Risk Management for Play and Sports Facilities

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Risk management is more than eliminating risks.
If the sole purpose of risk management was to eliminate the risk of injury, the most successful risk management programs would be ones which kept people out of the parks and playgrounds and ensured that no one used any recreational equipment.

INTRODUCTION

There are various ways of managing risks. The most obvious way of managing risk is to refrain from engaging in the "risky" undertaking. Secondly, policies and procedures can be adopted to identify risks and minimize their effect. Thirdly, the responsibility for the risk can be diverted to another party.

Risk management occurs within the context of tort law and occupiers liability. In most cases the primary issue is whether the allegedly wrongful conduct was appropriate or reasonable. However, it is small consolation that the "offender" is only required to act reasonable since, when the matter proceeds to court, what is reasonable will be evaluated with the wisdom of hindsight. Thus, for example, while it does not seem appropriate to leave a lawn mower running while you pick up paper in the immediate vicinity, in **Whaling v. Ravenhorst (1977) 16 OR (2d) 61 (Ont CA)** the defendant was held liable in the case where the lawn mower was briefly left unattended where children were playing while the operator picked up paper just 30 feet away.

DEFINITION

What is Risk Management:

Risk management is a modern buzz word which connotes to many the concept of risk elimination.

Many employees seek assistance of corporate counsel for risk management advice either out of fear of being caught in a bureaucratic squeeze (passing the buck) or out of general concern about risks. However, invariably their request is that the corporate counsel miraculously ascertain how the risky activity can be taken in a manner which avoids all exposure to lawsuits.

A working definition of risk management that I will adopt here is, "the management of the risk relating to your undertaking and managing your undertaking to avoid unnecessary risks." In my mind, therefore, risk management can be boiled down to common sense. However, to have common sense it is necessary to sensitize yourself to what risks your undertaking is exposed to and what considerations you should bear in mind when looking at those new found areas of concern.

What is common sense and how common is it?

The assessment of a risk is basically a 3 step process:

1. Identify the risk.
2. Assess the risk in terms of its severity and probability.
3. Determine what steps should be taken to reduce or eliminate the risk.

Identifying the risk is simply the process of developing an eye for risky aspects of your business. It should be noted that a successful risk management program will entail a program of sensitizing the staff to risk management.

When assessing a risk, a risk manager should consider the nature of the risk and weigh it against the costs of avoiding that risk. The courts are influenced to a large degree by the nature of the risk that they are confronted with within the context of the costs of avoiding the risk. In other words, if an injury of a severe nature is likely to occur and could be avoided with very little effort or money, the courts will be more likely to find liability.

CAVEATS

Risk management is not a be all and end all.

What business are you in?

While it is honourable and desirable to create a safe environment for your clients and employees, this goal must not completely detract from the overall mission of the corporation.

All Things In Moderation!

It is possible to go overboard. For example, if someone comes to your premises to provide you with a volunteer service, such as painting Christmas decorations on your windows, while a risk management program would acknowledge that there are certain risks related to the activity (falling paint, falling painters, etc.) it would be unreasonable to require extensive waivers, indemnities and insurance provisions.

It is likely you will be sued at some time; It is only a question of time.

It is arguable that in the increasingly self-centred society people are more in tune with what they can get than what they can give. The result is a greater concern with rights than with responsibilities. At the end of the day people are always looking for someone else to blame when something goes wrong.

So for example, when a person recently broke into a City of Surrey outdoor pool by climbing over a six foot high chain-link fence, climbed on the roof of the changing room building, ran off the roof, diving headfirst over 20 feet of concrete and then broke his neck when he hit the pool bottom, the City was given notice he would be seeking compensation for negligently allowing him to break into the pool area. He argued that the City was aware that break-ins occurred and that people were diving off the roof and did nothing to prevent it.

In another case the plaintiff was injured when he drove his motorcycle off an embankment of the defendant's land. He was trespassing on the land and injured himself when the trail he was riding on suddenly ended. The sand he was driving on had been stockpiled on the site by the

owner and had remained relatively unmoved during the previous months. During the week of the accident the owner of the property moved some of the sand and did not erect a sign to warn trespassers that the configuration of the property had changed. The plaintiff successfully sued the occupier for creating the hazard.

One of the most difficult concepts for most risk managers is the idea that their corporation may be held responsible for the stupidity and misbehaviour for which people bring harm upon themselves **[Jacobsen v Kinsmen Club of Nanaimo (1976), 71 DLR (3rd) 227 (BCSC)]**. The defendant was held liable when patrons of the curling rink injured themselves when the steel girders they had climbed on in a drunken state collapsed. The defendant had warned then regarding the activity but had taken no additional steps to prohibit or prevent reoccurrences of beam climbing.

But, the reasonability of the defendant's behaviour will be judged on its own merits. If one knows that others are inclined to act in a careless way while on your property, you must take reasonable efforts to minimize the possibility of resultant harm. The occupier will be responsible for the foreseeable folly of others.

Image:

An area of risk management which is frequently overlooked is the image of the corporation. The maintenance standard will create an image which will, in an intangible way, affect how an area is used by the majority of the users of the facility. It will also affect the way the users (and employees) consider a defect in maintenance. It is common for plaintiffs to comment that they proceeded with a lawsuit because it appeared that a party allegedly responsible did not seem to care about risk that caused their injury or harm.

Image is coupled with staff manners, attitudes and common courtesy. Ordinarily this is reflected in the speech, dress, and personal commitment of the employees. This should be true of all staff. The promotion of good "image" is not the responsibility of one person. It is a group effort which is integral to risk management.

Pride in workmanship is integral to risk management. Quality personnel may well constitute the single most indispensable component in an effective risk management program. You can have the best facilities, equipment, programs and procedures, but without competent staff, they can be next to useless. [Saari v Sunshine Riding Academy Ltd.(1967), 65 DLR (2d) 92 (Man. QB)]. The court found the defendant liable, despite an abundance of waivers and warning signage when employees failed ta ascertain a risk and ensure that it did not materialize. On the other hand, an employee who "owns" his job and the product of his labour is an effective employee if properly trained and encouraged. Moreover, in light of the fact that the employees will be responsible for the day to day operation of the risk management program, it is imperative to their "buy in" that they be given an opportunity to be involved in creating it.

Inspection Procedures and Checklists (Paper Hell):

Checklists are often viewed as a nuisance. In court, however, a properly completed checklist may be the only "independent" evidence that a defendant can present which proves it acred reasonably in the maintenance of its premises.

A checklist should be designed with input from those who are going to use them. A multiple use checklist can be a guide to work requirements and work schedules, a reference point for time lost, staff assignments, staff accountability, clarification of duties and evidence in litigation.

All list makers should beware of overpapering employees. There is a saturation point on lists. A checklist program should be complete enough to ensure an adequate defense to most claims. In addition it is better to have a few lists that are used than unused lists. An unused checklist will indicate that while particular care was recognized as being required, there is no record of its status at the relevant time. This may lead to a presumption that the work did not take place.

Recreation checklist possibilities include:

1. General Work Schedule
2. Maintenance Equipment Inventory
3. Material Inventory
4. Emergency Equipment Checklist
5. Play Equipment Safety Checklist
6. First Aid Equipment Checklist
7. Signs: Words/Design/Installation Checklist
8. Play Safety Checklist
9. Vandalism, Theft, Robbery Report Form
10. Motor Vehicle Checklist
11. Water Safety Checklist
12. Storage Safety Checklist
13. Accident Reporting Form
14. Electrical/Lighting Checklist
15. Insurance/Agreements/Amendments Checklist
16. Trail/Track Checklist
17. Special Competition Checklist
18. Outdoor Program Checklist

Work Volume:

Work volume is also a factor in risk management. For municipalities and other government institutions, work volume, limited resources and policy determinations on the use of limited resources can constitute a defense to a claim. Therefore, in the case of a tree pruning program which operated on a limited budget, the B.C. Ministry of Highways was not liable where it could prove that it had a system of inspection but simply could not deal with all the trees in its jurisdiction **[Swinnammer v. Ministry of Highways & Transportation]**.

This type of defense does not exist for private corporations. It is no defense to the negligent undertaking of a task to say you did not have the money, time or personnel to do it properly.

A work volume issue also arises in the context of overuse of a facility. If too many people are using a facility so that it cannot be supervised properly, the operator will be liable for failing to limit access to the facility. In addition, when work volume is high, staff may take shortcuts to try to get the job done, increasing risk exposure in the process. Proper risk management, therefore, will consist of a determination in advance of the limits of the physical and human resources.

How does the law affect you:

Our examination, herein, is an examination of how the law of torts and occupier's liability affects the every day operation of a sports or recreation facility.

While it is true that to some degree everyone involved in recreation has responsibility for his or her own safety and the safety of others, the real issue is, what form does this responsibility take and to what degree is it owed to others.

Negligence:

Negligent conduct is conduct which involves neglect or failure to act with the care that would normally be expected in

the circumstances. Negligence is composed of the following elements: a duty requiring conformity to a certain standard of conduct, failure to conform to this required standard of care, material injury to the interests of the injured person, a reasonable connection between the defendant's conduct and the resulting injury.

Liability may also arise in the sports and recreation context as a result of the defendant position of occupier. In British Columbia the **Occupier's Liability Act** sets out the standard of care of the owner of premises. Under the **Act** the occupier of property is required to take reasonable steps to prevent injury to those who are reasonably using the premises.

Counterbalanced against the purportedly negligent conduct of the defendant is the plaintiff's own conduct. Plaintiffs who voluntarily accept the risks of the activity such as being hit by a puck escaping a hockey rink, or a baseball hit out of a ball park, or have contributed to the injury by skiing without keeping the proper lookout or have contracted out of the right to sue in tort by waivers found in tickets, etc., may have damages reduced or denied.

In the sports and recreation context there is also some room for motives and rules of the game. Therefore, in recreation such as golf, the player assumes the normal risks of the game. However, one does not expect to have the golf ball driven directly at one. In the case **Ratcliffe v. Whitehead(1993) 3 WWR (Man KB)**, the plaintiff, while playing golf, lost her eye as a result of being stuck by a golf ball played by the defendant. The defendant had "sliced badly" on the 8th tee and ended up playing across the 7th. Someone on the 7th invited him to play through (he was standing in the middle of the fairway) but the plaintiff just walked up and was hit by another bad slice.

The judge wrote "If it were to be found that it is a risk incidental to the game to have balls driven directly at one, it would, to say the least, interfere with the alleged pleasure and healthfulness of the game. The person playing a golf ball should be scrupulously careful and not hit anybody, and if he does, the onus of making an explanation showing the care and caution he took is much the same as though he had thrown a stone or fired a gun"

An injury from a golfer playing on an adjacent fairway is considered a normal risk. In the case **Ellison v. Rogers (1968) 1 OR 501 (HC)**, a golfer who normally slices, hooked the ball off the first tee into the eye of the player on the tee of the 4th green. Once the plaintiff proved he was struck by a ball driven by the defendant, the onus of proof shifted to the defendant to prove that the accident was not the result of negligence or intent on his part. The defendant satisfied the burden as he was a persistent slicer and expected to slice on this occasion. There was no reason for him to foresee he would hook or any reason to hail as the rules of the game permitted him to proceed if the fairway in front of him was clear.

The club's liability as an occupier of land was only there **re** an unusual danger or trap. There was no unusual danger or trap here. Parallel, contiguous fairways are common on golf courses. In considering the layout of this course it was significant that 80% - 85% of golfers sliced rather than hooked. It is a normal risk of the game assumed by all those who play or venture onto a golf course. The action of the golfer is a risk for which the occupier of the golf course is liable if it is a normal risk of the game. The court notes "Mr. Lamb explained the difference in the stroke that produces a hook or a slice. Despite these apparently simple adjustments 85% of golfers still slice."

But the golf club can be liable if it is reasonable to expect that the play will occasionally interfere with others. In the case **Castle v. St. Augustine's Links, Ltd and Chapman (1922) 38 TLR 615** a ball had been driven from a fairway which parallels a road, onto the road. The ball was sliced and hit a vehicle on the road. Damages were claimed against the golf club in nuisance, viz. in maintaining the course in proximity to the road without giving warning to passing traffic. The directors knew, or ought to have known, that balls driven from the tee frequently landed on the road, even though there was no specific complaint. Also the slicing of balls was a probable activity of golfers.

What duty do I owe to children?

Children may be plaintiffs as well as defendants in matters of responsibility and liability. As plaintiffs, children enjoy more protection and require a higher standard of care from defendants. Generally speaking an owner or occupier must not expose children to potentially dangerous things which may be irresistibly attractive to them. To constitute an allurement or trap, the condition or object must be both fascinating and injury causing.

The onus is on the occupier to know the dangers that the premises present to children. The circumstances of each case determines the effect and expense required of each occupier to make the premises safe. Such effort and expense may depend on the social habits of the neighbourhood, (the play activities of the children and the supervision of the adults), the financial resources of the occupier, the nature of the premises or the reasonableness of guarding against children on the property.

On the other hand, a child is expected to conform to the standard appropriate for normal children of similar age and experience **[Jones v. BC School Dist. No.71 (1981) 221 (BSSC)]**. In this case the school district was held not liable for injuries sustained by a school boy who injured himself on a trampoline after being given instruction and showing an ability to do the manoeuvre contemplated based on prior activities.

What About Volunteers?

Volunteers play an important role in society, and recreational programs in particular lend themselves to volunteer participation. With the current trend to reduced budgets, parks and recreational facilities must increasingly depend on volunteer support. There has to be a blending of the work force and the volunteer force. It is important to match talent to duty, etc. The working staff needs to understand that the volunteers are an integral part of the operation.

The organization retaining the assistance of volunteers needs to determine an advance the role and duties of volunteers. Failure to do so will result in poor utilization of the volunteers and probably a loss of good will. The issue, however, is what level of expertise is required of volunteers who assist in the recreation program.

"... it is in the interest of society that voluntary efforts directed towards promoting excellence and safety in any field of endeavour are to be encouraged. If the standard expected from a non-profit organization is put to high, such organizations may depart the field" **[Smith v. Horizon Areo Sports Ltd. (1982) 130 DLR (3rd) 91 (BCSC)]**.

This would suggest that there may be a lower duty of care placed on an organiza-

tion utilizing volunteers. However, there are cases which would indicate that the duty of care of an occupier of lands is the same whether the occupier is a volunteer organization or a "for profit" organization **[Wessel v. Kinsman Club of Sault Ste. Marie (1982) 37 OR (2d) 481 (HC)]**. In addition, there will be requirement that there be a level of training which is commensurate with their duties.

Environmental Issues:

I do not intend to address environmental concerns here in any depth. However, there are two primary points which should be considered: (a) the extent of current environmental liability, and (b) the nature of that liability.

Liability for environmental issues is not something which only affects the company for which you work, it can dent your own pocket book. The Supreme Court of Canada has recently ruled that where directors of a company are held to be personally liable for the pollution created by their company, the company can not indemnify the directors for the payment of the fines.

Second, with the increasingly high standards of pollution legislation, such as the **Environmental Protection Act,** it is mandatory for staff to keep abreast of environmental concerns. Thus, for example, while in the past the optimizing of turf fertility while minimizing fertilizer use has not been a high priority, environmental concerns about the use of agricultural chemicals has increased to the point that it is now mandatory for turf managers to be sensitive to chemical contamination **[Reghetti, T.L. Plant Analysis for Turfgrass, The Turf Line News, Dec/Jan, 1995/96]**. Thus, part of good risk management in the environmental area must include a reduction in chemical use for pest control and fertilization through Integrated Pest Management which is not a no chemicals program but a methodology of control strategies. The standard of conduct is set out in the recent literature which you should be reviewing and assimilating for application to your responsibilities as a turf manager.

Nelson and Johnston stated that the increased environmental awareness of the public over the past decade has created a need for turfgrass managers to become knowledgeable about the environment and to manage accordingly **[C.N. Nelson & W.J. Johnston. Maximizing Biological Potential of Turf, The Turf Line News, Dec. 1995 - Jan. 1996]**. This is not only good business practice, it is also good risk management. The turfgrass manager must understand water pollution (both surface and ground), wildlife habitat, urban development, wetlands and historical sites. This leads inexorably to a need for comprehensive ecosystem management measures.

The articles in the literature will be used in court against you.

Nuisance:

Nuisance is an area of liability where there is no personal injury but rather an invasion of an occupier's interest in the use and enjoyment of land. A nuisance occurs where some activity of the defendant prevents the plaintiff from enjoying his land or causes some danger to the land. The most obvious issue here is the issue of toxic chemicals, etc. However, a nuisance is also created by stray golf balls finding their way onto adjacent property or roads

The case of **Segal v. Derrick Golf & Winter Club (1977) 4 WWR 101 (Alta TD)** was a situation in which the golf course was built and then the plaintiffs moved into a house. The 14th hole approach led directly to the plaintiff's house. There had been some futile attempts to remedy the situation. The plaintiffs claimed in trespass for the going on their property and in nuisance for the golf balls. The golf course was not liable for the former but was liable for the latter and an injunction was issued. A similar situation arose in the Australian case of **Lester-Travers v. Frankston, (1977) VR 2.** "I know of no basis on which it can be said that the interests of golfers, whether they are playing on a municipal golf course or any other kind of golf course, are superior to the right of the occupier of premises to the undisturbed use and enjoyment of such premises. If cricket cannot be played on a ground without creating a substantial risk, then it should not be played there at all."

Parks and Playgrounds:

The cases are of two types, those that deal with the physical characteristics of the park or playground including its grounds and equipment, and those concerning the acts or omissions of the staff, etc.

Failure to Inspect Grounds:

Where a danger is not discovered by an occupier liability will arise when an injury occurs as a result of the danger. In **Hertzog v Winnipeg (City) (1990) 2 WWR 177 (Man. QB)** the plaintiff broke his leg in a park on a hazard which had not been discovered by the City's maintenance crew. The lack of discovery arose from the fact that there was no system for checking the grounds for hazards. Similarly in **Kelemen v. Delta (May 1991) BCSC** liability was awarded because of failure to inspect a swing in a public park.

On the other hand, a proper, and documented, inspection system will be a good defense to a claim premised on negligent maintenance. In **Vanna v. Kamloops (1992) 2 WWR 759 (BCSC)** a case of improper installation of equipment was claimed. The two year old child had fallen onto a concrete pad in which playground equipment was embedded. The municipality had carefully inspected the playground, thus it was not liable. Accidents happen when small children are not closely supervised.

The inspection program does not have to be extreme but it must be reasonable. In **Gaw v. Porte Industries Ltd.** the plaintiff tripped in a hole on the defendant property. The court held that the occupier could not be required to complete minute inspections of the area, however, it was expected to complete sufficient inspections to discover a two foot hole near a well used pathway.

An occupier is not required to complete underwater inspections. In **Schab v. Alberta (1984) 57 Ar 321 (Alta. QB)** the plaintiff cut his foot on an underwater hazard in the form of a broken pipe which the occupier was not aware of. The court held that the defendant failure to carry out the underwater inspection did not constitute a breach of the province's duty of care.

Hazardous Conditions:

What constitutes a hazard in any given case may differ depending on the surrounding conditions, the normal standard of care, the reasonableness of the maintenance requirement which would have eradicated the hazard in question and what the court had for breakfast the morning of the trial. For example in **O'Conner v. Gousee (1989) RRA (Ca Que)** a golf cart on a fair way struck an obstacle. In **Flint v. Edmonton Country Club ltd. (1981) 26 AF 391 (QB)0** a regular golfer at the club did not use reasonable care in tripping over a fence around the tee off area. Likewise in **Sum-**

mers v. Niagara Parks Commission (1945) OR 326 (HC) a golfer should have been aware of the danger of bricks falling from an old fort on a golf course. Thus sand in a beach changing/shower room is not an unusual hazard **[David-Trempe v. Canada (1986) 7 FTR 302 (Fed. TD)]**, nor is it unusual for steps at a rural resort to be somewhat less than perfect where it was found there was no breach of Occupiers' Liability when the plaintiff slipped on outdoor steps at a rural resort **[Alderson v. North Pender Holding Ltd. (Aug. 11, 1987) (BCSC)]**. However when the occupier fails to install handrails on the improperly constructed stairs **[Crerar v. Dover (1984) 3 WWR 236 (BCSC)]** or warn of the design of the stairs **[Migus v. Club Med Ltd. (Dec. 7, 1983)]** liability will follow.

Negligent Design of Premises:

While frequently premises are designed by professional architects and engineers, reliance on paid professionals will not necessarily constitute a defense. Risk management entails a review of design at the construction stage and subsequently to ensure that it is sufficient to create a safe recreational area. Thus designing a recreation facility in which the playground was located adjacent to a baseball diamond was ruled a negligent design as it was reasonably foreseeable that there was a danger of persons in the playground being hit on the head by baseballs **[Long v. Mount Pearl Town (1983) 41 NFLD & PEI 209]**.

Some sports such as tennis, which are played in parks or park-like settings, can involve occupiers' liability when the court is of poor design or maintenance, even though the player may be partially liable. Thus in **Stone v. Victoria (affd) 43 BCLR (2d) 118 (BCCA)** the park was held liable when the design was such as to cause a hazard. However, here the player's knowledge that the tennis court was six feet shorter than usual as well as having a curb at the end constituted contributory negligence. In **Burough v. Kapuskasing (1987) 60 OR (2d) 727 (Dist. Ct.)** a player assumed the risk of playing on a court where there were cracks in the surface which released the town from its duty under the Occupier's Liability Act. Also in **Zaitozow v. Vancouver (1976-77) BCD Civ. (BCS)** the player should have examined the surface of the court before starting to pay as obvious repairs had been made with asphalt strips.

Supervision:

In public parks, as opposed to schools, there is generally no duty to supervise the activities of park users **[see Desaultels v. Regina (city) (1941) 3 DLR 804 (Sask. KB)]**. however, once supervision is undertaken, there is a duty to ensure that it is done in a non-negligent manner. This is particularly true of children.

Insurance Protection:

As part of risk management, recreation organizations must identify and assess all risks of injury to people and loss or damage to property which could ultimately affect the organization's success or viability. Once these risks have been properly considered, the organization can take action as set out above to either eliminate or reduce them or to insure against and budget for the possible consequences of the remaining risk. Part of that process is obtaining insurance for the operation.

It is important that time be spent with the insurance agent advising the agent of the nature of the operation and the activities. This will ensure that appropriate coverage is being obtained and should it not be obtained, that action can be taken against the agent for negligent advice.

Signage:

A sign in a dressing room which indicated "No Diving" was not sufficient when there was no notice posted in the pool area **[Arseneau v. Fredericton Motor Inn Ltd. (1984) 59 NBR (2nd) 60]**.

A sign posted at a horse stable that stated, "You enter premises and ride at your own risk" and "Notice: all riders using horses do so at their own risks" was not sufficient in the absence of clear wording to the effect that they are not liable for negligent acts **[Collins v. Richmond Rodeo Riding Ltd. (1996) 55**

ONTARIO TURFGRASS SYMPOSIUM

January 7 - 9, 1997
Constellation Hotel, Toronto

When you receive this Sport Turf Manager you probably will have received a brochure outlining the program for Ontario's Premier Turf Education and Trade Show. Now is the time to fill out your application form and cheque and put it all in the mail. Be sure to indicate your membership in the sports Turf Association.

Why attend? For a starter - to hear Ron MacLean of Hockey Night in Canada relate his experiences covering the 1996 Olympics!

For your personal advancement - to learn from Dr. Steve Baker of the Sports Turf Institute in Bingley, U.K., discuss the latest developments in root zone construction and drainage principles. Or listen to him outline the principles of the measurement of playing field quality. If you are contemplating the development of an IPM program for your organization be sure to hear Dr. Linda Gilkeson of the BC Ministry of the Environment.

Don't forget the Trade Show of over 100 exhibitors just down the hall. There will be some new piece of equipment, gadget or material which can help you in the turf program for your organization.

Last, but not least, meet old friends and swap ideas. It is an educational experience called "networking."

WWR 289 (BCSC)].

On the other hand a sign stating "Diving at your own risk - Depth, 6 feet" was sufficient, even though the depth ranged from 1 1/2 to 5 feet, on the basis that the plaintiff executed a dive which would not have been safe even if the depth had been 6 feet **[D'Auteuil v. Beausejour Investment Ltd. (1961) 37 WWR 156 (Man. CA)]**.

Waiver Forms:

A waiver form is also an effective measure to avoid liability. However, a waiver form must clearly set out the purpose of the form, the fact that the party executing the form understands it and the terms of the release. Frequently, waivers are deemed to be insufficient because they fail to clearly state that the party executing the form agrees that the potential defendant is not liable even if he is negligent. Therefore, in **Delaney v. Cascade River Holidays Ltd. (1983) 44 BCLR 24 (BCCA)** a passenger on a rafting trip was given a life jacket which, to the defendant's knowledge, would not provide enough flotation. The plaintiff had signed a liability release form which was clearly worded to cover even negligence on the part of the defendant. The defendant was not liable in the circumstances.

On the other hand, children cannot waive their rights to seek compensation for an injury sustained at a recreation facility **[Crawford v. Ferris (1953) OWN 713 (Ont. HC)]**. This does not mean the waiver should not be obtained. While a minor cannot be bound by a contract, evidence arising from the execution of the waiver can be used to establish that the child voluntarily assumed the risk.

CONCLUSIONS

Risk management is a growing industry. As the courts consider more bizarre cases the efforts of risk managers must be incrementally increased to deal with the imaginative plaintiff's counsel. However, a good system of risk management does not have to go overboard or eliminate altogether the activities that the corporation is involved in. Moreover, a good system of checklists, waiver execution and insurance will insure that the corporation is not brought to its knees by "one false step".

[An address to the 1996 WCTA Conference, Victoria, BC. Reproduced with permission from The Turf Line News]

GTI HILITES

In the June, 1995, issue of the Sports Turf Manager an article appeared on endophyte alkaloid production in turfgrass. Prof. Bowley of the Crop Science Dept. at the U. of G. had started a project investigating the production of alkaloids by endophytic fungi in turfgrass species, a production which may make the turfgrass resistant to damage by above ground feeding insects such as the chinch bug.

Having refined the analytical procedures required to quantify the presence of the alkaloids produced by the fungus, Prof. Bowley examined the occurrence of these alkaloids in four common varieties of ryegrass and four varieties of tall fescue (Table 1). Endophyte was detected in all tillers examined of the four perennial ryegrass varieties in 1995 at all sampling dates. On the other hand, endophyte infection of tall fescue tillers was lower than in ryegrass throughout 1995, although the infection increased from 56% of the tillers in June to 75% infection by August.

Whereas all varieties of perennial ryegrass had infected tillers at all dates the same held true for only one variety of tall fescue - Mustang II. The concentration of the fungi in the tillers was also higher in all the varieties of ryegrass than in the tall fescue.

Prof. Bowley feels it may be possible to utilize the turfgrass-endophyte association to effect insect control in perennial ryegrass but that possibility is less promising in tall fescue. The latter is interesting since the original reports of alkaloid production by endophytic fungi was reported in tall fescue which lead to a rejection of tall fescue by grazing animals.

This research has significant implications in the economics afforded by reducing insecticide use and the environmental issues associated with man-produced chemicals to control insect damage to turf. It would appear the next step in this interesting research would be to acquire data to confirm the perennial ryegrass varieties have resistance to heavy chinch bug attack under field conditions.

Table 1: The percent of infected tillers and the density of fungal hyphae from four varieties of ryegrass and of tall fescue at the Guelph Turfgrass Institute in 1995.

SPECIES	VARIETY	INFECTION			COUNTS / MICROSCOPE FIELD		
		June	July (%)	Aug.	June	July (No. / field*)	Aug.
Perennial Ryegrass	APM	100	100	100	2.8	2.5	2.6
	Cutter	100	100	100	1.9	2.0	2.2
	Pinnicale	100	100	100	2.1	1.5	1.6
	Yorktown II	100	100	100	2.3	2.1	2.2
Tall Fescue	Jaguar II	25	38	50	0.3	0.1	0.1
	Mustang II	100	100	100	1.5	0.8	1.2
	Pixie	25	38	50	0.1	0.1	0.1
	Rebel 3D	75	88	100	1.0	0.2	0.5

* microscopic field