
Fact Sheet LP02

Duty of Care



"Everyone involved in sport at whatever level and in whatever capacity should be aware that many injuries are avoidable and that risks can be minimised. Those who have power to do so should take steps to prevent injury." (D.Healey, 1989)

Participation in sport and recreation activities always involves some level of risk of injury. However such risks may differ very greatly from activity to activity.

All players, coaches, referees and/or organisers have a duty to make all activities as safe as possible for themselves and other people in any sporting recreation environment. This duty is referred to, in the eyes of the law, as the "duty of care". The law tends to view that people in a supervising or managing capacity owe a greater duty of care than players, spectators and passers-by. Coaches, referees and tournament organisers are included in this group of supervisors/managers. Courts also view that some people in society are owed a greater duty of care, as they are less able to look after themselves. This group includes children, mentally ill, elderly and in some instances the pregnant.

Due to the inherent nature of sport and recreation many injuries and deaths occur and naturally persons who are affected by these events will, more often than not, seek some form of redress through the law courts. Consider the following examples:

- Football stands have burnt down (Bradford fire disaster)
- People have been crushed to death (Hillsborough soccer stadium)
- Athletes died as a result of a bridge collapse (Maccabi Games Israel)
- Racing yachts caught in very extreme sailing conditions, deaths resulting (Sydney to Hobart yacht race 1999)
- Boy breaks neck in rugby football scrum (Watson v. Haines)
- Tennis champion stabbed by spectator (Monica Seles)

What actions can we take?

Sporting Bodies and Schools have a responsibility to:

- Provide information to participants, coaches, referees or event organisers about risks.
- Ensure volunteers have training and be appropriately accredited.
- Ensure there is first aid assistance available for all participants
- Exercise crowd control to ensure spectators are safe and participants are safe from spectators
- Check sporting venues for hazards

Coaches have a responsibility to:

- Check equipment
- Remove injured players from the field
- Have First Aid personnel and equipment standing by
- Enforce a policy of not sharing water bottles to prevent spread of communicable disease
- Do not put people in position to which they are unsuited
- Exercise great care in using experimental techniques
- Do not rush people to learn new skills before they are ready
- Check playing surfaces
- Do not encourage aggression

Officials have a responsibility to:

- Enforce the rules
- Check playing surfaces
- Protect participants
- Duty to warn
- Anticipate reasonably foreseeable dangers
- Manage the game
- Fair and consistent game rulings

Negligence

If a person is injured through participation in sport or recreation and wishes to seek some form of compensation, then whether or not they succeed will depend on establishing three things:

1. That the person was owed a duty of care
2. That there was a breach of this duty of care
3. As a result an injury occurred.

Establishing that a duty of care exists

A person who is injured and wishes to seek some form of compensation, must sue somebody in a court of civil law for **Negligence**. In a court of civil law a successful case will depend on establishing that a relationship exists between the injured party and the person being held responsible.

When injuries occur in a sport and recreation environment, it is not difficult to find someone to sue. There are a number of important relationships that could be examined. For example, it could be established that any of the following have a duty of care:

- The coach of the player
- The referee
- The grounds caretaker
- The match organiser
- The management committee of the organisation running the event
- The municipal council that owned the field owed a duty of care

Establishing that a duty of care exists is one thing but proving, on the balance of probabilities, that a breach of this duty of care has occurred is quite another. Whether or not the injured person's lawsuit is successful will depend on this.

Establishing that a breach of duty of care has occurred

To establish whether a person has breached the duty of care that they owed to another, the courts will apply a test. This test is often referred to as a test of "**reasonableness**". The courts will ask the question:

Should the defendant (the person being sued) have contemplated that his or her negligent act would lead to the injury suffered?

The court will carefully consider here what is reasonable to expect a person to have done or not done in the circumstances.

For example:

- Is it reasonable that they should walk over every square metre of the turf looking for holes?
- What can be reasonably expected for a groundsman in looking after the playing surface?
- Does the match organiser or the municipal council bear any responsibility?

It is important to note and understand here that:

Intention: There is no need to prove any intention on the part of the defendant. In other words, there is no defence for the defendant to say, "I did not put the hole there deliberately".

Probability: There is no defence to claim that no one took steps to check the playing surface because accidents of this nature hardly ever happen.

When a court finds that someone breached a duty of care owed to another person, they are said to have been **Negligent**. Furthermore when a person sues another for breaching their duty of care, essentially they are suing for **Negligence**.

A definition of negligence that should be remembered is:

Conduct that falls below the standard regarded as normal and desirable in a given community.

Negligence is one of the torts (French word) and a tort may be defined as:

Any wrong, not arising out of a contract, for which there is a remedy by way of compensation or damages.

Insurance Cover

Individuals and organisations can insure themselves against being sued for negligence.

In the case of an organisation or business entity the type of insurance cover is called "**Public Liability**".

In the case of coaches and referees the type of insurance is called "**Professional Indemnity**".