

# HOT LEGAL TOPICS





# Sport Law & Strategy Group

Providing strategic insight to the Canadian sport community through professional services in these areas:

- ✓ Legal Solutions and Policy Development
- ✓ Risk Management
- ✓ Strategic Planning and Good Governance
- ✓ Communications, Facilitation and Integral Coaching™
- ✓ Event Management and Marketing
- ✓ Financial Planning and Human Resource Management

# Our Team



# Agenda

1. *ONCA Update*
2. *Running an AGM*
3. *Club Mergers*
4. *Conflict of Interest*
5. *Risks Unique to Children/Minors*
6. *Concussions – Rowan's Law*



# Ontario Not-for-Profit Corporations Act

- Ontario NFP Act received Royal Assent on October 25, 2010 and will come into force upon 24 months notice.
- Existing not-for-profit corporations:
  - Will have **three years** after the new Act comes into force to update articles and amend by-laws
  - At the end of the three years, these documents will be **deemed to be amended** to conform with the requirements of the new Act
  - New Corporations subject to Default Bylaws
    - If Corporation does not pass an organizational by-law within 60 days after the date of incorporation.

# Types of Ontario NFP Corporations

- Charitable Public Benefit Corporation, incl. religious (Charitable PBC)
- Non-Charitable Public Benefit Corporations (“Non-Charitable PBC”) – receive >10k/year from public resources
  - Government grants (federal or provincial), and
  - Donations from non-members, directors, officers or employees)
- Non-Public Benefit Corporations (“Non-PBC”) – everyone else

# Audit Requirements

Type of Corporation	Amount of Revenue	Type of Financial Review
Public Benefit Corporation	\$ 100,000 or less	Waive*
	More than \$100,000 but less than \$500,000	Review engagement*
	\$500,000 or more	Audit
Non-Public Benefit Corporation	\$500,000 or less	Waive*
	More than \$500,000	Review engagement*

\*Approval to waive an audit or to waive both an audit and review engagement requires an extraordinary resolution.



# Members' Rights Expanded

- Vote by proxy (mandatory rule) unless mail in voting or alternate voting accepted (Proxy holders need not be members)
- Presentation of Financial Statements
  - Director must present before the members at every AGM
    - The Financial Statements approved by the Directors
    - The Report of the Auditor
    - Copies must be provided no less than 21 days before the AGM.



# Fundamental Changes

A special resolution of the members and each class for the following:

- (a) change the corporation's name;
- (b) add, change or remove any restriction on the activities that the corporation may carry;
- (c) create a new class or group of members;
- (d) change a condition required for being a member;
- (e) change the designation of any class or group of members or add, change or remove any rights or conditions of any such class or group;
- (f) divide any class or group of members into two or more classes or groups;
- (g) add, change or remove a provision respecting the transfer of a membership;
- (h) increase or decrease the number of, or the minimum or maximum number of, directors;
- (i) change the purposes of the corporation;
- (j) change the manner of giving notice to members;
- (k) change the method of voting by members not in attendance at a meeting

# Running an AGM



# Purpose of an AGM

1. To amend the Articles of Incorporation or Bylaws
2. To elect the Board of Directors
3. To receive the audited financial statements
4. To appoint the auditor
5. Amend Rules?
6. Other Business?
7. Insure your Bylaws comply with the Act.

# Notice

1. Annual Meeting - Every 15 months and 6 months of fiscal
2. Notice – Per the OCA, notice of the time and place and the required notice for the holding of meetings should be described in the organization's bylaws.
3. The Act allows Directors to call a members meeting at anytime.
4. The Act allows Members holding not less than 10% of the voting members may request a members meeting at anytime for any purpose connected to the corporation. (Directors must call the meeting within 21 days or the members may do so within 60 days.)

# Notice

1. How you will notify members should be described in the Bylaws. Who is responsible?
2. Notice should include enough information for the members to make informed decisions. (Financials, Reports, Amendments, New Business, etc.)
3. A sample agenda and/or motions should be included.
4. Notice must include the right to vote by Proxy.
5. Notice should be provided to the auditor.

# Venue, Date and Time

- Set a date and time of the AGM
- Book the meeting room
- Think about whether the room is accessible to all your members – e.g. could a wheelchair user attend the meeting?
- Ensure that the room will be big enough to accommodate a minimum number of people
- Is security required?
- Membership ID Check
- Good Standing

# Participation by Electronic Means

- Do your bylaws allow for participation by electronic means
- Requires a person to communicate adequately with each other during the meeting



# Proxy Voting

- The OCA mandates that all voting members are entitled to vote by proxy.
- A proxy holder need not be a member.
- A proxy must be signed by the member
- Submitted to the Head Office a minimum of 48 hours prior to the AGM.

# Sample Proxy Clause

- Proxy Voting – Every Member entitled to vote at a meeting of Members may, by means of a proxy, appoint a proxy holder, or one or more alternate proxy holders, to attend and vote on behalf of the Member. The proxy holder need not be a Member. A proxy must:
  - Be signed by the Member;
  - Be in a form that complies with the Act;
  - Comply with the format stipulated by the Corporation; and
  - Be submitted to the Registered Office of the Corporation at least two (2) business days prior to the meeting of the Members
  - Comply with the Corporation's Proxy Policy

# New Business

- Managing New Business should require proper notice and not an open discussion at the end of the Annual Meeting.
- Set a timeline for the submission of New Business
- Do not accept new business from the floor
- New Business - No other item of business will be included in the notice of the meeting of the Members unless notice in writing of such other item of business, or a Member's proposal, has been submitted to the Board sixty (60) days prior to the meeting of the Members.

# Agenda

- Call to order
- Establishment of Quorum
- Approval of the Agenda
- Declaration of any Conflicts of Interest
- Adoption of Minutes of the previous Annual Meeting
- Board, Committee and Staff Reports
- Report of Auditors
- Appointment of Auditors
- Business as specified in the meeting notice
- Election of new Directors
- Adjournment

# Amending Bylaws

- The Directors may amend bylaws which have full force and effect until approved or rejected by the voting Members via Special Resolution.
- Members may also suggest bylaw changes and amend the Bylaws via Special Resolution.
- Notice of such changes must be in compliance with the Bylaws.

# Corporate Records

## Corporate records to be kept:

- the articles and by-laws
- the minutes of meetings of the members and of any committee of members;
- the resolutions of the members and of any committee of members;
- the minutes of meetings of the directors and of any committee of directors;
- the resolutions of the directors and of any committee of directors;
- a register of directors;
- a register of officers;
- a register of members; and
- accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis.
- Red means members access

# Operating an Incorporation

- Corporate Filings
  - Annual Return – Form 1
  - Schedule 546, Corporations Information Act Annual Return for Ontario Corporations, together with their T2 return
- Bylaws
- Annual Audit
- Policies
  - Workplace Safety and Harassment Policy
  - Privacy Policy
  - Accessibility Policies
  - Etc.
- Insurance (Accident, Liability, Directors and Officers)



# Mergers / Dissolution



# Steps to Merge

Entities incorporated under the same legislation may merge into one corporate entity.

1. Create Amalgamation Agreement
2. Create New Bylaws
3. Send Amalgamation Agreement and new Bylaws to all parties for discussion and approval.
4. Determine if there are any financial implications for the amalgamation. Definitely consult with your accountant. The Date of amalgamation may be very important for accounting purposes.
5. Each Club to pass resolution accepting Amalgamation Agreement.
6. File Amalgamation Documents (Form 11).
7. Open new bank account.
8. Direct all assets to Amalgamated Corporation.

# Amalgamation Agreement

1. Name of Amalgamated Corporation
2. Registered Office
3. Objectives of the Corporation
4. Expenses to Amalgamate
5. First Directors
6. Membership – Conversion/Cancellation
7. Updated Bylaws - attached
8. Responsibilities of the Parties
  - a. Pay all debts and liabilities
  - b. Provide all capital, assets, monies, and investments to the Amalgamated Corporation on or prior to the Amalgamation Date.
  - c. Provide all books and records to the Amalgamated Corporation on or prior to the Amalgamation Date.
  - d. Ensure that there is no creditor prejudiced by the amalgamation.
  - e. Execute, deliver, file and register all documents necessary to give effect to the amalgamation.

# Other Options

## Option 1 – Dissolution and Transfer of Assets to current Corporation

1. Special Resolution of Members to Dissolve
2. Bylaws to align with dissolution and transfer of assets
3. Advertisement in the Ontario Gazette
4. Completion of required documentation and affidavits
5. Ensure no debts or liabilities

## Option 2 – Dissolution of both Organizations and New Corporation

1. Special Resolution of Members to Dissolve
2. Bylaws to align with dissolution and transfer of assets
3. Advertisement in the Ontario Gazette
4. Completion of required documentation and affidavits
5. Ensure no debts or liabilities
6. Establish New Corporation

# Conflict of Interest



# Legal Duties of Directors

1. Diligence
2. Obedience
3. Loyalty
  - 1) Required to put interests of the organization first.
  - 2) Ahead of your own
  - 3) Ahead of another organization - directors who are involved in more than one organization
  - 4) Free from conflict of interest

# Disclosure of Interests / Corporations Act

- Every director must declare any indirect or direct interest in in a proposed contract at a meeting of directors.
- Disclosure must be immediate and in writing.
- If disclosed and the Director has not voted on the contract, the Director is not accountable to the organization or its members for any profit realized from the contractor or is the contract voidable.



# What is a Conflict?

- “*Conflict of Interest*” – Any situation in which an Individual’s decision-making is **OR PERCEIVES TO BE** influenced or could be influenced by personal, family, financial, business, or other private interests.
- “*Pecuniary Interest*” - An interest that an individual may have in a matter because of the reasonable likelihood or expectation of **financial gain or loss** for that individual, or another person with whom that individual is associated.
- “*Non-Pecuniary Interest*” - An interest that an individual may have in a matter which may **involve family relationships**, friendships, volunteer positions or other interests that do not involve the potential for financial gain or loss.

# What Employees Need to Know

- Legal duty to serve employer with good faith, loyalty and faithfully.

\*must not engage in activities that conflict with the interests of your employer

- Must disclose a conflict or potential conflict
- Conflict cannot continue without approval

# What is Conflict of Interest?

➤ COI exists when:

The employee's personal interests (or those of a related party) could influence your decisions or impair your ability to act in the best interest of your employer.

# Simple Guidelines for Employees with Outside Business Interests

- **Do Not** use employer's tools, information, systems or equipment for personal business
- **Do Not** work on your personal business matters during regular work hours
- **Do Not** set up a business that competes with your employer
- **Do** let your employer know what you are doing

# Conclusion

- As an Employee, you may undertake other contracts/opportunities but they must be disclosed and approved by the Employer.
- All conflict must be resolved in favor of the Employer
- Conflict of Interest may be grounds for termination with cause.

# Risks Unique to Children/Minors









# Duty of Care

A person owes a duty to anyone who they ought to know could be affected by his/her actions

**COACHES → ATHLETES!**

A duty arises by virtue of a “relationship” between two parties, and the coach-athlete relationship is clearly one which establishes a duty of care.

# Standard of Care

- **Written/published standards**
  - Equipment standards
  - Organization policies & rules
  - Facility rules
  - Code of Conduct
  - Coaching/teaching/leadership manuals
- **Unwritten/unpublished standards**
  - New developments and Trends
  - Network
  - Pursue and Participate in Professional Development.
- **Case law**
- **Common sense**
  - Intuition
  - Knowledge
  - Experience
  - Gut

## Myers v. Peel Country Board of Education (1981)

- Fifteen year old boy suffers broken neck while dismounting rings in a gymnastic class.
- Standard of Care required of a coach is that of a careful or prudent parent.
- A prudent parent would not:
  - Use substandard mats when more protective mats available.
  - Permit a his/her child to practice dangerous maneuvers without adult supervision.

# What we learned from *Myers*

The potential for accidents will be reduced if the following four tests are met:

1. Activity is suitable to the participant's age and condition (mental and physical);
2. Participant is progressively trained to do activity properly;
3. Equipment is adequate and suitably arranged; and
4. The performance is properly supervised.

# Screening – Growing Consensus

Debate is not on whether we must screen (as it is widely accepted that we must) but:

- How it should be done...

Given the need to find balance between the duty of an organization to provide a safe environment and the practical limits of what an organization can do.

# Things to Think About

- Drafting a Screening Policy
  - Who is to be screened:
    - Those persons who have difficulty protecting themselves and are at risk due to age, disability, handicap or other circumstance”
  - What acts are prohibited?
  - How are you going to make decisions on each person?
  - Disclosure Forms

# TEN “SAFE STEPS” PROGRAM

- 1. Determine the risk**
- 2. Write a clear position description**
- 3. Establish a formal recruitment process**
- 4. Use an application form**
- 5. Conduct interviews**
- 6. Follow up on references**
- 7. Request a Police Records Check**
- 8. Conduct orientation and training sessions**
- 9. Supervise and evaluate**
- 10. Follow up with program participants**

# ARE YOU PREPARED?

1. Have you done everything reasonable to provide a safe environment?
2. Media, Parents, Victims
3. Can you sleep at night?



# WAIVERS

A close-up photograph of a hand holding a dark pen with gold-colored accents, signing a document. The document has a red line and some text, including "on behalf of the Client (with)". The word "WAIVERS" is overlaid in large blue letters in the top left corner.

**An intentional, informed and  
voluntary agreement to give up  
a known legal right**

# 2 TYPES OF RISK IN SPORT

## **PHYSICAL RISK**

The risks, dangers and hazards that are inherent in the sport activity. These risks are unavoidable, reasonable and in many cases, desirable

## **LEGAL RISK**

The risk that the organizers of the sport activity will behave negligently. This risk is not inherent in the sport, nor is it desirable, reasonable or acceptable

# WAIVERS

**CONTEXT** – is the waiver being used in a setting that is appropriate for such use

**WORDING** - is the waiver easy to read and understand?

**CONTENT** - are all activities, all parties, all risks covered (including negligence)?

**EXECUTION** - does person have authority to sign a contract, did they have an opportunity to read and understand the contract, did they sign the contract voluntarily?

# Concussions



# Background

- Rowan Stringer was a 17 year old rugby player who died on May 12, 2013.
- Cause of death was multiple head injuries while playing high school rugby.
- It was stated that Rowan died from Second Impact Syndrome:
  - Where a pre-existing injury followed by another head blow can cause death.
- Date before her death, she was tackled on May 8, 2013, she showed symptoms of:
  - Headache
  - Exhaustion
  - Bags under her eyes
- It was believed she never told her parents or any adults about the headaches.

# Aftermath

- A coroner's inquest into Rowan's death concluded with 49 recommendations:
  - Enhanced concussion awareness and treatment.
  - Head injury awareness and prevention
  - Removal-from-play
  - Return-to-play strategies for young athletes, coaches and mentors.
- The coroners recommendations includes:
  - Making concussion awareness mandatory in Ontario's curriculum,
  - The promotion of an annual Brain Day awareness campaign, and
  - Better tools for coaches and players to identify and treat concussions.
- Rowan's Law would create an expert advisory committee to Ontario's Premier that would advise on the implementation of the Ontario specific recommendations.
- Ontario would be the first in Canada with concussion related legislation.

For more information, visit:

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