

RICHARDS BUELL SUTTON LLP

The law firm for sports & recreation insurance issues

The RBS Insurance Law Group has represented some of the foremost sports and recreation bodies in British Columbia and across Canada. The list includes Football BC, the BC Soccer Association, the BC Lacrosse Association, Gymnastics Canada, WTF Taekwondo Canada and Karate Canada as well as numerous individual sporting clubs, leagues and societies.

RBS, B.C.'s oldest law firm, has a robust insurance law practice. Group members, comprised of Alex Eged, Peter Lightbody, Scott MacDonald, Nicole Mangan, David Moriarty and Nicholas Safarik, have wrestled with most issues regarding insurance coverage and the defence of sports and recreation organizations.

The Group has worked extensively with insurers, brokers, managing general agents and adjusters operating in the arena of sports and recreation insurance in areas such as providing coverage advice to insurers, including the revision of their insurance policy wordings; defending numerous national and provincial sports and recreation bodies;



Lightbody

analyzing, revising and updating sports associations' constitutions, bylaws and codes of conduct; and advising on risk management practices and providing effective waivers of liability and assumption of risk forms.

Through its involvement in sports and recreation cases, the Group has noted the most common coverages deal with additional insureds and intentional acts. The most common defence issues deal with waivers and standard of care.

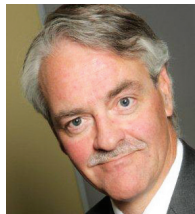


Eged

Cover your playground

The additional insured endorsement often becomes an issue when a facility provider, usually a municipality, allows a sports organization to use its facility in exchange for an endorsement on the organization's liability policy that the facility provider is covered "for liability arising out of the operations of the named insured."

In *Saanich v. Aviva*, for example, a plaintiff, erroneously advised by Saanich to enter a gym where a lacrosse practice was underway, was injured by a lacrosse ball. In spite of its error, the court concluded the municipality's potential liability arose out of the activities of the named insured lacrosse association, and coverage was granted. In *Vernon Vipers v. Canadian Recreation*, the plaintiff, while departing a Vipers hockey game, slipped and fell over some rocks near a parking area. The court held that the connection to the Vipers' operations was too tenuous to attract coverage.



MacDonald

Innumerable fact scenarios could test whether there is an "unbroken chain of causation," but we now have the benefit of some coverage goalposts established by the B.C. Court of Appeal.

Kick away coverage

The application of the intentional act exclusion often becomes an issue in player-versus-player incidents. Injuries in the "heat of battle" are often pleaded both as being purposeful (i.e. battery) and negligent.

The Supreme Court of Canada case of *Non-Marine Underwriters v. Scalera* requires that the true nature of the claim, and not the labels



Mangan

affixed by the plaintiff, are to be examined. The B.C. Supreme Court applied *Scalera* principles in *Economical v. Doherty* and found the pleadings alleged an intentional kick to the face in a soccer game and not



Moriarty

a negligent one. A denial of coverage for the claims against the kicker was proper. **Waive goodbye** The applicability of a waiver of liability depends on its language and the steps taken by the releasee to bring the waiver to the attention of the signing party. For two decades courts have been more inclined to enforce properly drawn waivers and have rejected numerous attacks on the legality of these documents, most recently in *Loychuk v. Cougar Mountain*.

Fair play

Determining a standard of care is a situational exercise in which one asks, "What would a reasonable competitor, in his place, do or not do?" Speed, body contact, stresses, risks and the spirit of the game or activity are some of the considerations in determining the standard of fair play. A breach of rules is a factor, but not necessarily definitive. The cases of *Unruh v. Webber* and *Zapf v. Muckalt* are instructive in determining the correct standard.

Organized sport and recreation in Canada are expanding, and with greater participation by younger and older individuals. The Insurance Law Group at Richards Buell Sutton is skilled and experienced in serving the insurance, sporting and recreational activity communities.

For more information about sports and recreation liability law, call 604-682-3664 or visit www.rbs.ca. **iw**



Safarik