

## RM103: Legal Risk in Community Recreation

*RM103 - Legal Risk in Community Recreation was developed several years before Recreation North's Pilot by Dr. Ian McGregor of SportRisk, an expert in the field, and Caroline Sparks. RM103 was designed and prepared for the Recreation and Parks Association of the Yukon and funded by Yukon Government Sport and Recreation Branch along with RM101 and RM102.*

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### **Description:**

There are two types of risk: inherent and legal. This session introduces and explains concepts of legal risk such as negligence and liability. Participants will be reminded how to reduce risk in five key areas and explore strategies for transferring risk such as waivers and insurance.

### **Learning Objectives:**

- Recognize 'legal risk' in community recreation settings.
- Understand concepts of negligence and liability.
- Explain strategies that reduce or transfer legal risks.

### **Required Learning Activities:**

- RLA: You're the Jury (group activity)

### **Week 1:**

RM103 introduces legal risk; the chance of a lawsuit and/or being sued if someone or an organization behaves negligently. An understanding of the concepts of negligence and liability is essential. Negligence, not being careful enough, is closely connected to liability, a legal process that establishes responsibility for negligence.

There are three major parts to establishing liability. The first part determines whether or not there was negligence through four key issues: duty of care, standard of care, damage or injury, and proximate cause. The second part determines the extent to which responsibility/liability is personal, vicarious, occupiers, or products.

*Key teaching points: (also refer to RM101 Trainer Guide)*

- Inherent risk, is considered normal or natural to an activity and cannot be eliminated without changing the primary nature of the activity.
- Negligence is the failure to exercise a degree of reasonable care under the circumstances and to take reasonable steps to prevent damage or injury.
- To determine whether or not there was negligence, the courts first consider four issues, asking a question for each. Negligence is established if the answer to all four questions is 'YES'. If 'NO' is answered on one question, the case does not proceed.
  - Duty of Care: Was the injury/damage foreseeable?
  - Standard of Care: Did an employee or volunteer breach the Standard of Care?
  - Damage: Was there damage or was someone injured?
  - Proximate Cause: Were the employee or volunteer's actions (or inactions) a direct cause of the injury?
- Assigning responsibility for negligence is based on four types of liability.
  - The person whose negligent behavior caused the injury may be found personally liable for damages.
  - Vicarious liability may place responsibility on an organization having a relationship with the individual who committed the negligent act.
  - Occupiers' liability is responsibility for damage caused by a hazardous or defective aspect of the property on which injury occurs.
  - Products liability assigns responsibility for damage due to defective or hazardous equipment or equipment improperly used or installed.

## **Week 2:**

The third part of establishing liability is to determine if a defendant can escape liability. It may be possible to escape liability if the plaintiff's own actions contributed to the injury, the plaintiff voluntarily assumed risk of injury, and/or the plaintiff signed a valid waiver form. The risk of liability can also be minimized by transferring risk by contracting out or through insurance.

Week 2 wraps up with a group activity that involves working in groups on a negligence liability trial. Three groups will examine the case of an accident that caused serious injury. Group 1, the lawyers for the plaintiff, prepare the case to sue

for damages and claim negligence. Group 2, lawyers for the defendant, argue that there is no negligence. Group 3, the Jury, decides if there is negligence and liability.

*Key teaching points: (also refer to RM101 Trainer Guide)*

- To establish Contributory Negligence, the courts will ask how much of a factor was the plaintiff's behavior in the outcome and damages sustained; and, if the plaintiff had acted differently, would the accident have happened, or been less severe? Typically, if a plaintiff is found to be contributorily negligent, the settlement is reduced proportionally.
- A signed Informed Consent means a participant agrees to and assumes an activity's inherent physical risks, but not risks due to improper supervision, faulty equipment or facilities, inadequate training of a leader, etc.
- A waiver asks a participant to accept both physical and legal risk. A valid waiver is a signed, legal contract which may protect an organization in a negligence suit. When a participant signs a waiver, he/she is able to participate in an activity but, in doing so, gives up the right to sue.
- Risk can be transferred by contracting out so that someone else delivers the activity or event and by purchasing liability insurance to transfer certain operational risks to an insurance company.

### **Required Learning Activity: Risk Rating**

READ: [You're the Jury Instructions](#) and connect with your group in Group Messaging.

PREPARE and POST: Using the appropriate handouts (scroll to the bottom of [You're the Jury Instructions](#)). Groups 1 and 2, the lawyers, will prepare and record their cases. Group 3, the Jury, will review the cases and present their ruling.

### **Resources and References:**

#### Resources

- RM103 LE Presentation
- RM103 activities formatted in H5P

#### Activities

- Required Learning Activity – You're the Jury

#### References