CHAPTER FIVE

ANALYSIS AND DISCUSSION OF RESULTS

5.1 ANALYTICAL PROCEDURES

The primary purpose of assessing the legal aspects related to recreation and sport programmes at tertiary institutions was to improve the existing position, to create an awareness of legal aspects and safety in these applied fields and to thereby improve the delivery of the service. Although one of the subsidiary aims of the investigation was to explore whether a final numerical quantity, indicating the status of the management of legal aspects, could be arrived at, such a figure would not have a statistically meaningful value. In other words, it does not allow a comparison with the management of sport and recreation across institutions. It appears to be more desirable, when the purpose is to improve the existing situation, to simply analyze what exists and from that assessment to recommend improvements. After changes have been implemented, a subsequent assessment can be made to determine if, in fact, an improvement has occurred. The instrument utilized in this study consequently has its greatest value when analyzing improvement within a program rather than when comparing programmes.

A profile analysis has been decided upon as most appropriate for assessment. With a profile, obvious strengths and weaknesses can be identified, and any point on the profile can be compared with subsequent evaluations. The profile analysis gives a graphic picture of the total status and, in addition, each subcategory can be examined (Penman & Adams, 1980).

The investigator assigned different weights to the four categories, because all the areas under evaluation were not regarded to be of equal importance. Issues concerning general
liability were assigned a weight of 40% because it was found in the literature that these were the areas in recreation and sport that most often invoked the law (Collins, 1993; Girvan & Girvan, 1993; Parmanand, 1987). Issues relating to equipment and facilities were regarded as second most important and were given a weight of 30%. Medical aspects were weighted as third most important at 20% and records and information were weighted as fourth most important at 10%. It is important that if any comparison of the composite scores is to be undertaken in the future, either by researchers or sport managers at these tertiary institutions, these weights must remain constant.

The weights add up to one hundred. Since each category has a rating of 1-7, there is a maximum possible weighted score of 700. This maximum possible score is divided into the total weighted category score in order to arrive at a composite score. This composite score could be used for comparison purposes and to evaluate improvement. A composite score of 1.0 would represent a perfect program. The category ratings may also be plotted on the profiles and relative importance established for each category as the profile is inspected (Penman & Adams, 1980).

The profiles of each institution are included as part of the appendix. The institutions have not been identified to protect their confidentiality, or they would most probably not have been co-operative in revealing the information required of them.

5.2 GENERAL LIABILITY

Table 3. Average Category Rating: General Liability

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AVERAGE: 87.9 \div 21 = 4.2
Table three reflects that the average category rating was 4.2, which is generally favourable as it is above the midpoint rating of 4. Ten institutions (48%) emerged to be below the average score of 4.2, while eleven were above the average in the area of general liability which dealt with insurance, classification and association relations, standard of care, transportation, spectators, supervision and miscellaneous issues. In statistical terms this represents a normal distribution.

Of the eleven respondents that had scored above the average, some were historically black institutions or previously disadvantaged institutions, while a few of the very prominent advantaged universities comprised the below average group. It would thus appear that the fact that some of the institutions were previously disadvantaged does not necessarily reflect a poorer or more vulnerable position with regard to legal liability. The fact that some of the most prominent universities in the country scored below the average could indicate that they have personnel who are not sufficiently aware of legal liability issues and therefore do not have management practices that are legally sound. On the contrary, it is also possible that these institutions have personnel who are more legally literate in sport management matters and were consequently more critical and severe in the rating of the practices of their departments.

Of the eleven institutions (52%) that had above average ratings, there were four institutions (1,9,12,17) that rated very highly (5.6 and above), indicating a formal, structured and thorough approach to general liability issues. Considering that this is the main area of sports law occasioning litigation, it is clear that far too many loopholes are left unaddressed by a significant number of responding institutions (10). Further, at least five respondents (7,10,11,13,15) had extremely low ratings, indicating a serious risk of liability.

Upon closer analysis of the subcategories, by summing up the frequencies of each subcategory rating, a more precise identification of the main problem areas was possible. Sixteen institutions were below the category average of 4.2 when it came to classification and association relations which deals with aspects such as awareness and implementation
of national sport governing body rules, eligibility standards and gender issues. In the context of tertiary level student sport, such a situation is inconceivable and unacceptable practice. Firstly, all of the responding institutions were *bona fide*, registered members of the governing body, namely S.A.S.S.U. (S.A.S.S.U. Website). As such, they had all received Circular 04/99 in January 1999, which was an update on the constitution and regulations. In addition this information is available via the internet on the S.A.S.S.U. website and the majority of these institutions do have access to such a facility.

The preamble to the S.A.S.S.U. constitution consists of the following resolution:

"Therefore the sportspersons of South African institutions of tertiary education commit themselves through the medium of sport and sporting contact to the establishment and promotion of a peaceful, united, non-racial, non-sexist and democratic society where all people are equal before the law; where they may compete equally in sporting competition; where the tenets of affirmative action apply, based on the equitable provision and distribution of sporting facilities; where normal democratic principles apply, and where the principles of accountability are upheld" (S.A.S.S.U. Constitution, 1999:1).

The only logical conclusion that one may therefore arrive at is that sport management personnel are not upholding the basic tenets and founding principles of their national governing body, that they do not clearly know, understand and appreciate the legal implications of applying the above-mentioned rules in their day-to-day role functions. They are clearly exposing themselves and their employers to serious risk of litigation. The common sense, agreement and co-operation suggested in the theoretical framework (Chapter 3: 50) is lacking. Also, in the light of the discussion on the requirements of activity leaders/supervisors (Chapter 3: 60), the duty to not only exercise reasonable care in whatever they do, but also the need to possess a certain amount of technical knowledge in the activities they supervise, is apparently being breached.

According to Gaskin (1993), experts in the area of sport law stress the importance of establishing, communicating and enforcing rules and regulations. If rules and regulations are established but not communicated, it is as if they do not exist, or if they are established and communicated but not enforced, it is as if there were no regulations. One component cannot exist independently of the other two. All must be demonstrated for a
participant to be held contributorily negligent for an injury resulting from violation of a rule.

Thirteen respondents provided a lower than average standard of care, which essentially deals with employing the services of qualified and knowledgeable, competent coaches, supervisors and sport administrators. Within the general liability category, the standard of care subcategory has been the cause of the majority of negligence cases (Girvan & Girvan, 1993).

With regard to transportation of athletes and teams, twelve of the institutions were below the average rating. This subcategory dealt with liability arising from clearly written institution policies relating to safe transportation of athletes to and from tournaments, the use of students’ vehicles, the licensing, insurance and roadworthiness of institution-owned and private vehicles. In this regard, the investigator reiterates the warning of Pittman (1993), referred to in chapter 4 (109), that “safety must be the primary concern when considering transportation options – lack of careful planning could have serious results.” Twelve of the respondents were also below the average rating when it came to the miscellaneous subcategory, which dealt with issues such as awareness of coaches and sport management staff of delictual liability as it relates to their responsibilities. In this respect, it would appear that professional standards were questionable by reference to the discussion in section Chapter 3 (84), which requires personnel to conform to the standard of a reasonable manager, coach or supervisor i.e. the standard of a professional.

5.3 EQUIPMENT AND FACILITIES

| Inst. | 1   | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11  | 12  | 13  | 14  | 15  | 16  | 17  | 18  | 19  | 20  | 21  |
|-------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Ave   | 5.5 | 6.0 | 4.0 | 5.5 | 4.0 | 6.5 | 3.5 | 6.0 | 6.0 | 5.5 | 2.5 | 7.0 | 4.0 | 6.0 | 4.0 | 4.0 | 7.0 | 5.0 | 6.0 | 6.0 | 6.0 |

AVERAGE : 110 ÷ 21 = 5.2
Table 4 shows that the average category rating in respect of equipment and facilities was 5.2. This is a relatively high average by comparison to the midpoint rating of 4. Thirteen responding institutions (62%) were above the average rating in the category of equipment and facilities. On the other hand there were eight institutions (38%) that were below average. Upon a closer analysis of the subcategories, it was found that when it came to legal issues relating to equipment, eleven of the respondents (52%) were below the average. This area dealt with knowledge of rules relating to protective equipment and their use, purchasing, regular examining and safe storage of equipment.

As outlined in section Chapter 3(86), the premises and equipment utilised must be reasonably safe for the activity. Prinsloo (1991) has indicated that in many English cases, the trainer and his employer were held liable because the equipment was inappropriate. Further, items 4, 5, and 6 of the A.A.H.P.E.R.D. recommendations (Baley & Matthews, 1989) are particularly relevant here and institutions should make every effort to implement them.

Ten of the institutions (48%) were below the category average when it came to their management of facilities. This subcategory dealt with the issue of providing, supervising and maintaining safe facilities, both indoor and outdoor. Girvan & Girvan (1993), in conducting a content analysis of risk management practices, have stated that the provision of a hazard free facility for both athletes and spectators was a concern addressed by every author. Frequent safety audits and daily inspection of facilities and equipment were discussed as necessities.

5.4 MEDICAL ASPECTS

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AVERAGE : 76.7 / 21 = 3.7
The average category rating for medical aspects, as indicated by table 5 was 3.7. This is a relatively low average which falls below the midpoint rating of 4. Girvan & Girvan (1993) have indicated that in their content analysis of risk management practices, all except one of the authors mentioned organised medical response. Most of the literature focussed on the necessity of well-defined emergency procedures for accidents and injuries to student athletes. Eleven institutions (52%) were rated above average in this category. On the other hand, ten of the institutions (48%) were below the average in this category which dealt with pre-season, during-season and post-season legal considerations.

Upon careful analysis of the subcategory ratings, it emerged that twelve (57%) of the institutions were below the average with respect to pre-season legal considerations. These dealt with the responsibilities of coaches to have proper first-aid training, to demand physical examinations at the beginning of the season, matching of athletes, sports nutrition advice, prevention and accurate recording of sport injuries. In this regard, Prinsloo (1991) and Parmanand (1987) have enunciated that in emergency situations the coach must provide reasonable first aid, but must be extremely cautious not to perform any action that s/he is not capable of, because unreasonable acts or omissions in medical treatment which aggravate the injured person’s condition can lead to legal liability. Coaches should take no chances, but should summon professional medical assistance.

Ten institutions (48%) were below the average when it came to post-contest or post-season legal considerations. These dealt with responsibilities of coaches in so far as they need to secure medical approval for any treatment prescribed and also for further participation following injury or illness.

Thirteen of the respondents (62%), however, gave above average attention to in-season legal considerations. This encompassed the need for clearly written policies being established and adhered to in treating injuries during contests and practices, and the responsibilities of coaches in respect of the following: refraining from administering
dietary supplements, using prudent judgement in emergency situations, having medical assistance readily available and using sequential, progressive conditioning procedures. These strategies for providing adequate medical care to meet the needs of program participants coincide with the suggestions made by Gray (1993).

5.5 RECORDS AND INFORMATION ON ATHLETES

Table 6: Average Category Rating: Records and Information on Athletes

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AVERAGE: 55.5 / 21 = 2.6

The average category rating for records and information on athletes was 2.6, as noticed in table 6. This is a very low average, considering the midpoint rating to have been 4. What it reveals is that this category has generally received very poor attention by institutions. This could be related either to a lack of awareness of how this category impacts on legal liability in sport, or to the fact that serious constraints in respect of human resources are experienced by most institutions when it comes to the delivery of sport services. This was confirmed by the governing body (S.A.S.S.U.) secretariat who revealed that there were not enough people to do the job. In other words, neither the governing body nor institutions were compiling records and information on athletes. Notwithstanding the low average, ten of the institutions were rated below the average, indicating a large scope for improvement in maintaining health records, documents from parents and records relating to performance assessments.

Upon further analysis of the subcategory ratings in this section, it was found that fifteen institutions (71%) were below average in respect of maintaining health records, such as pre-season physical assessment data, records of injuries occurring during practices and contests, written records of medical treatment given to athletes and written permission
from a physician, and allowing injured athletes to re-enter competition. Twelve of the respondents (57%) were also below the average when it came to filing documentation from parents. This is a very relevant responsibility of the sport management staff in the light of the discussion in chapter three on defenses to negligence claims. It primarily dealt with filing of consent and indemnity forms, birth certificates, special requests and permission from parents and/or a physician for previously ill athletes to re-enter competition. Further, ten of the institutions (48%) were below the average in respect of maintaining written evaluations of physical abilities of athletes.

Girvan & Girvan (1993) have stated that in order to identify and reduce risk, the one approach that was mentioned by every author was the use of printed forms to document what had been done and to provide evidence as a solid defense against liability. They maintain that it is no longer enough to follow recommended practices to reduce risks, but to verify those practices in writing to provide protection in the courtroom.

5.6 COMPOSITE SCORES

Table 7: Average Composite Score

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<td>.34</td>
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AVERAGE: \(12.72 \div 21 = 0.61\)

The composite score was calculated by summing the weighted category and then dividing by 700 for each institution. A perfect score would be 1.0. The average was then calculated by adding these individual scores and dividing by the number of institutions. Table 7 illustrates that the average composite score was 0.61. Twelve institutions scored above the average composite score, indicating a fairly positive position in terms of addressing the issues related to sport liability and managing risks relatively effectively. However, nine organisations scored below the average, indicating decreasing attention to
sport liability matters and ineffective risk management strategies. What is noteworthy is that two institutions (7&11) scored extremely lowly, with scores far below the average. This implies that there is much room for improvement in matters concerning risk management and that much work lies ahead of the sport management staff at these institutions in preparing effective risk management strategies and plans.

5.7 SPREAD OF SCORES FOR ALL FOUR CATEGORIES

Figure 3 illustrates graphically the minimum, average and maximum rating values across all four categories, namely 1, general liability; 2, equipment and facilities; 3, medical aspects; and 4, records and information on athletes. It is an attempt to statistically understand how the scores were spread between the minimum value of 1 and the absolute maximum value of 7. The graph also indicates in which category areas the institutions appeared to be strong and in which categories weaknesses were apparent.

From the graph it is clear that generally the institutions emerged strongest with their profiles in the category relating to equipment and facilities. The absolute maximum value of 7 was attained by at least two institutions. As discussed under table 4, the average for this category was 5.2, which is a relatively high average, well above the midpoint. Even the lowest value of 2.5 exceeds the lowest value in the other three categories. This is a positive situation in that it would seem that tertiary institutions were generally aware of their legal requirements and responsibilities, and were consciously attending to the provision, supervision and maintenance of a wide spectrum of safe facilities and equipment.

The area with the second greatest strength would be category 1, which relates to general liability. The relatively higher average of 4.2, by comparison to the average of 3.7 for
category three, which dealt with medical aspects, is an indication that more of the institutions scored in the upper reaches with a maximum score of 6 being attained by at least three institutions.

The category that appears to have the severest weaknesses emerges to be category 4, which relates to documentation of information on athletes. The highest score was 5.7, which was attained by one institution, while the lowest score of 1 was obtained by four organisations. The average is relatively very low as well. This is the category that clearly has the greatest room for improvement in the future in tertiary sport programmes.

Figure 3: Range of scores across Four Categories
CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

In this final chapter, an attempt will be made to draw conclusions from the crystallization of thoughts, ideas and data presented by theorists in sports law and from the quantifiable data of this investigation.

6.1 CONCLUSION

The study was particularly successful in that a body of knowledge incorporating those principles and issues of sport law, appropriate to the needs of professionals in South Africa, has been developed. The extensive references to appropriate local and international case law and legislation, and the simplified but accurately described legal concepts have served to remove much of the mystique and fear surrounding legal concepts. The compilation of the relevant legal considerations will clearly assist professionals in recreation and sport to better understand their legal responsibilities by providing them with basic legal literacy. As such, this study introduces the sporting community to the relationship between sport and the law, and to the possibilities of legal liability in sport.

This study, in the context of the modern day democratic South Africa, will help professionals in a complex and rapidly changing society to understand the workings of the law in relation to their specific circumstances, which Labuschagne & Skea (1999) and Nygaard and Boone (1989) have expressed as no longer desirable, but mandatory. The expectation is that once these professionals are empowered or equipped with basic legal literacy, they will incorporate risk management into public and private recreation, sport and leisure enterprises.

The study has established, through the literature review, that emphasis on safety in modern day sport is of paramount concern. It has also revealed that a comprehensive
legal framework in sport law is urgently needed. The legal profession should investigate this void very seriously. With an understanding of legal liability in sport and specific risk reduction strategies, professionals will be competent in reducing the rate and severity of injuries, as well as reducing the consequent levels of litigation, which proves to be extremely expensive.

The investigation has fulfilled and occupied a relevant niche in the field of South African sport in general, and sport at educational institutions in particular. As such, because of the absence of a body of knowledge in sport law in the country (Labuschagne & Skea, 1999; Neethling, 1991; Parmanand, 1987), this research study helps to develop such a body of knowledge by providing a compilation of relevant issues and principles and by engendering and recommending further research in this specialized and applied field of the law. The focus on theoretical principles and issues also serves another purpose. It may be used by specialists in the country, such as curriculum developers, authors of reference works, and lecturers who prepare training materials for trainees in the field of sport management, leisure management and human movement sciences.

At this juncture it is significant to address the critical questions posed in the introductory chapter of the study. The first concern was to determine if sport and recreation managers were aware of their legal responsibilities. The specific results which will be presented in the answers to the subsequent questions will support the conclusion that while there appeared to be a general acceptance and understanding of the concern for safety, the legal principles underpinning the concepts of safety and risk management were not fully known, understood and appreciated by them. In the area of general liability, almost half the institutions left many critical issues unaddressed. The subcategories dealing with awareness and implementation of national sport governing body rules, eligibility standards for athletes and gender issues in sport was scored below average by 16 of the 21 institutions. Further, in each of the different subcategories of liability, there were a few very low scores, indicative of a serious risk of liability. Hence, the first hypothesis of this study was rejected.
The second critical question sought to establish which risk management practices were most frequently addressed formally, informally or not addressed at all. Arising out of the general lack of awareness of their professional and legal responsibilities it was found that the governing body rules and regulations and risk management principles were not diligently applied in their daily functions. It can thus be concluded that many of the institutions are clearly exposing themselves and their employers vicariously to serious risk of litigation by breaching the legal standard of care expected of them. The safety of participants when considering transportation was not given primary concern by more than 50% of the respondents, and an equal proportion of the respondents did not measure up to the required professional standards.

The category of equipment and facilities appeared to be most frequently addressed in a formal manner. However, one cannot conclude that all institutions provided hazard-free facilities for both athletes and spectators. Another category that appeared problematic was medical aspects. Almost half of the respondents accorded below average attention to pre-season, in-season and post-season legal considerations. This finding is in concert with the results of Van Heerden (1996), who emphasized that of all the identified prophylactic measures to reduce the risk of injury, adequate health care which stresses the pre-participation physical evaluation and continuous injury surveillance of participants, should be the cornerstone of preventive sports-medical care.

The category that appeared to be least addressed dealt with the management of records and information on athletics. The very low average score of 2.6 revealed 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 health records, documents from parents and records relating to performance assessments. This finding supports the much earlier concern of Tempelhoff (1983), that sports offices at universities were under-staffed, facilities were limited, coaching needs were inadequate and financial assistance
for the promotion of all of the aforementioned was insufficient. In view of the findings of this study, the second hypothesis was also rejected.

The third critical question was to ascertain whether a value could be obtained for each responding institution in order to assess the overall manner in which risk management practices were being applied. The results of the study show that this has been achieved (see section 5.6: Chapter 5). The value of a profile analysis has also been elucidated in chapter 5, and the profiles together with the composite score for each appear in the appendix. Hence, the third hypothesis of the investigation was accepted.

6.2 RECOMMENDATIONS

The following recommendations are based on the results of the study and include recommendations for future risk management planning and for further research in sports law. It is recommended that:

1. Because of the constraints of the present investigation, and the fact that the data was gathered by questionnaires that were completed by one individual, the instrument should be used by an evaluation team or committee rather than only one individual. The team should be composed of individuals with varying degrees of responsibility such as a combination of coaches and administrators. One person could thereafter summarize the scores. Such a corporate evaluation will minimize individual bias and a more valid and complete appraisal can be made.

2. Further research extends the sample to include colleges of education as this investigation was delimited to universities and technikons.

3. The evaluation instrument should be used initially in a formative process, that is, a process that has improvement of the existing position as its primary intent. Such a self-appraisal process would enable the management to identify areas in which
university and technikon personnel need more information and thus promote workshops, seminars and/or in-service training programmes which would strengthen the areas.

4. The instrument be used in further research to determine if composite scores on this instrument correspond to the incidence of injuries and/or lawsuits within the country.

5. To solve the perceived problem of increasing judicial interference in sport, the various governing bodies should ensure that they have set in place disciplinary procedures which respect both the rule of law and the rules of natural justice.

6. Sport personnel who are uncertain about any legal issue should seek expert legal advice and not rely on the contents of this study as authority. While every care has been exercised to present and discuss legal issues and principles occurring in sport and recreation accurately, each situation is different and only an expert is qualified to analyse specific cases and to offer advice.

7. Sport officials, coaches, directors and managers have a working knowledge of the Road Accident Fund Act, and consult attorneys whenever necessary.

8. The instrument be printed by the national student sport governing body (S.A.S.S.U.) and made available to its member institutions. It could be a valuable addition to the current information on its website.

9. Workshops, seminars and/or in-service training programmes be developed for the standards and recommended practices as a basis for presenting the legal aspects of sport participation at tertiary level.

10. In addition to its constitution, S.A.S.S.U. should develop a handbook explaining constitutional provisions, rules, regulations and safety measures in a manner that is
simple to understand and put into practice in the daily functions carried out by sport management staff.

11. S.A.S.S.U. should increase its permanent, full-time staff complement. For quality programmes, it has been shown that quality management staff is a prerequisite. A national risk management officer should be appointed to develop effective risk management measures to reduce or prevent injuries and any consequential litigation. This appointee could also be tasked with the responsibility of compiling a national register of student sport injuries to generate reliable, statistical data, to trace the trends in sports injuries.

12. Tertiary institutions should assign a knowledgeable and competent member of their sport centre staff the responsibility to initiate and co-ordinate the development of risk management plans for intramural activities. This person should also be responsible for the development of specific policies regarding safety precautions such as transportation, insurance, emergency accident plans, supervision and instruction, and the maintenance of records.

13. All tertiary institutions and organisations should make it mandatory that complete written records are maintained; that every aspect of the daily functions of sport management staff is reduced to writing and filed. Apart from contributing to efficient organisation, such records provide vital proof of risk reduction steps taken and could be used as a defense against claims of negligence.

14. The study of sport law becomes an integral part of the professional preparation programmes of coaches, officials, physical educators, sport and leisure managers and anyone who makes sport their career.
6.3 CONCLUDING REMARKS

It is generally accepted that the environments in which we spend the most time have the greatest impact on our values and beliefs. Because athletes dedicate much time immersed in the culture of sport and many hours practising and fine-tuning their sport skills, the values and beliefs they hold are often shaped by those with whom they work and the environment in which they play and train. Therefore, as we are on the threshold of a new millenium, sport and leisure managers should strive to provide positive learning environments and experiences, because nowhere is it more apparent than in the sport milieu, that participants and spectators alike model the behaviours of their heroes and heroines, either positively or negatively and this powerfully impacts on their actions and what they may believe as true and right. A start to inculcating positive behaviour in sport would involve nothing more than treating others with dignity, respect and common decency. If common decency can be used as a beginning, the future of sport in South African society as a vehicle to support and foster ethical and moral practices amongst others, becomes brighter.