TERTIARY SPORT AND RECREATION: PLAYING IT SAFE

by

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SYNOPSIS

TITLE : Tertiary Sport and Recreation: Playing It Safe
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This study was undertaken to evaluate the risk management practices in sport and recreation at tertiary institutions in South Africa. Because of the growing emphasis on safety in sport, the aim was to determine: to what extent sport management staff understood legal liability issues affecting sport and recreation; to what extent they conducted their affairs in a professional manner by utilizing what specific risk reduction strategies to prevent or reduce injuries. Because of a paucity of scientific research in this field in South Africa, and because there was no evidence of a body of knowledge that has developed locally, a secondary aim was to set out and explain the various legal aspects from various legal systems concerning sport that are suitable for the needs of personnel in this country. A range of personnel are involved in the whole business of sport and recreation. They include facility managers, coaches, referees, activity leaders, sport officers, promoters, educators, sport and recreation directors, club managers, participants and spectators.

The methodology employed involved descriptive research. The secondary aim of investigating what legal issues are relevant to sport, from a sport perspective, was accomplished by an analysis of case law, journal articles and published reference works on the topic. The quantitative assessment of risk management practices was achieved by utilizing an instrument developed by Penman and Adams (1980), called "Assessing Athletic and Physical Education Programs". A pilot study was conducted on two universities and two technikons to validate the instrument. The sample for the study
consisted of forty tertiary institutions. A profile analysis of the respondents was done to identify their strengths and weaknesses.

The literature review established that there is a growing interest in the academic study of the legal regulation of modern day sport and recreation. Further, “Sports Law” is now a legitimate subject in the United States, Britain, Canada, Australia, New Zealand and South Africa. The commercialized nature and sophistication of modern sport has necessitated the law’s involvement in sport.

An indispensable part of the literature review was a content analysis of risk management practices. The most frequently listed risk management concerns that surfaced over the past two decades were categorized into the following specific areas: supervision and instruction; equipment and facilities; medical care; travel and transportation; insurance; and civil rights. The most recommended approach to identify and reduce risk was the use of printed forms to record whatever had been done and to provide evidence as a solid defense against liability. The legal theory was analyzed and discussed under the following broad categories: negligence issues; constitutional issues; legislative issues; administrative issues; and risk management theory.

The profile analyses revealed a normal distribution of scores in the general liability category. The results showed that the status of institutions in respect of being previously disadvantaged or advantaged was not a good indicator of vulnerability to legal liability. It was found that far too many safety issues were not addressed by a significant number of respondents. Also, about a quarter of the institutions were exposing themselves to a serious risk of liability.

The category of equipment and facilities appeared to be most frequently addressed in a formal manner. However, not all institutions provided hazard-free facilities for both athletes and spectators. A category that appeared problematic was medical aspects.
Almost half of the respondents gave below average attention to pre-season, in-season and post-season medical considerations.

The category that showed the severest weaknesses dealt with the management of records and information on athletes. This category had the lowest average score indicating that there appeared to be either a lack of awareness of how this category impacts on legal liability in sport or that there were serious constraints with respect to human resources in sport management services at most institutions. This category reflected the largest scope for improvement of practices relating to the maintenance of records and information of athletes.

This study revealed that there was an urgent need for a comprehensive legal framework in sport law, and that the legal profession should investigate this deficiency very seriously. Further, safety in modern day sport is of paramount concern. This study has helped to develop the body of knowledge in sport law in South Africa. Sport and recreation managers were generally not aware of their legal responsibilities. Many of the institutions were clearly exposing themselves and their employers (vicariously) to serious risk of litigation by breaching the legal standard of care expected of them. Based on the results of the study, recommendations were made: to improve the legal literacy of sport management personnel; to improve the standard of care in sport and recreation; to implement risk management as a vital planning tool in the drive to reducing injuries; to incorporate sport law in professional preparation programmes; and to conduct further research.

KEY WORDS:

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# Chapter One

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There is an increasing sport-related culture globally. In South Africa, for instance, the National Sports Council (1995) has noted the rising interest in sport, particularly among the young. This is associated with the following factors:

1. The emphasis on the Ministry of Sports & Recreation to get the nation involved.
2. The adoption of the slogan "Let's get the nation to play" as an appeal to the bodies of sport and recreation, mainly the National Sports Council (1995).
3. The introduction of the National Department of Sport and Recreation's national "Active" South Africa campaign.
4. South Africa's re-entry into international sport.
5. The transition to democracy and the adoption of the new Constitution (Act 108 of 1996) which includes the Bill of Rights that protects the human rights of all citizens.
6. Interest in sports participation being stimulated through the general media and televised sports content.