

## Section 2. Risk Management Primer

The purpose of this section is to provide basic general background information related to legal liability, risk assessment and risk management as these apply to school off-site experiences. Understanding roles, rights and responsibilities starts with understanding society's expectations

### *Legal Liability and Risk Management – The Basics*

#### **How Safe is Safe Enough**

**SCHOOLS ARE NOT GUARANTORS OF SAFETY.** No trustee, administrator, teacher/leader, service provider or volunteer can foresee every eventuality. Despite high media profile of a few very tragic incidents, education and recreation program injury rates are typically not as high as many other commonly accepted daily activities (e.g., automobile travel and unsupervised activities), and program injury rates continue to decline due to improvements in safety procedures, training and equipment. Also, the best of decisions can still result in an unfortunate outcome, due to unanticipated interactions of the environment, activity and group. Conscientious program teachers/leaders should not live in fear.

That said, **most injury incidents that do occur are preventable**, and school outings must be planned and conducted with safety as a high priority. A failure to do so can lead to incidents that result in unaffordable hikes in insurance premiums, loss of time and resources spent in court proceedings, and loss of the board's and school's public reputation and internal morale.

The goal should be to provide interesting and exciting opportunities for students to learn and grow, while actively minimizing the potential for fatalities, disabling injuries, emotional distress and serious illness, and maintaining or reducing minor incidents and illness to a level commensurate with that expected in the life of active, healthy youth.

## Inherent Risks

Many activities that students participate in have **inherent risks**. Inherent risks are risks that can't be removed without changing the nature and value of the activity in ways that detract from its very essence (e.g., falling is an inherent risk of learning to skate). When a person voluntarily participates in an activity and knows the risks associated, he or she is generally treated as having assumed those risks. Therefore:

- **students and their parents/guardians must be made aware of the known risks**, especially those that are not obvious; and
- **teaching staff and volunteer leaders also need to be aware of and consider the risks of participating**, not only the physical risks of injury, but also other risks (e.g., loss of income if cannot work).

## Assumption of Risk

Ultimately, parents/guardians retain the right and responsibility to make informed choices about the levels and types of risks their children may be exposed to in school-sponsored activities. Information about risks is usually communicated through letters and consent/permission and acknowledgement of risk forms provided as a package. Appropriate forms should not attempt to have parents/guardians give up any legal rights of the child. Rather, the forms should help parents/guardians to understand the activities and their associated risks and allow them to determine that:

- the activities described are appropriate for the child, and
- the parent/guardian retains the authority to grant or withhold consent for the child to participate.

Only make a promises that can be kept. Never state, verbally or in writing, that a particular program or activity is "safe". Share the nature of the inherent risks involved and key ways known risks are to be managed (e.g., supervision, instruction, safety equipment).

## Negligence

In Canadian civil law (versus criminal law), when one person has wronged another, a court may require that the defendant pay **damages** to compensate the injured party and to encourage due care and diligence by the defendant and similar persons/groups in the future. Negligence implies **carelessness**; causing harm to someone by failing to act as the reasonable person would have in the same situation. Here, the courts try to determine whether the injury(ies) would have occurred **except for the actions and/or omissions of each named defendant** party. This may include anyone and everyone in the chain of command who could have contributed to or acted to prevent the incident; trustees, district staff, principal or designate, teacher(s)/leader(s) staff and/or volunteer and service provider staff and/or volunteers. This involves determining whether the four-point test for negligence succeeds against each party blamed.

### ***The Test for Negligence***

- A **duty of care** owed the student. Teachers/sanctioned program leaders have a legal duty of care; they are entrusted with care of the students in their programs during program hours, whether on or off-site.
- A **breach of one or more established standards of care**. The standard of care expected of teachers/leaders is that of a **'careful parent'**; the level of caution that prudent parents would show in the care of their own children, and a **'prudent professional'**; the standard of the reasonable person with similar training and performing in "like" circumstances. The prudent professional standard recognizes that teachers have specialized training, but likely have many more children in their care than the average parent. Where the activities/students/ environments have a higher level of inherent risk, the courts expect a higher standard of care.
- **Loss**; identifiable physical and/or psychological injury, death, property damage).
- **Causation**; a connection between the actions/omissions of the defendant and the resulting injury or loss; i.e., determining whether the injury or loss sustained was a **foreseeable** outcome of the defendant's error(s) or omissions. Factors considered may include:
  - whether the risk was known or ought to have been known;
  - the magnitude/severity of the risk (i.e., how many people hurt and how badly);
  - the probability of an injury like the one incurred;
  - the difficulty, cost and inconvenience of avoiding the risk; and
  - the presence of any other conflicting responsibilities which the leader may have had.

**Defences** to claims of negligence are based on showing that the above test fails on one or more counts, for each named defendant, and/or that another party was at fault (e.g., the injured party through **contributory negligence, or a third party**). Courts often **apportion the damages** by degrees of fault found.

#### **Causes of Action**

If a teacher/leader is named in a negligence lawsuit following an unintentional injury, the claims made are likely to be that there was a failure to:

- **adequately inform** the students/parents/guardians of the risks,
- **properly instruct** students (age appropriate, progressions if relevant),
- **appropriately supervise,**
- **use equipment appropriately,** and/or
- **obtain the parent(s)/guardian(s)' informed consent** for the child to participate.

## Who's Responsible and Who Pays

A **government, organization (including a school board) or company can be found liable** because of:

- its **own errors or omissions** (e.g., occupier's liability for unsafe premises),
- for failing to meet a **statutory requirement** (e.g., violating the Motor Vehicle Act), or
- vicariously for the **errors or omissions of its staff and volunteers**.

An **individual (e.g., teacher or leader) may be found liable for his or her errors or omissions**, if:

- **acting outside the scope of the employment/volunteer position**,
- **willfully or wantonly (grossly) negligent** (e.g., leading students while under the influence of alcohol or drugs), and/or
- committing an **intentional act** (e.g., assaulting a student).

Teachers and volunteers are entitled to use reasonable force necessary to defend themselves or another student against any person who, the teacher/volunteer believes, intends to cause harm. Any physical force used must be necessary and proportional to the situation.

### Personal Fault/Vicarious Liability

A school board can be found negligent because of **its own errors or omissions** (e.g., failing to provide a sufficient number of supervisors for an activity). It may also be found responsible, through the tenets of **vicarious liability**, for the errors or omissions of its employees and volunteers who are operating within the scope of their employment and are not acting in manner that is willfully or wantonly negligent. If a claim arises from a teacher's employment or volunteer work with a school district, any defence required for the teacher and any compensation ordered to be paid will usually be paid by the school district's insurer.

In most cases, a school trustee, board employee or authorized volunteer, acting on behalf of the school board in an authorized activity, will not face personal legal liability if they are negligent. B.C.'s *School Act* section 94 provides:

94 (1) No action for damages lies or may be instituted against a trustee, an officer or an employee of a board for anything said or done or omitted to be said or done by him or her in the performance or intended performance of his or her duty or the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of the duty or the exercise of the power.

No action for damages lies or may be instituted against a volunteer for anything said or done or omitted to be said or done by him or her in the provision of volunteer services for a board, or for any alleged neglect or default in the provision of volunteer services for the board by the volunteer.

(2) Subsections (1) and (1.1) do not provide a defence if: (a) the trustee, officer, employee or volunteer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful

misconduct, or (b) the cause of action is libel or slander.

- 3) No action may be brought against a trustee, an officer or an employee of a board or a student or volunteer in respect of personal or other injuries sustained by a person arising out of the operation by the board of traffic patrols.
- (4) Subsections (1), (1.1) and (3) do not absolve a board from vicarious liability arising out of a tort committed by a trustee, officer, or employee of the board, a student or a volunteer for which the board would have been liable had subsections (1), (1.1) and (3) not been in force.

### ***Other Sources of Rules and Regulations***

School boards and schools must provide for the health and safety of their staff, volunteers and students. Staff and volunteers benefit from having clearly defined, written **job descriptions**. They need to know what their roles and responsibilities are.

Teachers/leaders are expected to **be familiar with the board's relevant policies, regulations, procedures and guidelines** as they apply to the context. They should also know who to contact if they have a question, and to know they are responsible for asking questions when they are uncertain.

Policies, regulations and/or guidelines may include direction toward addressing student health and safety related elements such as, but not limited to:

- fire prevention and emergency procedures;
- inclement weather;
- administration of medications;
- outbreak of infectious diseases;
- emergency medical treatment of students, staff and volunteers;
- use of volunteers;
- security and crime prevention;
- off-site experiences;
- international travel;
- transportation;
- supervision of students during activities;
- school bus safety precautions;
- student conduct and discipline (on and off-site);
- emergency measures and crisis management;
- communications;
- unique facilities and equipment that have inherent risks (e.g., a climbing wall);
- moving of heavy equipment (e.g., canoes);
- staff and volunteers conduct (e.g., smoking, use of alcohol); and
- other relevant aspects of school life.

Teachers/leaders need to be familiar with these as they apply to the context.

## Insurance

Insurance is purchased to **transfer** otherwise unaffordable risks. It is only relied upon when other elements of the risk management program have failed and someone has been injured.

**Liability Insurance Coverage:** In most circumstances, staff and volunteers will be covered by their board's **comprehensive general liability policy** should an incident occur while engaged in school business (curricular or extracurricular), on-site or off. Teachers/leaders may also have liability insurance coverage through a sport/activity governing or training body they are involved with.

**Out-of-Province Coverage:** Group out-of-province medical care coverage is available and is required for all travel outside of Canada. Be aware of activity, travel-related or medical exclusions.

**Accident Insurance:** Finally, in addition to their regular BC Medical Services Plan (MSP) insurance, students may also be covered under extended health programs provided by their parent(s)/ guardian(s)' employers, Blue Cross, and/or personal accident insurance available through their schools or through a provincial or national sports/activity governing body.

## Risk Assessment and Risk Management

Schools must take risks to provide quality programs students will learn from and through, while protecting mission-critical interests. Risk or safety management involves a conscious process to minimize loss (e.g., injury, financial costs, reputation) to an acceptable level. It includes the strategies, techniques and approaches involved in identifying and addressing sources of potential harm.

**In its simplest terms, risk management involves considering:**

- 1. Will this activity be of value** to students, families and the school?
- 2. What can go wrong?**
- 3. What will we do** a) to prevent or minimize harm to those involved; and  
b) to deal with an incident and its consequences?

## Risk Assessment

Before a risk can be managed, it must be identified and assessed as to its potential impact for a particular individual and/or group. This involves two steps:

### Step 1

**Identify the objective risks** (environmental; e.g., cold day, and equipment; e.g., loose ski binding) **and subjective risks** (human; e.g., students unfit). Focus on issues that could lead to real injury or death, not merely discomfort or annoyance.

Hazard (potential for harm) + people = risk

Factors affecting risk in school programs/activities/events include:

- **Activity**
  - Duration of the activity
  - Nature of the activity (e.g., complexity; demands re: stamina, speed, strength, etc.)
  - Accessibility to communication (time, reliability) and emergency services
  - Transportation to, from and/or during the activity
- **Environment and Facilities**
  - Site/facility specific hazards and inspection and maintenance considerations
  - Environmental factors such as terrain, presence of water bodies, remoteness
  - Weather conditions
- **Equipment**
  - Presence of appropriate quantity and quality of personal and group equipment
  - Presence of appropriate safety, rescue and first aid equipment/supplies
  - Use, maintenance and repair of equipment, including specialized equipment
- **People**
  - Knowledge, skills, fitness and experience of teachers/leaders
  - Leadership, teamwork and communication
  - Age, knowledge, skills and experience of students
  - Number of students
  - Other interactions (e.g., with people in other programs, general public)

## **Step 2**

**Consider the known risks**, including the potential **frequency** (likelihood) and **severity** of foreseeable serious injuries or illnesses. It is recognized that no one has the time or resources to plan for every conceivable or hypothetical scenario, and teachers/leaders are not risk management specialists, with incident frequency data readily available for quantifying risks.

Attempt to **minimize the potential for reasonably foreseeable high severity incidents**.

- First, focus on those where a **number of people** could be impacted at once (e.g., motor vehicle crash if transporting a group of students).
- Next, plan for anywhere **serious injuries/illness** could be anticipated (e.g., a student suffering a long fall from a cliff edge along an exposed hiking route).
- Finally, consider situations that could lead to frequent but minor injuries, property damage, significant disruption of program or operations, public liability, and/or government intervention.

## ***Risk Assessment for a Particular Program or Activity***

Identifying and assessing risks takes time. However, efforts here may pay huge dividends in

time and energy savings in dealing with the aftermath of a preventable incident. Risk assessment may occur as part of a pre-activity planning, and/or when encountering a risk during an activity. Consider the following as part of assessing a given risk.

### **Risk Assessment Considerations**

- Does this activity serve the child's interests?
- Am I competent and experienced enough to properly assess this type of risk?
- Do I have the knowledge, skills, fitness, and experience to deal with this risk?
- Is there a low risk of real physical and/or psychological harm to students?
- Is acceptance of this risk desirable in meeting school and student objectives?
- Is the risk identified in the activity plan and addressed in the safety plan?
- Is it a single risk (versus a combination of complex, interacting risks)?
- Is the risk difficult to avoid (e.g., inherent to the activity or environment)?
- Are all the students physically, mentally and emotionally prepared?
- Are the students of sufficient age, intelligence and experience to assume the risk?
- Have parents/guardians provided informed consent to expose their children to the risk?
- Is the group appropriately dressed and equipped to deal with the risk?
- Are there any subjective human hazards present (e.g., overconfidence, peer pressure)?
- Does the group have sufficient emergency response capacity to deal with incidents?
- Are Emergency Medical Services available?
- Has the board granted me permission to make decisions related to this risk?
- Will the group be able to handle the situation in the event that I am injured?
- Are there any legal obligations involved (such as statutes or codes)?

Ask: Is the right group, in the right place, at the right time, with the right clothing and equipment?

### **Risk Management**

Once risks are identified and assessed, there are three steps involved in managing it.

1. **Determine how to manage the risk.** Active safety planning includes considering options to:
  - **Retain risk** (when likelihood and magnitude of risk of loss are low – e.g., letting the students orienteer without long sleeved clothing);
  - **Reduce risk** (e.g., using safety equipment, instruction and/or supervision – e.g., using a buddy system to reduce the chances of a child getting lost or wandering off);
  - **Transfer risk** (to students through instruction, to parent/guardians through informed consent, and to service provider and/or insurer through contractual relationship); or
  - **Avoid risk** (when likelihood and magnitude of risk of loss are high – e.g., not letting students try base jumping off a skyscraper, even though they really want to).



For information regarding contracts such as waivers, releases and master agreements with service providers See *Section IV Special Considerations*.

2. **Develop and implement a safety management plan** that includes strategies, techniques and approaches to manage each significant risk. Options related to reducing a risk may include:
  - Selecting an appropriate **area/site**;
  - **Informing** students/parents/guardians of risks; warning of hazards;
  - Training other members of leadership team in **procedures and practices**;
  - Establishing an appropriate **supervision system**;
  - **Instructing students** in appropriate procedures;
  - Incorporating protective or other **safety equipment**; and
  - Establishing an appropriate **emergency response plan** (ERP).
  - **Record** the key elements of the safety management plan and ERP, on paper or computer.
  
3. **Monitor** processes, outcomes and modifications. Reassess risks if implementing an alternative or contingency plan. Note what worked, what didn't and what should be done next time.



The *Safety First!* Guidelines will help in identifying the most common foreseeable activity, environment and group related risks of school off-site programming and offering strategies, techniques and approaches to managing these risks.

See the remaining relevant sections of *Safety First!* for strategies, techniques and approaches to managing activity, group and environment risks.

See the [Adventure Leadership Resource](#) for more information related to environmental hazards and safety and emergency response planning.

Simply ask “What if...” and think through and document how each significant risk will be dealt with.