

WAIVERS - A How-To Guide

by

Rachel Corbett

**Centre for Sport and Law
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PURPOSE

The purpose of this guide is to provide information about waiver agreements so that sport and recreation organizations can make more informed risk management decisions. This document is not intended to promote or encourage the use of waiver agreements in sport and recreation settings, nor does the author or the Centre for Sport and Law endorse such use.

Each sport and recreation organization is responsible for making its own decision about using waiver agreements. This decision should not be taken lightly, nor should such a decision be made in isolation from other decisions relating to risk management in general, and insurance in particular.

DISCLAIMER

The information provided in this package is intended as general risk management and legal information only. It should not form the basis of legal advice or opinion of any kind. Readers seeking legal advice should consult with a lawyer.

ACKNOWLEDGEMENTS

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A. INTRODUCTION

Waivers of liability are commonplace in sport, fitness and outdoor programs. Most active people have at one time or another signed a waiver. Most organizers of sport programs have at one time or another asked their participants to sign waivers, and insurance brokers frequently recommend that waivers be used.

Waivers go by many different names -- *waiver of liability, exculpatory agreement, assumption of risk, release, disclaimer* and *indemnification agreement* are just a few examples of the terms that are used. Generally, waivers are written agreements which people sign before they participate in risky activities. Like insurance, waivers are a risk management technique that involves transferring liability for injuries from one party to another by means of a written contract.

Despite being so widespread in sport and recreation, waivers are terribly misunderstood. Some people think that having participants sign a waiver protects their organization from lawsuits. On the other hand, some people who sign waivers believe they are meaningless pieces of paper. The truth is a bit of both -- in some cases, the courts have upheld waivers. In other cases, and for varying reasons, they have not.

Nonetheless, many sport organizations continue to rely on waivers as a technique for transferring risks, and those who are sports-minded continue to sign them -- even though many of the documents presently in use are poorly designed, badly written and improperly executed. As such, they not only fail to provide legal protection to the organization, but they also fail to inform participants of their own responsibilities and of the risks involved in the sport activity they're undertaking.

The purpose of this information package is to explain the purpose of waivers and show those readers who use waivers how to improve the design, wording and execution of their waiver agreements. This package also explains alternatives to waiver agreements such as *assumption of risk*, *informed consent* and *participant agreements*. These alternatives are educational devices that forewarn participants of the risks they are accepting and the possible consequences. While they don't offer the same legal protection as a waiver of liability, they have considerable legal value and in many circumstances, for ethical or practical reasons, they are preferable to waivers.

B. WHAT IS A WAIVER?

Basically, a waiver is a legal contract between two parties: the *participant* in a sport or recreation program and the *organization* providing the program. In this contract, the participant agrees not to hold the organization responsible or "liable" for any injuries that the participant might receive as a result of participating in the organization's programs.

A waiver is a very onerous contract because by signing it, the participant agrees not only to expose him or herself to the physical risks of the sport activity, but also to the legal risks. The distinction between these two types of risks is critical to understanding the true legal meaning of a waiver.

There is physical risk associated with all physical activity -- this risk is inherent, unavoidable, reasonable and, in many sport and recreation settings, desirable. Physical risks are the risks, dangers and hazards that are inherent in the activity. An example is downhill skiing -- every skier knows that he or she might be injured by falling at high speed, by colliding with someone or something, or by improperly getting on or off the ski lift. These physical risks are considered to be inherent in the sport of alpine skiing.

The second type of risk is legal risk. This is the risk that the organizers of a sport activity will behave negligently -- that is, that in managing the program and dealing with participants they will not meet the reasonable standard of care required by law. Using the same example from downhill skiing, there is a risk that a skier will be injured by skiing into a hazard that should have been marked or by falling from a defective ski lift. This legal risk is not inherent in the activity, nor is it desirable, reasonable or acceptable.

Our law says that participants can voluntarily assume the physical and legal risks associated with a sport activity. The mere act of participating in an activity can often be taken as assuming the activity's inherent, physical risks. However, the legal risk (that is, the risk of negligence) can only be assumed by a written agreement or contract such as a waiver.

C. WAIVERS AND INSURANCE

Transferring liability through legal contracts is a common business practice. Like insurance, waivers are a risk transfer technique. Waivers and insurance often go hand in hand, and at times may be perceived as duplicating one another. However, there are important distinctions between the two, which must be understood by any organization considering using waivers.

A liability insurance policy covers costs that an organization might become legally obligated to pay as a result of bodily injury or property damage suffered by others. If participants and members are included as “named insured” and if the policy has “cross-liability” provisions, such insurance would cover the costs which the organization might have to pay to an injured member, whether through a court-ordered award or a negotiated settlement. The end result is that both the organization and the injured member benefit -- the organization’s costs are covered, and the member’s injury is compensated.

Waivers, on the other hand, serve only to the benefit of the organization. If an injured member signed a waiver and the waiver held up in court, the organization would be protected while the member would receive no compensation, even though the member’s injuries may have been caused by the organization’s negligence. Waivers are clearly not to the benefit of those who sign them, even though these may be members and volunteers who are integral to, and financially support the organization.

This conflict between what’s good for the organization and what’s good for its members is difficult to resolve. It is perhaps the first ethical issue that the organization must tackle if it is considering using waivers. There are also other issues, of an ethical nature, as outlined in Section D below.

For further information on insurance for sport organizations, readers should consult the publication *Insurance in Sport and Recreation: A Risk Management Approach* published by the Centre for Sport and Law. This handbook is one of a series of handbooks on risk management in sport and is available for \$8.95 from the Centre for Sport and Law (visit www.sportlaw.ca).

D. ETHICAL AND LEGAL ISSUES

When participants sign a waiver, they are expressly consenting to assume the legal risk of the organization’s negligence, as well as the inherent physical risks of the sport activity itself. A valid waiver will relieve an organization of responsibility for injuries resulting from the organization’s negligence. In other words, if a participant were badly hurt, he or she sued, a court found the organizers to be negligent yet at the same time, the waiver to be valid, *even though they were negligent the organizers would not be held liable* for the participant’s injuries.

This kind of protection makes waivers very attractive from the point of view of avoiding liability. However, it also raises a serious ethical issue -- asking people to sign your waiver has the effect of asking them to condone your negligence. Keep in mind that negligence is a precise legal concept that, in general terms, refers to someone’s behaviour or conduct falling below an *average, reasonable standard*. In many circumstances, asking participants to accept your negligence (in other words, to say it’s okay if your behaviour is below average or unreasonable) is not appropriate.

Ethical issues aside, waivers also raise some tricky legal issues. Because waivers are so poorly understood, they are frequently used in situations that render them unenforceable. For example:

- *minors* (persons under 18 in most provinces) cannot sign legal contracts, nor can their parents or guardians sign a contract on their behalf, particularly a contract as onerous as a waiver of liability. This means that waivers cannot be used in programs for children and youth;
- *mentally incompetent* adults cannot sign contracts -- this means that waivers cannot be signed by mentally disabled individuals (or their parents/guardians) or by adults whose judgment may be clouded by alcohol or some other substance;
- *public policy* might render a waiver unenforceable if participation in the activity is compulsory (for example, a varsity athlete or a physical education student taking courses for credit should not be asked to sign a waiver of liability because their participation in the activity is not voluntary).

In fact, some jurisdictions in the United States have gone so far as to prohibit waivers in voluntary recreational settings on the basis that they do not serve the public interest.

A properly worded and executed waiver of liability can offer an organization substantial protection from legal liability, particularly if the sport activity or event is unusually risky. However, a waiver is not always appropriate for ethical or practical reasons, and won't always hold up in court. At times, a waiver may not even be legally enforceable. For these reasons, the decision to use a waiver should not be taken lightly.

E. PRACTICAL TIPS FOR THE SPORT LEADER

If your organization is considering using a waiver, these are some practical guidelines which will help you improve the wording and execution of your waivers.

1. **Inform yourself about waivers and their legal and ethical implications.** Ask yourself, is this a situation for which participants should be signing a waiver? Might there be alternative risk management techniques that would be more appropriate, given the degree of risk? Would a waiver be supported by public policy in this situation? Would a waiver be enforceable in this situation?
2. Before you forge ahead with a waiver of liability, **consider whether an alternative written agreement is more suitable.** Alternative agreements are those that ask participants to consent to the *physical risks* of the sport activity, but not the *legal risk* of your negligence. These are not onerous contracts like a waiver agreement, but they do help to educate participants, can be a deterrent to legal action, and can strengthen your defense if a lawsuit does arise.
3. If you have decided to use a waiver agreement, **the wording of the waiver must be clear and unambiguous.** A major premise of any contract is that the parties signing it have full knowledge of all the terms of the contract. If the person signing the waiver can't understand it, then it likely won't be upheld by a court.

4. **Your waiver must specifically state the obvious and foreseeable risks, dangers and hazards that you are asking the participant to accept.** If your activity is potentially dangerous and there is a risk of severe or fatal injury, this should be stated in your waiver form.
5. **Be sure to include within the waiver all the parties you want to have covered, as well as all activities.** Parties to be covered could include directors, officers and employees obviously, but you might want to also include volunteers, contractors, instructors, coaches, athletes, members or any others who are involved in running your programs. Activities to be covered might include preparation and training as well as competition, pre-event and post-event activities (including social activities), and travel to and from the event.
6. **Develop procedures and guidelines that will help ensure consistent administration of waivers within your organization.** For example, be sure that waivers are executed at convenient times well in advance of programs, that witnesses follow a consistent procedure, and that all signed waivers are carefully stored in a safe place.
7. **Attitude is important.** A waiver is a very serious contract and should be treated in a serious manner. If your program officials treat waivers casually, then participants will also.

Finally, keep in mind that a waiver is specific to your unique circumstances. In other words, **DON'T JUST COPY SOMEONE ELSE'S WAIVER FORM AND CALL IT YOUR OWN.** Instead, follow these guidelines to develop your own waiver of liability agreement. Each of these practical points is discussed in detail below.

1. Inform yourself about waivers and their legal and ethical implications

The introduction in this package contains some basic information about the legal aspects of waivers. For further information on waivers and on the legal implications of their use in sport and recreation programs (including case law) readers should consult the publication *Waivers and Other Agreements: A Handbook for Recreation and Sport Organizations* published by the Centre for Sport and Law.

As described earlier in this package, waivers create an ethical dilemma. When organizations asks participants to sign waivers, they are essentially asking the participant, in advance, to condone or forgive their negligence. The organization considering using a waiver should ask itself, first, if this is a desirable ethical position. In high risk activities involving experienced participants where there is minimal supervision, this might be an appropriate position to take. Thus, the organization taking people whitewater rafting, heli-skiing, parachuting, alpine skiing, mountain-biking, ice-climbing, or scuba diving, or organizing competitive programs in contact hockey, rugby or football might require that adult participants sign a waiver of liability agreement.

On the other hand, activities which involve fewer risks and which are more carefully monitored and supervised are not typically situations that call for a waiver of liability agreement. Thus, for the organization offering programs in swimming, ringette, racquet sports, figure-skating or cross-country skiing, or putting on events such as track meets, bonspiels or golf tournaments, the practical and ethical disadvantages of a waiver agreement probably outweigh its benefits.

While there is no single source of information determining which sports are “high risk” and which are not, there are some useful sources of information to help you evaluate your own sport. One would be your own insurance claims history, or the claims experience of your national sport governing body. The claims history of the CIAU (Canadian Interuniversity Athletic Union), who until 1995 offered its member universities a sports accident insurance program, provides a useful benchmark of the relative risks of injury in different sports (where the higher rate suggest higher risk of injury). These rates were used by the CIAU in 1994:

| | |
|---|------------------------|
| figure skating, curling, swimming, golf | \$3 - \$4 per player |
| track, gymnastics, volleyball, squash, tennis, fencing, rowing, X-C running and X-C skiing | \$5 per player |
| diving | \$6 per player |
| judo and wrestling | \$7 - \$8 per player |
| basketball and field hockey | \$10 per player |
| | |
| soccer, alpine skiing and non-contact hockey | \$12 - \$15 per player |
| rugby, ice hockey and football | \$30 per player |

Keep in mind, as well, that risk management is more than just waivers and insurance -- there are many other techniques that you can use to control risks in your facilities, events and programs and thus reduce the number of accidents and injuries.

2. Consider whether an alternative written agreement is more suitable

Assumption of risk, informed consent and *participant agreements* are similar to waivers in all but one aspect -- they do not ask the person signing them to forfeit their right to sue in the event of negligence. Instead they ask the participant to consent to the physical risks and hazards that are inherent in the sport, and to accept responsibility for injuries they receive as a result of these risks and hazards.

Agreements such as these are educational tools that forewarn participants of the risks they are accepting and the possible consequences. They have considerable legal value as well, as they show that you have taken reasonable steps to inform participants of the risks involved in the sport activity, and by signing it participants have agreed not to hold you responsible for injuries or losses relating directly to these risks.

Another advantage of these agreements is that they can be signed by minors (those under 18) and by a minor’s parents and guardians. In fact, agreement such as these are the only agreements you can use with minors, as our law does not permit minors to enter into contracts, particularly one-sided contracts such as waivers. Minors can only sign contracts that are to their benefit -- a voluntary waiver of their right to sue for negligence is clearly not in any child’s best interests. The ability of parents or guardians to sign contracts on behalf of their children is also limited -- in general, the law only allows them to sign contracts that benefit the child.

Shown on the following pages are two examples of informed consent agreements: one from a provincial sport organization (Squash Alberta) and one from an educational institution (University of Alberta). The former agreement is used by all participants in Squash Alberta sanctioned events, both juniors and adults. The latter agreement is for participants in the University of Alberta gymnastics program.

These two agreements can be contrasted with the strict wording of the sample waiver of liability agreement for Flying High Climbing Wall. Note, in particular, that this waiver specifically precludes the participant from suing for negligence -- in fact, it states as much in four different places.

SQUASH ALBERTA -- PARTICIPANT'S AGREEMENT

Name of Participant: _____ Age (if under 19) _____

Name and Date of Event: _____

Facility Where Event is Being Held: _____

ALL SPORT, INCLUDING SQUASH, HAS ITS RISKS

I participate in the sport of squash because it is physically and mentally challenging I know that there are physical risks and hazards inherent in squash as there are in most sports. These include but are not limited to:

- muscular injuries resulting from vigorous physical exertion, rapid movements and quick turns and stops on the court
- bruises and scrapes resulting from falling to the floor or colliding with the wall or with opponents
- injuries to the eyes, teeth, face and other parts of the body resulting from being hit by racquets or balls
- additional risks associated with my travel to and from the Event, and associated with non-competitive activities related to the Event

EYEGUARDS

I understand that it is mandatory for all Junior athletes (under age 19) to wear protective polycarbonate lensed EYEGUARDS in all Squash Alberta sanctioned events. It is highly recommended that all players wear eyeguards at all times I understand that if I choose not to wear protective eyeguards while playing squash I am exposed to a much greater risk of injury.

I AGREE TO BE RESPONSIBLE FOR MYSELF

I am participating voluntarily in this Event. I agree that there are risks in squash, as described above. By participating voluntarily in this Event, I am exposed to these risks and hazards I agree to accept them and be responsible for any injury or other loss which I might receive while participating in this Event.

If something happens to me, I release the organizers of responsibility for any claims, demands, actions and costs which might arise out of my participation. In this Agreement I understand "organizers" to mean: Squash Alberta, Squash Canada, owners/operators of the facility and each of their respective directors, officers, employees, coaches, officials, volunteers and members.

I ACKNOWLEDGE MAKING THIS AGREEMENT

This is a legal agreement. It is binding upon myself as well as upon my heirs, executors and representatives. I have read and understood all its terms and by signing it voluntarily I am agreeing to abide by these terms.

Signed at _____ (city/town) this _____ day of _____, 19 _____.

Printed Name of Participant

Signature of Participant

Signature of Parent/Guardian (if Participant is under 18)

(used with permission)

**FACULTY OF PHYSICAL EDUCATION AND RECREATION
UNIVERSITY OF ALBERTA - GYMNASTICS PROGRAM**

PARTICIPANT'S AGREEMENT

DESCRIPTION OF RISKS

I am aware that there are physical risks and hazards inherent in gymnastics and in my participation in gymnastics activities at the University of Alberta, including my use of equipment such as climbing ropes, rings, balance beam, uneven bars and even parallel bars, pommel horse, vault, tumbling and floor mats, horizontal bar, runway, foam pit and trampoline.

The risks and hazards of gymnastics include, but are not limited to:

- injuries from executing strenuous and demanding physical techniques in gymnastics;
- injuries from collisions with the wall and any gymnastics apparatus, or falls to the floor or mats;
- injuries from physical contact with other participants (including spotters whose role is to enhance my safety and learning);
- injuries resulting from my failure to properly use any of the gymnastics apparatus; and
- injuries resulting from the mechanical failure of any of the gymnastics apparatus.

Furthermore, I am aware:

- that injuries sustained in gymnastics can be severe and even fatal;
- that the rules posted in the gymnastics room are designed to enhance the safety of myself and others and are to be followed at all times;
- that the trampoline poses a greater risk of injury than other equipment in the gymnastics room, and that the trampoline requires special training and safety precautions; and
- that my risk of injury increases as I become fatigued.

RELEASE

I agree to be solely responsible for any injury, loss or damage which I might sustain while participating in gymnastics and while using gymnastics equipment at the University of Alberta, and I agree to release the University, the U of A Gymnastics Club, the U of Agers and their respective directors, officers, employees, instructors, coaches, students, volunteers and members of all responsibility for such injury, loss or damage.

ACKNOWLEDGMENT

I acknowledge that I have read this agreement and that I fully understand, appreciate and accept the physical risks associated with my participation in gymnastics activities and my use of gymnastics equipment at the University of Alberta.

Printed Name of Participant

Signature of Participant

Printed Name of Parent or
Guardian (if Participant is under 18)

Signature of Parent or
Guardian (if Participant is under 18)

Date

(Used with permission)

**FLYING HIGH CLIMBING WALL
WAIVER OF LIABILITY AGREEMENT**

WARNING! BY SIGNING THIS LEGAL DOCUMENT, YOU WILL WAIVE CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE FOR YOUR INJURIES. PLEASE READ CAREFULLY!

DISCLAIMER

Flying High Climbing Wall Company, its directors, officers, employees, instructors, volunteers, agents or representatives (“the Company”) are not responsible for any death, injury, loss or damage of any kind suffered by any person while using the climbing wall facility (“the wall”), caused in any manner whatsoever including, but not limited to, the negligence of the Company.

DESCRIPTION OF RISKS

In consideration of my being permitted to use the wall, I hereby acknowledge that I am aware of the risks associated with or related to rock climbing and to my use of the wall (INCLUDING THE RISK OF SEVERE OR FATAL INJURY TO MYSELF OR OTHERS), which include but are not limited to:

- all manner of injury resulting from falling and hitting the floor, climbing wall faces, protruding holds or ledges, or other climbers;
- rope abrasion, entanglement and other injuries resulting from activities such as climbing, belaying, rappelling, rescue systems and any other rope technique;
- injuries resulting from failure of ropes, slings, harnesses, climbing hardware, anchor points and any part of the climbing structure;
- injuries resulting from falling climbers or dropped items such as ropes or hardware;
- cuts and abrasions from skin contact with climbing panels and various holds, ledges, edges and any fixtures, including injuries to the joints and knuckles of my hands;

I acknowledge that if I choose not to wear a helmet while using the wall and climbing equipment that I am exposed to an increased risk of injury.

RELEASE OF LIABILITY

In consideration of the Company allowing me to use the wall, I agree:

- To assume all risks arising out of, associated with or related to my use of the wall, even though such risks may have been caused by the negligence of the Company;
- To be solely responsible for any injury, loss or damage which I might sustain while using the wall, even though such injury, loss or damage may have been caused by the negligence of the Company;
- To release the Company from liability for any and all claims, demands, actions and costs which might arise out of my use of the wall, even though such claims, demands, actions and costs may have been caused by the negligence of the Company.

ACKNOWLEDGEMENT

I acknowledge that I have read this agreement, that I have executed this agreement voluntarily, and that this agreement is to be binding upon myself, my heirs, executors, administrators and representatives.

Signed this _____ day of _____, 19 _____, at Edmonton, Alberta.

Signature of Participant
(must be 18 or over)

Signature of Witness

Print Name

Print Name

(used with permission)

3. The wording of the waiver must be clear and unambiguous

A contract is a “meeting of the minds” of those signing it, and to be valid, both parties must have a common understanding of what the contract entails. Your waiver of liability agreement stands a far better chance of helping you if it is clearly and concisely written. Avoid legal jargon (words like *notwithstanding, heretofore, hereunder, aforementioned, aforesaid* etc.) and as much as possible, try to use words and phrases which the average person can understand. Examples of clear wording can be found in the example used throughout this package.

The person signing the waiver should clearly understand its meaning. Call the document a “waiver of liability” or “release of liability” as opposed to other confusing titles like “agreement to indemnify and release”. You might also wish to put a warning such as the following at the top of your waiver: *“By signing this form you give up important legal rights. Please read carefully!”* An even stronger, although more wordy statement would be: *“Warning! By signing this form you give up your right to bring a court action to recover compensation for any injury or loss to yourself or your property, and the right of your personal representative to bring an action to recover compensation for your death arising out of your participation in ABC”*

Although some waivers go on for pages and pages of fine print (which is precisely what should be avoided) there are essentially only three parts to a waiver agreement:

- the *description of the risks* you are asking the participant to accept, including both physical risks of the activity itself as well as the legal risk of your negligence;
- the participant’s *release or waiver of liability*. To “waive” means to “knowingly relinquish”. The backbone of a waiver agreement is the participant’s knowing relinquishment of their right to sue you;
- the participant’s *acknowledgment* that they have understood the terms of the waiver and that they are signing it voluntarily.

A waiver can include additional sections that refer to rules to be followed, equipment to be used, fitness requirements or other prerequisites for participation. The waiver should be clearly laid out with distinct titles and headings, in type that is not too small to be easily read, and it should fit on one side of a single piece of paper. It should be a distinct document, separate from a registration form or other written materials. Finally, the waiver should be explicit about what events or activities it covers, including dates, times and locations.

4. Your waiver must specifically state the obvious and foreseeable risks, dangers and hazards that you are asking the participant to accept

The majority of waivers in use contain the *phrase “I agree to accept the risks inherent in the activity ...”* or something similar. This is meaningless, unless we can assume that all participants know everything about the activity they’re undertaking. Perhaps an expert does, but most participants are not experts, and most need help understanding what the inherent risks, dangers and hazards of an activity are. Remember, too, that a valid contract requires a common understanding between the parties as to the terms of the contract. Waivers are a contract to assume certain risks, so those risks must be identified as clearly as possible.

Listed below are *examples* of descriptions of risks taken from various waiver and informed consent agreements. These descriptions were developed through a careful consultation with individuals familiar with the organization and the sport discipline. You will note that each description contains the phrase “*these risks include, but are not limited to ...*” This is important because it would be impossible for you to identify ALL possible risks in a sport or activity. Your purpose in this section of the waiver is to identify the obvious and foreseeable risks. Generally, the more significant the risks the more carefully you should define them. If one of these risks is severe spinal injury or death, then say so.

Skiing

“I acknowledge that I am aware of the possible RISKS, DANGERS AND HAZARDS associated with alpine skiing, snow boarding and ski racing, including the POSSIBLE RISK OF SEVERE OR FATAL INJURY. These risks include, but are not limited to:

- injuries which I may sustain during dry-land and other physical training
- injuries from failing to ski or race safely or within one’s abilities
- injuries from boarding, riding or disembarking ski lifts
- injuries from changing weather conditions and changes or variations in the ski surface
- injuries from colliding with trees or rocks, ski lift towers, snow-making or snow-grooming equipment, and other skiers, including those who may not be skiing or racing safely
- injuries from failing to remain within designated areas, including injuries from avalanche hazards
- additional risks associated with my travel to and from ski areas and racing sites, and associated with non-skiing events which are an integral part of the Ski Club’s activities”

Winter Climbing

“I hereby acknowledge that I am aware of all the risks associated with or related to winter ice climbing and to my participation in the course (INCLUDING THE POSSIBLE RISK OF SEVERE OR FATAL INJURY TO MYSELF OR OTHERS) which include but are not limited to:

- steep terrain where a fall, whether roped or unroped, may result in injury or death
- rope abrasion, entanglement and other injuries resulting from activities such as climbing, belaying, rappelling, rescue systems or any other rope technique
- injuries resulting from failure of ropes, slings, harnesses, or climbing hardware
- violent or unpredictable weather, which may cause injuries due to extreme cold, and which may prevent travel to, from or within an area
- remoteness of location with poor communication and inability to get rescue or medical assistance easily or quickly
- transport by motor vehicle to and from the course location”

Rugby

“I acknowledge that I am aware of the possible RISKS, DANGERS AND HAZARDS associated with the sport of rugby, a contact sport played without protective equipment, INCLUDING THE POSSIBLE RISK OF SEVERE OR FATAL INJURY TO MYSELF OR OTHERS. These risks include, but are not limited to:

- injuries resulting from vigorous physical exertion and strenuous cardiovascular workouts

- injuries to the eyes, teeth, face, head and other parts of the body resulting from contact with other players and the ground
- bruises, sprains, cuts, scrapes, breaks and dislocations resulting from contact with other players and the ground
- spinal cord injuries which may render me permanently paralyzed
- additional risks associated with my travel to and from competitive events, and associated with non-competitive events which are an integral part of the Club's activities"

Athletics

"I am aware that there are risks, dangers and hazards inherent in athletics activities, and in my preparation for, travel to or from, and participation in any track and field, cross-country or road running program or event which is organized, operated and sanctioned by Athletics Alberta.

Some of these risks, dangers and hazards are foreseeable, and others are not. These risks, dangers and hazards include, but are not limited to:

- injuries resulting from vigorous physical exertion and strenuous cardiovascular workouts;
- injuries resulting from falls to the ground due to uneven or irregular terrain or surfaces;
- extremes of weather and temperature which may result in heatstroke, sunstroke or hypothermia;
- injuries resulting from failure to properly use any piece of equipment or from the mechanical failure of any piece of equipment;
- injuries from colliding with or being struck by other participants, spectators, equipment or vehicles;
- risks associated with travel to or from training or competition locations; and
- additional risks associated with non-competitive activities which are often an integral part of competitive events

I also understand that injuries sustained in athletics training or competition can be severe and even fatal."

Squash

"I participate in the sport of squash because it is physically and mentally challenging. I know that there are physical risks and hazards inherent in squash, as there are in most sports. These include but are not limited to:

- muscular injuries resulting from vigorous physical exertion, rapid movements and quick turns and stops on the court
- bruises and scrapes resulting from falling to the floor or colliding with the wall or with opponents
- injuries to the eyes, teeth, face and other parts of the body resulting from being hit by racquets or balls
- additional risks associated with my travel to and from the Event, and associated with non-competitive activities related to the Event

I understand that it is mandatory for all Junior athletes (under age 19) to wear protective polycarbonate lensed EYEGUARDS in all Squash Alberta sanctioned events. It is highly recommended that all players wear eyeguards at all times. I understand that if I choose not to wear protective eyeguards while playing squash, I am exposed to a much greater risk of injury."

Gymnastics

“I am aware that there are physical risks and hazards inherent in gymnastics and in my participation in gymnastics activities, including my use of equipment such as climbing ropes, rings, balance beam, uneven bars, even parallel bars, pommel horse, vault, tumbling and floor mats, horizontal bar, runway, foam pit and trampoline.

The risks and hazards of gymnastics include, but are not limited to:

- injuries from executing strenuous and demanding physical techniques in gymnastics
- injuries from collisions with the wall and any gymnastics apparatus, or falls to the floor or mats
- injuries from physical contact with other participants (including spotters whose role is to enhance my safety and learning)
- injuries resulting from my failure to properly use any of the gymnastics apparatus and
- injuries resulting from the mechanical failure of any of the gymnastics apparatus

Furthermore, I am aware:

- that injuries sustained in gymnastics can be severe and even fatal
- that the rules posted in the gymnastics room are designed to enhance the safety of myself and others and are to be followed at all times
- that the trampoline poses a greater risk of injury than other equipment in the gymnastics room, and that the trampoline requires special training and safety precautions and
- that my risk of injury increases as I become fatigued”

Paddling

“I understand that there are many possible risks, dangers and hazards associated with flatwater paddling, river touring and white-water paddling, including the possible risk of severe or fatal injury to myself or others. These risks include, but are not limited to:

- the risk of drowning
- extremes of weather and temperature which may result in heatstroke, sunstroke or hypothermia
- remoteness of certain river locations and an inability to obtain emergency medical assistance
- the risk of injury from confrontation with wild animals, including bears which we know to be unpredictable and dangerous
- additional risks associated with shuttling boats, travelling to and from paddling locations, and associated with non-paddling events which are an integral part of the Society’s activities”

Kung Fu

“I understand that unlike many other martial arts, kung-fu has few established rules and is practiced without protective clothing or equipment. I understand that martial arts training, and particularly kung-fu, involves many inherent physical risks. These include, but are not limited to, injuries resulting from:

- ongoing physical contact with the instructor and other students
- striking objects with parts of the body
- tumbling, falling or being thrown to the floor
- strenuous cardiovascular workouts
- exerting and stretching various muscle groups and

- executing self-defence escapes and techniques

I understand that my risk of injury is reduced if I follow all rules adopted during training. I also certify that I am physically fit and have medical approval to proceed with this type of vigorous training.”

5. Be sure to include within the waiver all the parties and all the activities you want to have covered

Voluntary organizations are somewhat unique in their complexity and in the diversity of people who comprise them. While a for-profit business might consist of directors, officers and employees, a voluntary sport organization might consist of directors, officers, employees as well as volunteers, instructors, contractors, committees, athletes, coaches, officials, practicum students, members and sponsors.

When drafting your waiver or participant’s agreement, think carefully about the people you want to have covered. Then define them in your agreement -- for example, a participant’s agreement for an outdoors club could ask participants to release the organizers of responsibility, where “organizers” are defined as the club’s directors, employees, volunteers, trip leaders, and other members. Similarly, the climbing wall waiver shown on page 10 of this package states that Flying High Climbing Wall Company, its directors, officers, employees, instructors, volunteers, agents or representatives will not be responsible for a participant’s death or injury.

A waiver agreement can also cover organizations other than your own -- for example, if a national organization has sanctioned your event, you might wish to include them, as well as the facility where the event is being held. The Squash Alberta participant’s agreement asks the participant to release the organizers of responsibility for any injury, where “organizers” are taken to mean Squash Alberta, Squash Canada, owners/operators of the facility where the event is being held and each of their respective directors, officers, employees, coaches, officials, volunteers and members. Likewise, two martial arts organizations hosting an event could have a joint waiver that names both organizations and their respective directors, officers, employees, instructors and volunteers.

A waiver should also be broadly worded to cover all the activities related to a program or event. So, if a single waiver or agreement is to be signed at the start of the season it should cover all events throughout the season. If a waiver is being used for a specific event it should cover activities before the event (including transportation) as well as activities after the event (such as the wind-up banquet or awards ceremony). Keep in mind, as well, that there will always be non-sports events associated with sports programs, and these too should be included within your waiver.

6. Develop procedures and guidelines that will help ensure consistent administration of waivers within your organization

The content of a waiver is only half the picture -- how the waiver is executed is also important. The person signing the waiver must have an opportunity to read and understand it. This means that waivers can’t be done at the last minute, but instead must be scheduled into other activities such as a planning meeting, program registration, or equipment sign-out.

These are some simple steps to help you improve the administration of waivers and agreements:

- If you choose to use a waiver, strictly enforce your policy -- no waiver, no participation!
- The waivers should be signed at a convenient time and place in advance of the activity. Ensure that participants have ample opportunity to read the waiver, and are not being rushed to do other things like organize equipment.
- Waivers should be signed in the presence of a representative of your organization, not sent through the mail. Should your waiver have to be defended in court, you will have no way of knowing how it was executed unless it was done in front of you.
- Waivers should be witnessed. Preferably, the witness should be a representative of your organization. If this is not possible, the witness can be another adult but should not be a relative of the person signing the waiver. The role of the witness is to ensure that participants read, sign and date the waiver. A witness will also be critical if your waiver is challenged in court.
- Don't have waivers signed when or where alcohol is being served or provided.
- Ask for proof of age if you think someone is under 18 (remember, waivers can only be signed by adults).
- Store signed waivers in a safe place, for as long you can. An adult has two years to begin a legal action against you and one further year to serve you with notice of the action. For this reason, you may need to retrieve a waiver that is several years old. Having a consistent archive of signed waivers also helps you demonstrate that you are careful and thorough in the administration of your waivers.

If you choose to use an informed consent or participant's agreement instead of a waiver, proper execution is not so critical. These are not onerous contracts and therefore do not require the careful steps which a waiver requires. They are educational tools and as such, you should take reasonable steps to ensure that participants read them before signing. It is also acceptable to send and receive them through the mail.

7. Attitude is important

Waivers, if you decide to use them, are a serious matter. Your staff and volunteers must impress upon participants that the waiver is important. Participants should never be rushed when signing the waiver, nor should they ever be led to believe that the waiver is just a necessary but meaningless formality.

Informed consent agreements should also be treated seriously. Although they are not an onerous contract that requires careful execution, as does a waiver, they are important educational devices. All participants should be urged to read them and give them careful consideration.

F. SUMMARY

There are advantages and disadvantages of using waivers in your sport and recreation programs. Clearly the greatest advantage is that the waiver may hold up and transfer liability in the event of a finding of negligence against your organization. A waiver can also serve as a deterrent to legal action, as the individual signing it might believe that they cannot sue and therefore won't. A waiver is also an excellent educational device that forewarns participants of the risks they are accepting and the possible consequences.

One of the major disadvantages of waivers has already been described -- this is the ethical dilemma that they create for the organization using them. This ethical aspect can harm an organization's public image. For ethical reasons alone, many organizations no longer ask participants, and in particular volunteers, to sign waivers under any circumstances.

A final practical disadvantage is that waivers are time-consuming and inconvenient. Good waivers require careful planning and implementation, and do nothing to reduce or prevent injuries. Many sport and recreation organizations place too much emphasis on waivers at the expense of other risk management measures, which may be easier to implement, less costly and more effective in controlling risks and protecting the organization from liability.