrong) the waiver may be deemed to be unenforceable.



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This is not an easy exercise. If you sign a waiver, and you are over 19 years old, expect it to be enforced, absent very unusual circumstances.



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