

OTTAWA SPORT COUNCIL WEBINAR



SIRC

Sport Research
Intelligence sportive

I'm a Coach- Now What?
Understanding Your Legal Obligations



We believe that there should only be positive experiences in sport

Nous croyons que seules les expériences positive ont leur place dans le sport

Webinar Archives

If you didn't have a chance to catch the previous webinars in this series, here's your chance:



Coaches – Nutrition and your Team

Speaker: Kim Gutler, Kim's Apron

Ottawa Sport Council: <http://sportottawa.ca/coaches-nutrition-and-your-team/>

SIRC: <http://sirc.ca/webinar/coaches-nutrition-and-your-team>



Bidding & Hosting Sport Events 101

Speaker: Jason Robinson, Sport Law & Strategy Group

Ottawa Sport Council: <http://sportottawa.ca/bidding-and-hosting-sport-events-101/>

SIRC: <http://sirc.ca/webinar/bidding-hosting-sport-events-101>

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Ottawa Sport Council

- Non-profit membership based service organization
- Established 2013 in response to demand for assistance from community sporting organizations
- Key Activities:
 - Municipal Sport Strategy – in partnership with City Staff –
 - Support of Community Sporting Organizations
 - Build organizational capacity
 - Assist with challenges:
 - Establish common vision, cohesive approach for sport



Jeff Darwin
Board Member
Ottawa Sport Council



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Key Programs

- Ottawa Sport Council Foundation-endowment fund to support community sporting organizations thru grants
- Lunchtime online webinar series-February/March 2015
 - Nutrition for Athletes
 - Hosting of Sporting Events
 - Legal Obligations for Coaches
 - Social Media Demystified
- Ottawa Sport Council Annual Summit – November 1 2014
 - over 100 attendees,
 - key note speakers included Ian Mendes (TSN), Adrian Harewood (CBC), Ottawa Sports and Entertainment Group (OSEG) (sponsorship team), Ottawa Senators social media team



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Today's Speaker

Steven Indig

Steve began his career with the Sport Law & Strategy Group in 2003 immediately after being called to the bar as a lawyer. In fewer than ten years, Steve has worked with over 400 national, provincial, and local sport organizations to provide consulting and legal services related to governance, employment, contracts, policies, disputes, and privacy. He is a regular guest speaker and presenter at AGMs, conferences, and workshops, and has also acted as an adjudicator.



Steve graduated from Dalhousie University with a Bachelors of Recreation degree and a successful five-year career as varsity athlete in swimming. He continues to be involved in swimming as a master's swimmer (Canadian Masters Swimming medalist) and a coach at the Vaughan Aquatic Club.

Contact: sji@sportlaw.ca

Sport Law & Strategy Group



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Sport Law & Strategy Group

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

- Legal Solutions & Risk Management
- Planning & Governance
- Communications & Coaching



SOME OF OUR CLIENTS



COACHES
of Canada

**FREESTYLE
SKI
ACROBATIQUE**

Canadian Cycling Association
Association cycliste canadienne

**CANADIAN SWIMMING
CSCTA
COACHES & TEACHERS
ASSOCIATION**



**EQUINE HIPPIQUE
CANADA**

**SQUASH
CANADA**

**TRUE
SPORT
LIVES HERE**

CANADA



**ONTARIO
BASKETBALL**



**—JEUX DU—
CANADA
—GAMES—**



ONTARIO UNIVERSITY ATHLETICS
SPORTS UNIVERSITAIRES DE L'ONTARIO



CANADA



**CABC
COACHES ASSOCIATION
OF BRITISH COLUMBIA**



CCAA



AthletesCAN

**SWIMMING/NATATION
CANADA**

RCGA
Royal Canadian Golf Association | Association Royale de Golf du Canada



ACSC



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AGENDA

- *Negligence*
- *Screening*
- *Position of Trust/Authority*
- *Social Media*





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OUTLINE

Question 1 - *How does the law expect a coach to behave?*

Answer → negligence & liability

Question 2 - *Given what the law expects, how does a coach ensure that he/she behaves appropriately?*

Answer → risk management



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NEGLIGENCE/ACCIDENTS

Negligence occurs only when:

- **A Duty of Care is owed,**
- **The Standard of Care is breached,**
- **Harm or Loss occurs,**
- **The breach of the Standard causes or substantially contributes to the Harm or Loss**





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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.



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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



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STANDARD OF CARE



Highest possible level of care

- risk is eliminated

Reasonable standard of care in the circumstances

- risk is appropriately managed

Failure to exercise any care

- risk is ignored



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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.



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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.



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Hamstra v. BC Rugby Union (1989)

- Rendered quadriplegic when scrum collapsed.
- Sued coach for mismatching athletes playing the prop positions.
- Test for negligence is “whether [the coach] acted in accordance with the ordinary skill and care of a coach in the circumstances in which he found himself.”



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Hamstra Continued

- Written Standards
 - Court ruled coach acted in accordance with the Rules of the Game, safety regulations, and accompanying guidelines promoted by the sport's governing body.
- Unwritten Standards
 - Coach properly taught all players proper technique.



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Case Law Summary

- *Hamsta* establishes a lesser duty of care than the standard in *Myers*.
- Coaches have an obligation to act within those parameters established by these two cases.
- ** Coaches should be prepared to act within the standard of a reasonable and careful parent, the higher standard of care established by the Supreme Court of Canada**



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Poll & Questions?



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SCREENING





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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.



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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?
 - How are you going to manage confidential records ... etc.



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Pre-Hiring Screening Tools

- Create Job Description
- Create application form
- 1st, 2nd or 3rd Interview
- Police Record Check
- Check References

Post-Hiring Screening Tools

- Orientation/Training
- Impose a Probationary Period
- Evaluations
- Follow up with participants and co-workers



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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



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CONCLUDING THOUGHTS

- Screening must find a balance between the individual's legitimate rights and the organization's legitimate need to protect clients, participants and the public
- There is a "sliding scale" of screening
- Screening is far more than police checks
- The process of screening is a process of managing risks
- Your screening procedures will be specific to your organization and circumstances



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POSITION OF TRUST





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Criminal Code

- Section 153(1) prohibits every person who is in a position of trust or authority towards a young person, from engaging in any sexual activity with that young person, even where the activity is consensual.
- Section 273.1(2)(c) prohibits the defense of consent in cases of sexual assault where the accused is abusing a position of trust, power or authority, regardless of the age of the complainant.



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“Position of Trust”

- An obligation of special responsibility is placed on someone that is not placed on a normal person in society.
- A duty is imposed upon a coach to conduct themselves in a certain fashion in relation to the person they owe the duty to.
- Possesses a lawful or unlawful power to command and direct the athlete.



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Case Law Summary

- There is no single or simple legal test to determine if a coach is in a legal position of trust or authority over an athlete.
- The following factors are significant:
 - Is there an imbalance of power between the coach and the athlete?
 - What is the age difference between the coach and the athlete?
 - Does the coach give orders and does the athlete comply with these orders?
 - Is the coach/athlete relationship ongoing or has it been suspended or terminated?



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SOCIAL MEDIA

-Facebook

-Internet

-Etc.





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Issues with Computer-Mediated Communication (CMC)

- ✓ Role Ambiguity, Credibility and Clarity
- ✓ Closeness (Hyperpersonal)
 - ✓ Say things online that you would not normally say face-to-face. There is no 'sober second thought'.



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On Facebook... the biggest challenge

- ✓ Viewing illegal or irresponsible conduct



CONSTRUCTIVE KNOWLEDGE ?



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Coach's Personal Social Media Guidelines

- ✓ For coaches... personal guidelines
 - ✓ Not necessarily written
 - ✓ Standard and consistent
 - ✓ Transparent
- ✓ Every coach should be prepared to answer questions about their personal guidelines when it comes to coach-athlete interactions on Facebook



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Sample Guidelines for Coaches

- ✓ Be consistent in your use of Facebook with athletes. If you accept one athlete as your Facebook friend – you must accept all of your athletes
- ✓ Don't pressure athletes into befriending you on Facebook
- ✓ Interact with your athlete when invited to do so; for example by replying to an athlete's comments on your personal pictures
- ✓ Limit initiating contact on Facebook. Limit wall posts. Avoid commenting on an athlete's personal pictures.
- ✓ Ensure that parents are aware that some coach-athlete interactions may take place on Facebook, by texting, or by instant messaging.
- ✓ Parents may want to interact with you via these media as well.
- ✓ Team information should not be distributed on, or limited to, Facebook.
- ✓ Remember – coaches and athletes are not “friends” - even if Facebook says that you are



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“If I wave to the kids on the bus first, they would think I’m a pervert. But if they wave to me first, then it’s OK for me to wave back” (Diaz, 2008).

Diaz, J. (2008). Facebook’s squirmy chapter. Retrieved May 29, 2008 from the Boston Globe website http://www.boston.com/lifestyle/articles/2008/04/16/facebooks_squirmy_chapter/



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Sport Information Resource Centre **sirc.ca**



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Thank you

Next webinar: Wednesday, April 8

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Twitter Made Easy



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