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DOCUMENTS DEADLINE ESSENTIAL TO YOUR DEFENCE

In defending a claim against your organization, it is critical that we work together in any way possible with the timely and prompt production of documentation and undertakings.

To date, we have not had any situations where clients who faced claims against their organization did not provide all relevant documents outside of the 60-day deadline, which came into effect as of July 1, 2006. This is good news, because it means that we were able to provide our clients with the best possible defence.

We cannot stress enough, however, how important it is to disclose or produce all relevant documents within this timeframe. Not to do so could have serious negative consequences – including not being able to provide the strongest possible defence.

The Rules

The rules that govern the handling of lawsuits are known as the Rules of Civil Procedure. The Rules of Civil Procedure require that all documents relating to any matter at issue in a legal action - that are or have been in the possession, control or power of a party to the lawsuit - be disclosed.

A document is anything that discloses information, i.e. evidence. This includes paper documents, sound recordings, videotapes, films, photographs, charts, graphs, maps, plans, surveys, books of account, etc. A party cannot pick and choose which documents to disclose; harmful documents cannot be withheld simply because they are harmful.

During the Examination for Discovery, each party will often request that additional information and/or documentation be provided. The agreement to produce additional documentation is called an *undertaking*. Undertakings are like promises. For Examinations for Discovery held after July 1, 2006 all undertakings must be compiled within 60 days. The lawyer appointed to work with you in defending the case will assist you in fulfilling these undertakings.

The duty to disclose and produce documents is an ongoing responsibility. That means if any additional documents are located, they must be disclosed.

The Consequences

As we mentioned above, the failure to disclose or produce relevant documents may have serious consequences. For example, if a favourable document is not produced, we would not be able to make use of it at trial except with leave (permission) of the trial judge. In fact, the court has the power to dismiss the action or strike out a defence for failure to produce relevant documents.

If documents are not produced in a timely fashion, it may also affect the credibility of the defence. The court and/or opposing parties may become suspicious and may not believe a party that does not co-operate in the production of relevant documentation.

It is also of great strategic importance that all relevant documents are provided at the earliest possible opportunity so that all of the strengths and weaknesses of the case are known at the earliest opportunity.

We recognize that searching for and providing the necessary documentation in a timely manner can be both laborious and time consuming. This is, however, a necessary step in the litigation process. In order to provide you with the best possible defence and ensure you have complied with your obligations set out in the insurance policy, it is imperative that this deadline be met.

The Risks of Winter Activities

Changing leaves and a drop in temperature are both signs that winter is on its way – whether we like it or not. Even before the snow falls, many municipal residents start thinking about lacing up their skates, or getting the toboggan out of the garage for an afternoon on the hills. With the advent of these activities, the municipality's risk of liability increases when they are carried out on municipally owned property.

Every year we see claims against municipalities involving death or serious injury to participants taking part in winter recreational activities. We encourage municipalities to take an active risk management approach in this regard. Not only is there a need to minimize your exposure to liability, but more importantly, to avoid unnecessary death or injury to the public.

We have put together some suggestions that can help protect you and your residents. They are as follows:

- If there is an awareness of casual use of municipal premises for a specific recreational activity, it is appropriate to inspect the location for obvious hazards such as trees, light standards, roadways, creek beds, or anything else that may hinder the activity.
- Signage may be necessary to prohibit use in certain locations where serious hazards exist. Signs should also be posted to warn of potential dangers and hazards.
- Locations that are sanctioned or recognized by the municipality as active for winter recreational activities require considerably more study. The fact that the municipality recognizes or promotes a particular location results in absolute responsibility to safeguard the public. These locations would require removal of obvious hazards together with regular inspections and a good documentation program.
- Under many provincial Occupier's Liability Acts, the municipality may have a statutory obligation to ensure that anyone entering their property is reasonably safe while on the premises. Hence, a municipal decision to permit these activities on their premises should be accompanied by a commitment to manage the risk. Where there is no Occupier's legislation, there is still the Law of Negligence.

- There may be a need to install barriers where appropriate and necessary (i.e. around trees). If fencing is installed, however, the municipality has a further obligation to inspect and maintain it on a regular basis.
- Use of motorized vehicles should always be kept completely separate from other activities. For example, snowmobile use should be prohibited from areas where people will be tobogganing or snowboarding.

If the municipality permits the use of their premises for any winter activities to another organization that is in control and responsible for the premises, we suggest that the following items be incorporated in their agreement:

- The permit holder should abide by the same safety precautions and standards that the municipality would if they were to control the activity.
- An agreement should be drawn up between the two parties setting out their respective duties and responsibilities.
- The contract should contain a hold harmless and indemnification clause in favour of the municipality.
- An insurance clause should be included which would require the permit holder to carry an acceptable limit of liability insurance and adding the municipality as an additional insured.
- A current Certificate of Insurance should be provided to the municipality providing proof that the necessary insurance is in place.

Regardless of the type of activity, from skating on temporary outdoor ice rinks, to tobogganing and snowboarding on municipally-owned premises, these are some common risk management recommendations that we encourage you to put into practice to minimize your exposure to liability.



Municipal Alcohol Policies/Procedures – Why are they prudent?

Municipal Alcohol Policies lessen the exposure of the municipality to liability arising out of the use of municipal facilities for alcohol-related events.

The purpose of a Municipal Alcohol Policy is to ensure that there are clear and responsible guidelines to aid in the prevention of alcohol related problems and allow for the enjoyment of those renting municipal facilities. In reducing the potential for alcohol related problems, you will reduce the risk of injury and death to patrons, loss of enjoyment of the patrons, as well as the risk of liability actions.

Liability of Occupiers

As an occupier, you have responsibility for the people you allow to enter and remain on your premises, including intoxicated and troublesome individuals. You must take reasonable steps to prevent the occurrence of foreseeable events. Occupiers, however, are not required to endanger themselves in this pursuit.

The condition and suitability of the premises is also the concern of the occupier. The property must be up to code, have suitable handrails and exits that are in good condition and be free from trip and fall hazards. If serving alcohol, the property must be safe for both sober and intoxicated individuals.

Occupiers are exposed to liability for the activities they allow on their premises. If you allow unsafe activities, such as drinking contests, dancing on the tables or events such as stag and doe parties to take place unchecked, you may be liable for any unfortunate outcome.

Joint and Several Liability

Joint and Several Liability is a legal doctrine that makes each party to a claim both jointly and separately liable for any judgement of damages. Should one party not be able to fulfill their portion of the judgement, the plaintiff has the right to seek recovery from another party to the judgement that has the resources to contribute more than their portion, even if they were found to be only 1% liable. So consider the 20 year old organizing a stag: What kind of financial resources does that young adult have to pay damages if they occur?

Remedies

In order to avoid any incidents from occurring on your premises, you should:

- Operate the facility with reasonable care for the safety of all users

- Keep the facility in safe repair
- Inspect the facility for hidden hazards
- Remove hazards or warn of their presence
- Prevent or control unsafe activities on the premises
- Require a Rental Agreement from third parties
- If alcohol is to be served, provide the renter with your Municipal Alcohol Policy

Alcohol Liability Insurance Policy

An Alcohol Liability Insurance Policy provides host liquor liability for the organizer of an alcohol related event. In today's legal climate, any individual or group who hosts an alcohol related event should be required to purchase host liquor liability insurance. As the owner of the facility, the purchase of such insurance and proof of the purchase should be a condition of the rental agreement.

Suggested Guidelines for Developing Your Policy

Relevant Sections

- 1.0 Policy Statement
- 2.0 Identify Suitable Premises For Serving Alcohol
 - 2.1 Identify Events in Which Alcohol Can Be Served
- 3.0 Conditions for Serving Alcohol
 - 3.1 Rental Agreement
 - 3.2 Special Occasion Permit
 - 3.3 Alcohol Liability Insurance
- 4.0 Mandatory Personnel
- 5.0 Smart Serve Program
- 6.0 Entry and Controls
- 7.0 Sale of Alcohol and Serving Practices
- 8.0 Insurance and Indemnification
- 9.0 Procedures for Dealing with Patrons
 - 9.1 Intoxicated Persons
 - 9.2 Problem Patrons
- 10.0 Designated Drivers/Safe Transportation Policy
- 11.0 Signage
- 12.0 What is NOT Allowed

Suggested Framework

We have developed a Suggested Framework for the development of Municipal Alcohol Policies for each Province. If you would like to receive a copy, please contact your Frank Cowan Representative.

ABC's of Toboggan Hills

Tobogganing is an activity that many Canadian children look forward to every winter. To make sure you protect riders, and yourself, we've put together some simple guidelines you may want to follow.

Alcohol should be forbidden

Bales of hay should be placed at all impact points

Close the hill after an ice storm

Discourage mechanical means of climbing the hill – scarves can become entangled

Encourage the wearing of helmets

Frozen bodies of water, roads and parking lots are not good end points for toboggan runs

Ground surface should be even with no rocks, trees, brush or knolls on the hill

Hours of use should be clearly defined

Inspect the area regularly and document all inspections and maintenance

Jumps and ramps should not be allowed in sledding areas

Keeep garbage off the hill by providing waste receptacles

Lighting should be provided if the hills are open at night

Mark the safe areas for tobagganing

Not everyone has a cell phone - where is the nearest telephone in the event of an accident

On busy days provide spotters at the top and the bottom of the hill

Parking area should be large enough to accommodate the vehicles but far enough away from the hill

Quality toboggan runs can only be achieved through a system of inspection, maintenance, appropriate signage and public education

Rules of Conduct should be posted at the entrance to the hill

School assemblies are a great way to educate kids and parents on toboggan safety

Twelve inches of covered snow on a hill is recommended before the hill is opened

Unsupervised hills should have signs stating this fact

Vandals can cause damage so regular inspections are important

Waivers should be considered for special events such as school outings

X'act run lengths are difficult to measure but it's recommended that hills have run-offs long enough for a natural stop

You own the property, so you are liable

Zone your hills i.e. Forbidden;
Age Appropriate; All
Levels Welcome



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