INSURANCE LAW GLOBAL

The Sports Bulletin

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Welcome to the latest edition of the ILG Sports Group Bulletin.

We are pleased to share a collection of articles from our member firms exploring recent legal developments affecting the sports sector, with articles covering occupiers' liability, governance, recreational risk, tax and regulatory issues across Australia, Canada, Ireland, the United Kingdom and the United States. We are also delighted to welcome our newest member firms, Gerber Ciano Kelly Brady and Whitney Moore, to the Insurance Law Global network. We look forward to their contributions and are pleased to have them as part of our growing international community.

It has been quite a sporting year already. The Seahawks' Super Bowl victory feels like a distant memory, and the Ashes series Down Under has been thankfully consigned to history. Most football lovers will have been pleased to see Spain deservedly claim the FIFA World Cup title, though the tournament was not without controversy. FIFA's President appears determined to further expand the tournament to 64 nations and introduce private equity into its commercial operations, while the organisation already faces a legal challenge over its decision to suspend the red card issued to US player Balogun. Whether FIFA faces meaningful scrutiny on these governance issues, or whether the promise of additional funds to smaller nations once again delivers the President the votes he needs, remains to be seen.

In the UK, judgment in the Manchester City vs Premier League case is still awaited, and concussion litigation across rugby union, rugby league and football continues. We have also enjoyed the Commonwealth Games in Glasgow and now turn our attention to the European Athletics Championships taking place in Birmingham.

We hope you enjoy this edition and find the insights valuable. Please do not hesitate to reach out to any of our Group members with any questions.

Bruce Ralston

Chair ILG Sports Law committee

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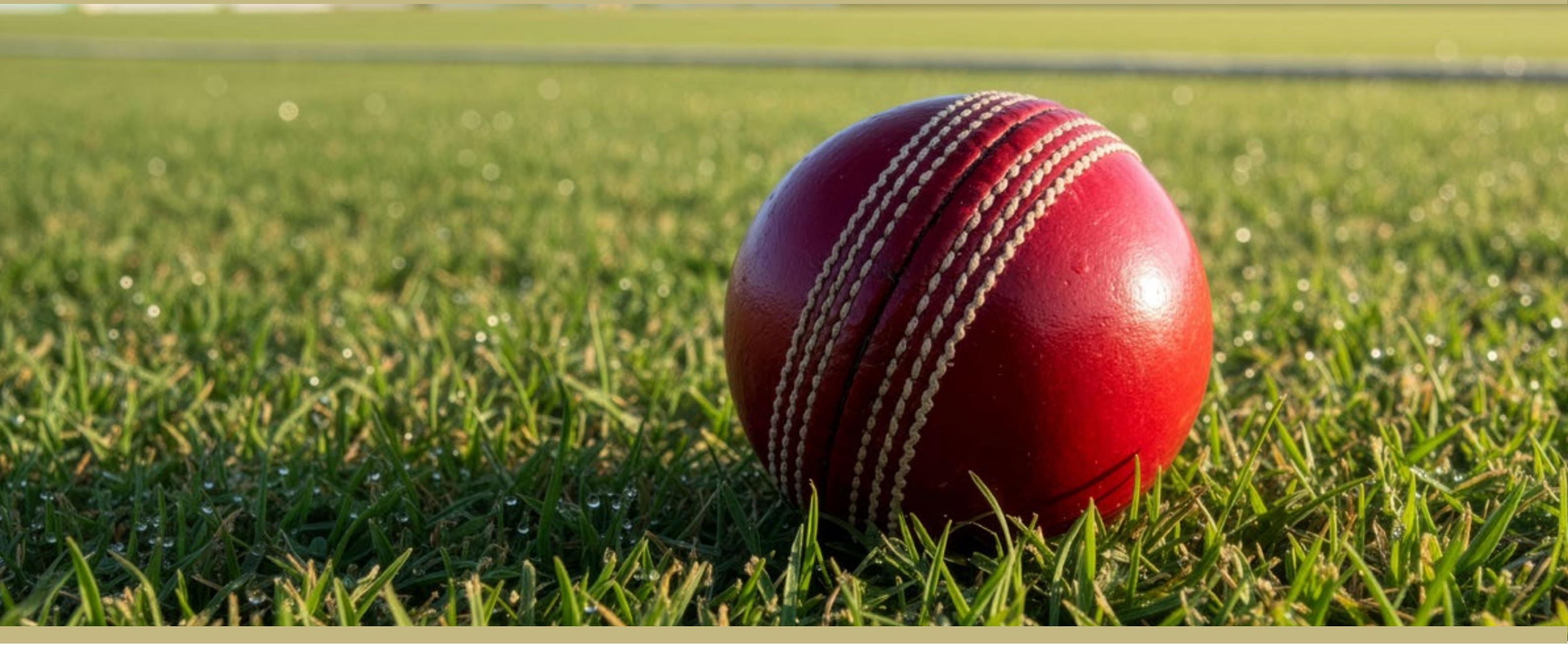
Table of Contents

By Partner Rebecca Stevens and Solicitor Lachlan Smith, Carter Newell Lawyers



The Gate That Never Was: A $15 Million Wake-Up Call for Councils and Sporting Clubs Alike

On an otherwise unremarkable Tuesday evening, a 23-year-old cricketer jogs back towards the nets and vaults over a fence. His foot unexpectedly clips the top of the rail, and he falls head-first to the ground. He will never walk again. The fence? Perfectly fine. No defects or irregularities. What was missing and what has now led to an astounding $15.2 million award for damages was a conveniently located gate. This simple omission is the centerpiece of the Victorian Supreme Court decision in *Woolnough v Whittlesea City Council & Anor*,[1] a judgment that should put all Councils and local Sporting Clubs on notice that a structurally sound facility is not of itself sufficient, and an occupier must turn their mind to how people will actually use it.

What happened in the Woolnough case?

The plaintiff, Jordan James Woolnough, was injured on 15 February 2022 while attending cricket training at the Laurimar Recreation Reserve in Doreen, Victoria ('**the Reserve**'). The 23-year-old self-employed carpenter was in the process of jumping over the boundary fence of the Eastern oval with the intention of returning to the adjacent cricket nets when his foot unexpectedly caught the top of the fence, causing a heavy fall to the ground.[2] The injuries that followed were catastrophic, and the young plaintiff is now wheelchair bound.

The plaintiff subsequently issued proceedings against Whittlesea City Council (the owner and occupier of the Reserve who had built the boundary fence and cricket nets) and Laurimar Cricket Club Incorporated (who were using the oval and nets and whose coaches were running sessions at the time of the incident). Both defendants denied liability for the plaintiff's injuries and contended that in the event they were found negligent, the plaintiff had voluntarily assumed the risk of injury or in the alternative, was contributorily negligent by jumping the fence instead of using a gate.[3]

1 [2026] VSC 190
2 Ibid [1].
3 Ibid.

The parties agreed that the plaintiff's damages, if successful, were $19 million.[4]

The infrastructure

To better understand the circumstances of this incident, it is important to note the layout of the Reserve:

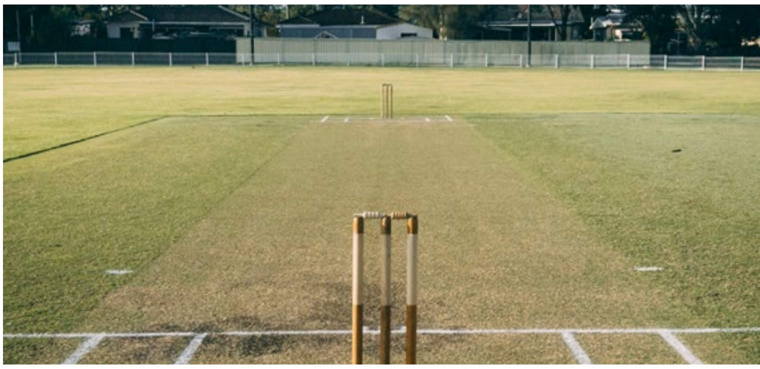
- There were two ovals at the Reserve, known as the Eastern and Western ovals, with a pavilion nestled between them. A set of cricket nets were installed in the first half of 2020 at a cost of $200,000. These nets were positioned to the south of the pavilion adjacent to both ovals.[5]

- The Eastern oval boundary fence was just over one meter high and consisted of tubular metal poles supporting upper and lower horizontal metal bars with wire mesh strung between them. No complaints had been made about the structure or condition of the fence itself.[6]

- There was a pedestrian gate located south-east of the nets, however reaching that gate would involve walking approximately 95 meters. The most direct path from the nets to the Eastern oval involved crossing the fence at a point approximately 41 meters from the nets. Notably, there was no gate for the shorter route at the time of the incident.[7]

- Between 75% and 90% of cricketers simply jumped or climbed the fence at the most direct point rather than walking the extra distance. It was only the older or injured players who took the longer route.[8]

- After the incident, the Council installed a gate at the approximate location of the plaintiff's fall at a total cost of around $1,500. The Council also added a concrete pathway to that gate.[9]



Why was the Council found liable?

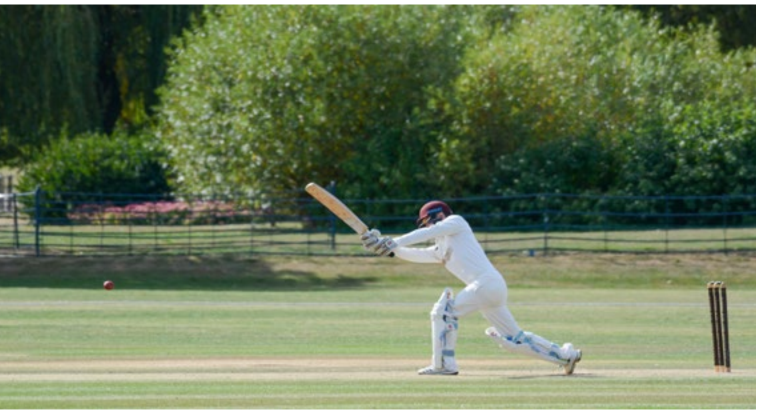
As occupier of the Reserve, the Council owed persons, including the plaintiff, a duty to take 'such care as in all the circumstances of the case was reasonable to see that they would not be injured by reason of the state of the premises or of things done or omitted to be done in relation to the state of the premises'.[10] This is a statutory duty pursuant to the *Wrongs Act 1958* (Vic) ('**the Wrongs Act**').[11]

The plaintiff's case against the Council was straightforward. When it installed the nets adjacent to the Eastern oval, it ought to have installed a pedestrian gate in the boundary fence at a point where people moving between the nets would naturally seek to cross the fence.[12]

It was held that the Council knew or ought to have known that people moving between the nets and the Eastern oval might jump or climb the fence in the absence of a conveniently located gate.[13]

4 Ibid.
5 Ibid [4], [5] and [6].
6 Ibid [5].
7 Ibid [12].
8 Ibid [13].
9 Ibid [9].
10 Ibid [15].
11 Section 14B.
12 Ibid [16].
13 Ibid [20].

It was unreasonable, having regard to the aggregate risk of injury coupled with the low cost of installing a pedestrian gate, for the Council not to have done so.[14] Ultimately, it was not necessary for the Council to envisage a catastrophic injury like that suffered by the claimant, and the risk of falls causing bruises or sprains was sufficient.[15]



More importantly, the Court found that the Club had, at some point throughout the 2021/22 season, raised verbally with the Council the need for a gate at the Eastern oval fenceline adjacent to the nets.[16] The Court was satisfied that the Club's request conveyed the fact that people had been climbing or jumping the fence in the absence of a conveniently located gate, and the Council, acting reasonably, ought to have promptly installed a gate before the plaintiff's injury to address safety concerns.[17]

The Council submitted that causation was not established because as a matter of '*commonsense*' the plaintiff's injury was caused by his own decision to climb or vault over the fence rather than use one of the gates.[18] That argument was quickly shut down, with the Court finding that had a gate been installed in the area adjacent to the nets, the plaintiff would have used it, and the incident would have been prevented.[19] The Council's negligent failure to install a gate was therefore deemed to be a cause of the injury and the plaintiff's claim succeeded.[20]

How did the Sporting Club escape liability?

The Club, also deemed an occupier, owed an analogous duty pursuant to section 14B of the Wrongs Act. The plaintiff's claim against the Club was two-fold:

- The Club failed to follow up with the Council regarding its concerns about the risk of injury arising from players climbing or vaulting the fence.[21]
- The Club failed to direct coaches and players not to jump the fence.[22]

It was held that the Club could not be said to have acted unreasonably given it had previously raised the need for a gate to the Council.[23] As consistent with ordinary human experience, His Honour, Justice Gorton, was satisfied that some explanation would have been provided when the Club's request was made, and that explanation was likely to the effect that people were climbing or jumping the fence.[24]

Despite not accepting that the Club had explicitly raised the lack of gate as a safety issue, His Honour was satisfied that it conveyed the fact that people had in fact been vaulting the fence.[25]

14 Ibid.
15 Ibid.
16 Ibid [39].
17 Ibid [46] and [51].
18 Ibid [35].
19 Ibid.
20 Ibid [36].
21 Ibid [53].
22 Ibid.
23 Ibid [57].
24 Ibid [46].
25 Ibid.

Although the coaches would have directed players not to jump the fence had they been instructed to do so by the Club,[26] the Club did not act unreasonably in failing to give that direction in circumstances where:

- The plaintiff was a fit and healthy young adult who was voluntarily attending senior cricket training and was not in the employ of the Club.[27]
- The risk of significant injury on any one occasion of climbing or jumping the fence was small.[28]
- The Club had no greater ability to identify the risk than the plaintiff or any other adult player.[29]
- The practice of jumping the fence was one of a common and unremarkable nature that had not resulted in an injury on any previous occasions.[30]

For these reasons, the Club was not held liable for the incident as it had not breached its duty of care, nor had it acted unreasonably in failing to issue a direction not to jump or vault the fence.[31] The claim against the Club was therefore dismissed, along with the claim for contribution pursued by the Council.

Voluntary assumption of risk and contributory negligence

Both defendants raised '*volenti non fit injuria*' as a complete defence to the claim.[32] To succeed in that defence, both defendants needed to prove that the plaintiff, freely and voluntarily, and with full knowledge of the nature and extent of the risk he ran, impliedly agreed to incur it.[33]

The plaintiff led evidence that he had climbed the fence on several prior occasions without difficulty and '*didn't see any problem*'.[34]

His Honour accepted that evidence, however was not satisfied that the plaintiff subjectively appreciated the fact that he was exposing himself to the risk of suffering serious injury, let alone the risk that he would become a quadriplegic, nor did he voluntarily accept that risk.[35] The Court considered it was more than likely that the plaintiff, like many other cricketers, simply traversed the fence out of convenience, and without turning his mind to the nature or level of the risk involved.[36]

The Court additionally considered the provisions of the Wrongs Act dealing with obvious risk. His Honour, while accepting that the risk of suffering some injury while navigating a fence in the manner the plaintiff did was an '*obvious risk*' within the meaning of the Act, such that the plaintiff was presumed to have been aware of it, was again not satisfied that the risk of suffering severe injury was an obvious risk, and the defence failed.[37]

Notwithstanding the above, the Court did make a finding of contributory negligence. While it was accepted that a reasonable person in the plaintiff's position would not have acted unreasonably merely by deciding to vault the fence in circumstances where most other cricketers were doing so and had not been injured, the plaintiff's conduct went one step further.[38]

26 Ibid [58].
27 Ibid [59].
28 Ibid.
29 Ibid.
30 Ibid.
31 Ibid [60].
32 Ibid [63].
33 Ibid [66].
34 Ibid [69].
35 Ibid.
36 Ibid.
37 Ibid.
38 Ibid [79] and [80].

Evidence from a witness described the plaintiff running '*reasonably fast*' before arriving at the fence, placing both hands on it, and then attempting to clear it with both legs simultaneously.[39] That account was consistent with the plaintiff's reporting to an ergonomist, in which he described swinging his leading leg across the fence while lifting himself with both hands.[40] The Court found that, whatever the precise mechanics, the plaintiff had run at, and attempted to vault the fence, without appreciably slowing down first.[41]

The Court held that a reasonable person in the plaintiff's position would have taken care to cross the fence slowly and carefully.[42] Running and vaulting inherently increased the risk of falling, and that conduct could not be excused as mere inattention or inadvertence.[43] Nonetheless, His Honour considered that the Council fell substantially further below the standard of care required of it than the plaintiff fell below the standard of care required of him.[44] Taking that into account, a 20% reduction was just and equitable in the circumstances, bringing the plaintiff's total award to $15.2 million.[45]

What does this decision mean for Councils and Sporting Clubs?

For Councils

The modest cost of a simple pedestrian gate now sits against an eye-watering judgment of $15.2 million. For Councils, the judgment is a stark reminder that the duty of care is not discharged simply by providing facilities that are structurally sound. It requires deep consideration of how people will use those facilities and whether the infrastructure supports safe use in practice. In circumstances where dozens of people routinely jump a fence solely because no gate exists as a natural crossing point, the Court has deemed that a foreseeable hazard requiring attention.

For Sporting Clubs

For sporting clubs, the judgment offers some reassurance. Acting reasonably in raising concerns will generally be sufficient, and clubs are not expected to rectify the shortcomings of premises they do not own. Of course, the line between adequately raising a concern and inadequately doing so is inherently fact-specific, and clubs would do well to document such communications. Installing a conveniently located gate was undoubtedly the obvious answer in this decision. Unfortunately, it was a decision that came too late.

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39 Ibid [75].
40 Ibid [74].
41 Ibid [80].
42 Ibid.
43 Ibid.
44 Ibid [81].
45 Ibid.

By Partner Stephanie Huestis and Solicitor Amber Boyce, Carter Newell Lawyers

Skydiver's Landing Technique Grounds his Negligence Claim

When a student skydiver is seriously injured on landing, the instinct to look skyward for someone to blame is understandable. But what happens when the expert evidence, the video footage, and two independent instructors all point to the student himself as the cause of his own injury? The Queensland Court of Appeal's decision in *Eyles v Sydney Skydivers Pty Ltd*[1] is a striking illustration of the causation trap that awaits plaintiffs who succeed in establishing breach but fail to connect that breach to their loss. The decision also provides useful guidance on the proper characterisation of inherent risk under the *Civil Liability Act 2003* (Qld) ('**CLA**') and the breadth of the 'dangerous recreational activity' defence.

Background

The appellant, James Eyles, was a qualified parachute packer and member of the Australian Parachute Federation who enrolled in an accelerated free-fall course with the respondent, Sydney Skydivers Pty Ltd, to pursue a career as a skydiving camera operator.

On 1 October 2016, the appellant completed two supervised solo jumps with instructor guidance via radio and hand signals. Both jumps were largely successful, though on the first occasion he was noted to have lost his balance on landing and gone down on one knee.[2]

The critical incident occurred on 30 October 2016 during a subsequent solo skydive at the respondent's North Queensland aerodrome. He was accompanied by two instructors, with a third remaining on the ground as a target assistant who would direct his final approach using paddles.[3] The appellant sustained spiral fractures to his right tibia and fibula during landing, having landed off the designated target area onto a loose gravel runway.

1 [2026] QCA 53 ('*Eyles*').
2 Ibid [8].
3 Ibid [9]-[11].

While he claimed he landed with legs together and knees bent before his foot slipped on the uneven surface, the instructors and video evidence suggested he had extended his right leg toward the ground in violation of his training.[4]

Competing Versions of the Landing

The appellant's pleaded case rested on several key contentions:

First, he alleged that after deploying his parachute, the two accompanying instructors continued to freefall, reaching the ground well before him.[5] This left him under the direction and supervision of the instructors and a target assistant on the ground.

Second, the appellant contended the target assistant, using hand-held paddles, directed him to hold the parachute toggles high in preparation for flaring but failed to instruct him to fully flare the parachute until he was sufficiently close to the ground.[6] This alleged failure in timing and direction, he argued, forced him to flare heavily at the last moment, resulting in the heavy landing that caused his injuries.

Third, the appellant maintained he had followed the target assistant's instructions by pulling the toggles down heavily in a full flare, which resulted in the heavy landing and the subsequent twisting injury.[7]

There was a fundamental factual dispute about the manner of landing. The appellant testified he landed with proper technique but was undone by slipping on the gravel surface.[8] The instructors, however, testified the appellant had extended his right leg toward the ground, contrary to training.[9]

A video recording of the landing was tendered but proved ambiguous, with both parties arguing it supported their respective accounts.[10] Medical evidence from Dr Cook, the orthopaedic expert, established spiral fractures to both bones typically resulted from a twisting force.[11] Such fractures could arise from uneven ground contact causing the foot to twist, though the exact mechanism would depend on various factors including the landing surface, footing stability, and parachute positioning.

Trial Decision

The District Court at Bowen (Lynham DCJ) delivered judgment on 4 September 2025.[12] Her Honour found the appellant, whilst an honest witness, had given evidence about the landing process that was inconsistent with the preponderance of the evidence, including the instructor witnesses, the video footage, and Dr Cook's expert evidence.[13] Her Honour concluded the appellant had "reached out" with his right foot immediately before touchdown, contrary to his training.[14]

4 Ibid [11]-[14].
5 Ibid [11].
6 Ibid.
7 Ibid.
8 Ibid [12].
9 Ibid [13].
10 Ibid [14].
11 Ibid [15]-[17].
12 *Eyles v Sydney Skydivers Pty Ltd* (District Court at Bowen, Lynham DCJ, 4 September 2025, unreported).
13 *Eyles* (n 1) [19].
14 Ibid [20].

Against that factual backdrop, the primary judge identified the relevant risk of harm as the risk a student skydiver undertaking a solo skydive might land and sustain injury by reason of unwittingly landing short of the designated landing zone and encountering an unexpected hazard such as a gravelly surface.[15]

The respondent was found to have breached its duty of care by allowing the appellant to fly over the runway before directing his landing approach, contrary to its operational manual.[16] However, Lynham DCJ held this breach did not cause the appellant's injuries. The injury instead resulted from the appellant's own incorrect landing technique, not the surface on which he landed.[17]

The court also rejected claims under sections 60 and 61 of the Australian Consumer Law, finding the injury resulted from the appellant's own actions rather than failure in the respondent's services.[18]

The primary judge further held that even if negligence were established, the respondent would not be liable under statutory defences in the CLA.[19] The injury resulted from the materialisation of an inherent risk (section 16 of the CLA) and an obvious risk associated with the dangerous recreational activity of solo skydiving (section 19 of the CLA).[20] The reasoning emphasised the real risk was not landing on gravel but landing incorrectly.

The Appeal

The appellant pursued four grounds of appeal:

Ground 1: Causation

The appellant did not challenge the primary judge's factual finding about the landing. Instead, it was suggested the primary judge had erred in the "correct identification of the relevant risk of injury", and, consequently, in the causation analysis.[21] The argument drew on the principle of *Roads and Traffic Authority (NSW) v Dederer*,[22] as cited with approval in *Tapp v Australian Bushmen's Campdraft & Rodeo Association Ltd*,[23] that the assessment of breach of duty depends on the correct identification of the relevant risk.[24]

The submission was, in essence, that because the identified risk (landing short of the designated zone on a gravel surface) made no reference to the method of landing, the method of landing was therefore irrelevant to both the formulation of the risk and the cause of the injury.[25]

The Court of Appeal, in reasons delivered by Boddice JA (with whom Mullins P and Doyle JA agreed), rejected this reasoning emphatically. The uncontested factual finding the appellant had reached out with his right foot was central to the cause of the injury.[26]

15 Ibid [21].
16 Ibid [22]-[23].
17 Ibid.
18 Ibid [24].
19 Ibid [25].
20 Ibid.
21 Ibid [28].
22 (2007) 234 CLR 330 at 338-339 [18].
23 (2022) 273 CLR 454 at 489 [106] ('*Tapp*').
24 *Eyles* (n 1) [30].
25 Ibid [32].
26 Ibid [32]-[33].

Critically, the Court confirmed the factual finding as to the landing technique was consistent with Dr Cook's medical evidence.[27] There was no causal nexus between the respondent's breach (permitting the appellant to fly over the runway in breach of its operations manual) and the injury.[28] The Court found there was no error in the primary judge's conclusion as to causation.[29]

Ground 2: Australian Consumer Law

At trial, the appellant had also pursued a claim under sections 60 and 61 of the Australian Consumer Law, being the guarantees of due care and skill and fitness for purpose. On appeal, counsel for the appellant properly conceded that if the causation ground failed, this ground also failed. The Court found it unnecessary to consider further.[30]

Ground 3: Inherent Risk

*T*he appellant challenged the primary judge's finding section 16 of the CLA had been satisfied.[31] An 'inherent risk' is one that cannot be avoided by the exercise of reasonable care and skill.

The appellant's argument was the primary judge had incorrectly identified the inherent risk. The relevant inherent risk should have been framed as the risk arising from the respondent's failure to direct him in accordance with the flight plan, a risk that, could have been avoided by reasonable care and skill on the respondent's part, and therefore was not 'inherent' at all.[32]

The Court rejected this, stating section 16 is concerned with a risk that cannot be avoided through reasonable care. The primary judge had correctly identified the inherent risk as the risk a student skydiver would land contrary to his training. The evidence had established the appellant was properly trained in the correct landing technique, including the parachute landing roll ('**PLR**'), and that a PLR could be performed on any surface.[33] There was nothing the respondent could have done to prevent the appellant from extending his right foot at the moment of landing. That was the risk that had materialised, and it was inherent. As such, Ground 3 failed.[34]

Ground 4: Dangerous Recreational Activity

The appellant argued skydiving for the purpose of future professional employment should not be characterised as a "dangerous recreational activity" under section 19 of the CLA, as he was undertaking the course primarily for vocational purposes rather than pure recreation.[35]

The Court acknowledged the identification of the 'obvious risk' in the context of section 19 of the CLA is, in principle, to be undertaken at the same level of generality as the identification of the relevant risk for the purposes of breach of duty.[36] However, the Court found it unnecessary to resolve the theoretical question of the correct scope of dangerous recreational activity. The primary judge's finding the appellant's solo jump was at least, in part, engaged in for enjoyment and pleasure was neither glaringly improbable nor contrary to compelling inferences.[37] A mixed motive, part vocational and part recreational, was sufficient to bring the activity within the scope of the provision.

Ultimately, the appellate Court had to decide four separate questions, and on every single one, they agreed with the trial judge, thereby dismissing the appeal.

27 Ibid [33]-[36].
28 Ibid.
29 Ibid [38].
30 Ibid [39].
31 Ibid [40].
32 Ibid [41].
33 Ibid [44].
34 Ibid [45]-[46].
35 Ibid [47].
36 *Tapp* 454 at 491 [112].
37 *Eyles* (n 1) [49]-[50].

Key Takeaways

Eyles is a useful decision for defendants in adventure sport and recreational activity litigation. While instructors clearly owe a duty of care to their students, that duty remains limited in scope. This decision establishes that once an instructor has provided adequate training to a competent student, liability for poor execution typically ceases. The student's choice not to apply that training effectively constitutes an intervening act sufficient to break the causal chain between any instructional breach and subsequent injury.

For operators, the implications are significant but qualified. Compliance with established safety protocols and proper instruction methods provides substantial protection against liability claims, even where operational breaches occur elsewhere. The critical distinction lies between breach of duty and causation.

For injured participants, the evidentiary burden is considerable. Establishing operator liability requires demonstrating not merely that a breach occurred, but that the defendant's specific breach directly caused the plaintiff's injury. Furthermore, statutory defences under the CLA create formidable barriers to recovery in adventure activity contents.

The broader trajectory of appellate reasoning suggests Australian courts will continue to recognise and enforce the principle that participants in dangerous recreational activities bear substantial responsibility for executing their training appropriately. As adventure sports and recreational risk activities continue to proliferate, this allocation of responsibility between operators and participants will likely become increasingly important in establishing the legal boundaries of instructor liability.

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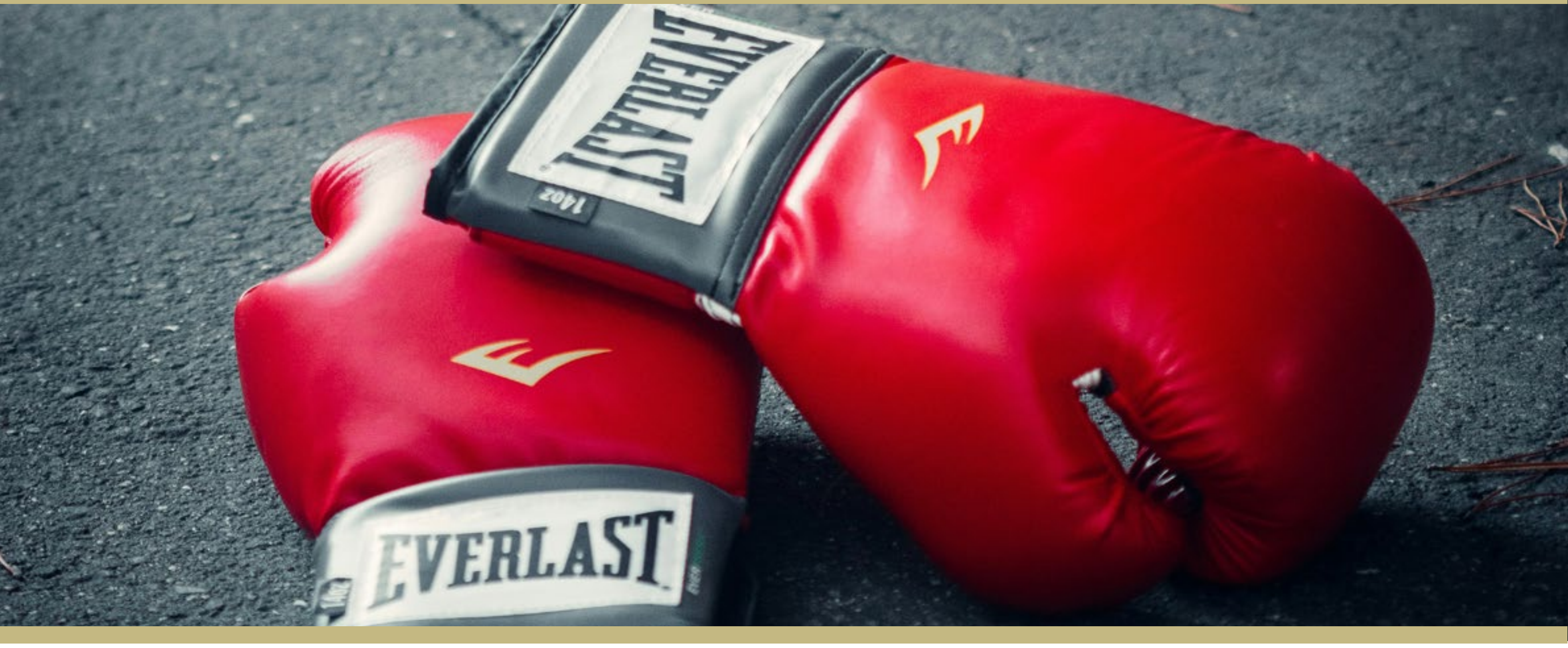

The Primary Assumption of Risk Defense in Sports and Recreational Activity Claims: What You Need to Know

The primary assumption of risk doctrine has long been a significant defense in tort actions involving sports and recreational activities in New York. Over the past decade, courts have issued a series of decisions that have both clarified and limited the doctrine's reach. Here is an updated look at where things stand.

The Foundation of the Doctrine

The primary assumption of risk defense was introduced by New York's Court of Appeals in the landmark 1997 case of Morgan v. State of New York. Under Morgan, participants in sporting or recreational activities assume the commonly appreciated risks that are inherent in the sport or activity and flow naturally from participation. Importantly, participants do not assume the risk of intentional conduct, and the defense does not apply when the dangers or risks of the activity are concealed or unreasonably increased.

Because the doctrine negates or satisfies a defendant's duty of care, it operates as a complete defense in tort actions, making it a powerful tool for defendants in the right circumstances.

Where the Defense Applies

The defense applies to inherent risks in qualified athletic activities sponsored or operated by a defendant at a designated venue. Its purpose is to encourage athletic participation and shield sponsors or venue owners from liability that might otherwise discourage them from hosting events or making their facilities available.

Courts have applied the defense to a wide range of situations. In Bukowski v. Clarkson University, a college baseball pitcher struck by a line drive during indoor batting practice was held to have assumed that inherent risk.

The court noted that even where indoor conditions were less than ideal compared to an outdoor field, the defense still applied because the risks were open, obvious, and not increased or concealed by the defendant.

Similarly, in Palladino v. Lindenhurst Union Free School District and Castro v. City of New York, courts applied the doctrine to field defects or suboptimal playing conditions where the plaintiff was aware of the condition, or it was open and obvious.

Where the Defense Does Not Apply

The doctrine has meaningful limits, and recent decisions have made those limits clearer.

First, the defense does not apply outside the context of sporting events, sponsored athletic activities, or recreational pursuits at designated venues. In Custodi v. Town of Amherst, the Court of Appeals declined to apply it to an in-line skater injured on a public sidewalk. The plaintiff was not engaged in a sporting competition at a venue sponsored or operated by the defendant, and extending the doctrine to public streets would undermine the obligation of landowners to maintain safe conditions. The usual rules of negligence and comparative fault applied instead.

Second, even within the sports context, the defense does not protect a defendant who conceals a risk or unreasonably increases the danger beyond what is inherent in the activity. In Weinberger v. Solomon Schecter School of Westchester, a 14-year-old softball pitcher was injured when directed to pitch from an unusually close position to the batter. The school's protective L screen was defective and fell to the ground during the drill. The court held that these conditions increased the inherent dangers of softball and the doctrine did not apply.

Third, the defense does not apply to horseplay or casual activities that are not sponsored or promoted by the defendant. In Trupia v. Lake George Central School District, the doctrine was held inapplicable when an 11-year-old was injured sliding down a banister at a summer camp.

The 2023 Court of Appeals Decision in Grady v. Chenango Valley Central School District

The most significant recent development came in 2023, when the Court of Appeals issued its decision in Grady v. Chenango Valley Central School District, which addressed two companion cases and provided important updated guidance.

In the first case, Secky v. New Paltz Central School District, a basketball player was injured during a rebounding drill when he collided with a teammate and fell into nearby bleachers. He argued the coach unreasonably increased the risk by eliminating court boundary lines for the drill. The Court of Appeals affirmed dismissal on assumption of risk grounds, holding that the drill did not unreasonably increase the risk of injury beyond those inherent in basketball. The court relied on its earlier decision in Trevett v. City of Little Falls, which established that the risk of collision with an open and obvious object near a basketball court is an inherent risk of the sport.

The companion Grady case reached a very different result. The plaintiff was a high school baseball player injured during a complex infield drill where coaches simultaneously hit balls to multiple infielders, who then threw to both a regular first base and a "short first base" a few feet away, with a protective screen positioned between them.

An errant throw bypassed the short first baseman and the screen, striking the plaintiff in the face and causing significant vision loss. The trial court and Appellate Division both dismissed on assumption of risk grounds. The Court of Appeals reversed.

The court found that the unusual complexity of the drill (involving multiple balls in play simultaneously and a non-standard protective setup) raised triable questions of fact as to whether the drill created a dangerous condition over and above the usual dangers inherent in baseball.

While errant throws are an inherent risk of the sport, the court held that whether this particular injury resulted from that inherent risk, or from a risk unreasonably increased by the drill's design, was a question for a jury to decide.

Post-Grady Developments

Following Grady, the Appellate Division continued to apply and refine the doctrine in several notable decisions.

In C.P.G. v. Uniondale School District, the Second Department applied primary assumption of risk to dismiss a claim brought by an eighth-grade student injured playing a pickup soccer game on a school field. The plaintiff alleged that pebbles and wet grass constituted dangerous conditions causing her injury. The court reversed the lower court and granted summary judgment, holding that the alleged defects did not unreasonably increase the risk beyond those inherent in outdoor soccer.

In A.G. v. Roosevelt Union Free School District, the Second Department reached the opposite result in a case involving a middle school student injured during rehearsal for a musical theatre production. The student struck her toe on a metal anchor affixed to the stage. The court reversed the grant of summary judgment in the defendant's favor, holding that a participant does not assume risks that are concealed or unreasonably enhanced, and that there was a triable question of fact as to whether the anchor on the stage was a concealed hazard.

Finally, in Gillard v. Manhattan Nuvo LLC (doing business as LeReve), the First Department addressed whether the doctrine could apply at a hookah lounge where a patron at a birthday party was injured when a bowl of burning coals fell on her. Both the trial court and the Appellate Division declined to apply the assumption of risk defense, holding that a birthday party at a hookah lounge is not a sporting event or a sponsored athletic or recreational activity at a designated venue. The court further noted that even if the doctrine somehow applied, there remained a question of whether the defendant unreasonably increased risk by failing to position the hookah at a sufficient distance from patrons.

Key Takeaways

The law in this area continues to develop, but several principles have emerged clearly from these decisions:

The primary assumption of risk doctrine applies to athletic or recreational activities at sports facilities or designated venues. It is a powerful defense when the injury results from a risk that is inherent in the activity, open and obvious, and not increased or concealed by the defendant. It does not apply to general recreational activities lacking the social and competitive attributes of sport, to activities on public streets or sidewalks, or where the defendant has structured conditions in a way that creates dangers beyond those naturally arising from the sport itself.

For defendants in sports and recreational injury cases, the key questions are whether the activity qualifies for the doctrine, and whether the specific risk at issue was truly inherent and not enhanced by anything the defendant did. For plaintiffs, the path forward often lies in demonstrating that the defendant's conduct (through equipment failures, unusual drill configurations, concealed hazards, or departures from standard practice) elevated the risk beyond what any participant could reasonably be expected to accept.

For questions about how New York's evolving assumption of risk law may impact your organization or your case, the attorneys at Gerber Ciano Kelly Brady are here to help. Our team regularly advises and defends clients in complex sports and recreational injury matters. Contact us to discuss your specific situation and risk exposure.

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By Associate Genevieve O'Mahony and Partner Colin Hayes, Whitney Moore

Beyond Box-Ticking: Governance as a Legal, Risk and Insurance Asset in Sport

Governance has become one of the defining issues in modern sport. Across many jurisdictions, governing bodies are under increasing scrutiny from athletes, members, sponsors, regulators and funders. High-profile governance failures have demonstrated that weaknesses in oversight rarely remain internal. More often, they evolve into regulatory investigations, safeguarding concerns, employment disputes, litigation, funding consequences and lasting reputational damage.

Unfortunately the Irish sporting arena has been no stranger to such controversies, the governance crisis within the Football Association of Ireland highlighted the risks arising from inadequate financial oversight, transparency concerns and ineffective board governance. The fallout triggered regulatory scrutiny, funding concerns, board resignations, governance restructuring and a prolonged effort to rebuild stakeholder confidence.

Similarly, the Rio 2016 ticketing controversy involving the then Olympic Council of Ireland demonstrated how governance shortcomings can escalate into international investigations, significant legal costs, adverse publicity and comprehensive organisational reform. Subsequent reviews criticised governance arrangements and oversight within the organisation, prompting a far-reaching transformation of the body that ultimately became the Olympic Federation of Ireland.

For insurers, these cases demonstrate an important reality: governance failures are often leading indicators of future claims and losses. While the immediate issue may relate to culture, conduct, oversight or decision-making, the consequences frequently manifest as regulatory proceedings, employment claims, safeguarding investigations, directors' and officers' liability exposures, professional indemnity issues or reputational harm.

For lawyers, insurers and risk advisers working with sporting organisations, governance has therefore moved well beyond constitutional compliance. Increasingly, it is one of the most important indicators of organisational resilience and risk maturity.

Governance as a Risk Management Tool

Governance is frequently viewed through the lens of regulatory compliance. In practice, however, it is one of the most effective risk management tools available to sporting organisations.

Many of the most significant disputes affecting sports bodies do not originate as legal or insurance matters. They begin with poor decision-making, unclear accountability, ineffective oversight or organisational cultures where concerns are not raised, escalated or addressed early enough. By the time legal advisers, regulators or insurers become involved, the governance failure has often already crystallised into a claim, investigation or dispute.

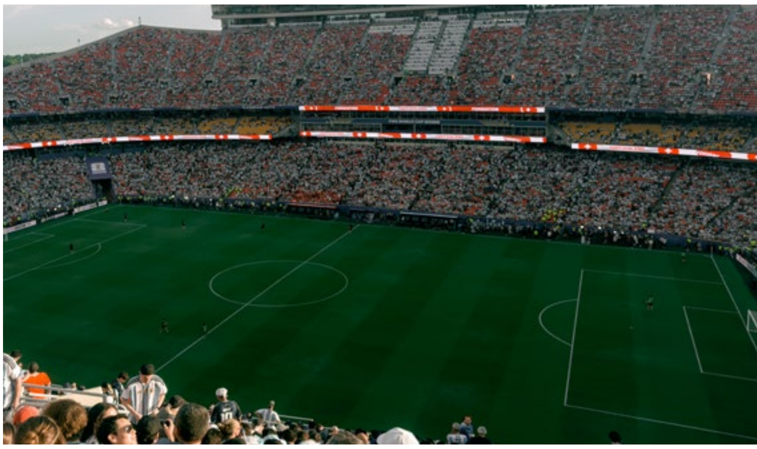
From both a legal and insurance perspective, governance is therefore preventative as much as protective. Effective board structures, clear delegation of authority, documented decision-making and appropriate oversight not only reduce the likelihood of disputes arising but can also mitigate the severity of losses when incidents occur. This preventative role has become increasingly important as governing bodies assume broader responsibilities in areas such as safeguarding, integrity, data protection, employment, equality and regulatory compliance. Each carries legal risk, but each is also influenced by the quality of governance supporting operational decisions.

Increasingly, insurers are looking beyond an organisation's written policies and procedures and assessing the quality of governance that sits behind them. Organisations that demonstrate effective oversight, accountability and proactive risk management are generally better positioned to prevent disputes and respond effectively when challenges arise.

Trust, Reputation and Insurability

Governance reforms are often introduced to restore public confidence following controversy. However, trust cannot simply be recreated through new policies or public commitments. For sporting organisations, trust has tangible value. It influences funding decisions, commercial partnerships, volunteer engagement, membership retention and stakeholder confidence. Once lost, rebuilding it is rarely achieved through compliance alone.

From an insurance perspective, reputational damage can often act as a multiplier of risk. Incidents that may initially appear operational in nature can quickly escalate into broader governance concerns where questions arise about leadership, accountability and organisational culture. The resulting scrutiny frequently generates legal costs, regulatory exposure and increased financial pressure.



This has practical implications for boards and advisers. Governance codes and regulatory standards remain important, but compliance should be viewed as the foundation rather than the objective. Organisations that consistently make transparent decisions, demonstrate accountability and align their conduct with their stated values are more likely to maintain stakeholder confidence when difficult issues arise.

Governance Failures Rarely Occur Overnight

In recent years we have seen reform often emerge following periods of crisis within sporting organisations. When weaknesses become public, stakeholders generally accept that change is necessary. Boards can implement structural reforms with relatively little resistance because the need for action is obvious. The greater challenge arises when organisations are performing well.

Success can encourage complacency. Existing structures appear effective because positive outcomes continue to be delivered, even where underlying weaknesses remain. This is a familiar issue across many sectors. Major governance failures rarely occur because warning signs were absent. More often, risks were identified but not sufficiently challenged, escalated or addressed.

For boards, governance should therefore be viewed as an ongoing process rather than a periodic exercise triggered by a crisis or regulatory intervention. Regular board evaluations, governance reviews and independent scrutiny remain valuable even where an organisation appears healthy.

For insurers, this distinction is significant. Organisations that embed governance as a continuous discipline are often better equipped to identify emerging risks before they develop into claims or loss events.

Culture Matters More Than Compliance

Over the past two decades, governance within Irish sport has developed significantly. Professional executive teams are now commonplace. Board recruitment has become increasingly skills-based. Governance codes have strengthened accountability and encouraged greater board diversity.

These developments represent genuine progress. However, the next stage of governance reform concerns culture rather than structure. Policies establish expectations. Culture determines whether those expectations influence behaviour. This distinction is particularly relevant from both a legal and insurance perspective. Organisations may have comprehensive governance documentation while continuing to experience failures in safeguarding, disciplinary processes, financial oversight or complaint handling because established practices differ from written policies.

Insurers increasingly recognise that the existence of policies alone is rarely sufficient. A safeguarding policy that is not followed, a whistleblowing process that is not trusted or a governance framework that does not encourage challenge can create significant exposure despite appearing compliant on paper.

Lawyers conducting governance reviews are therefore increasingly looking beyond constitutional documents towards board effectiveness, decision-making processes, committee structures, reporting arrangements and organisational culture. These factors often provide a more accurate assessment of governance risk than documentation alone.

Beyond Box-Ticking

Across many jurisdictions, sporting organisations have implemented substantial governance reforms, including independent directors, gender representation requirements and enhanced governance standards. These initiatives have strengthened accountability and improved board composition. The remaining question is whether those reforms are producing better governance.

Independent directors only add value if they are encouraged to challenge established thinking. Diversity improves governance when different perspectives influence strategic decisions rather than merely satisfying representation targets. Policies reduce risk only when they are consistently implemented and understood throughout the organisation. This distinction matters legally, operationally and from an insurance perspective. Many governance-related disputes arise not because policies were absent, but because they were poorly applied, inadequately supervised or ignored in practice.

For insurers, the existence of policies is rarely enough to prevent claims. Effective governance is demonstrated through behaviours, accountability and decision-making.

For advisers, governance assessments increasingly require consideration of organisational behaviour alongside formal compliance. Boards should be asking not simply whether governance requirements have been met, but whether governance arrangements are achieving their intended purpose.

Volunteerism and Emerging Governance Risks

Volunteer participation remains fundamental to most sporting organisations, particularly at grassroots level. At the same time, governance expectations have become more demanding. Volunteers are increasingly expected to navigate complex obligations relating to safeguarding, regulatory compliance, data protection, financial oversight and organisational accountability.

Many potential volunteers also seek shorter, project-based commitments rather than long-term governance roles. This presents a governance challenge extending beyond operational management.

Succession planning, board development, volunteer recruitment and leadership training have become important components of organisational resilience. Without effective planning and support, organisations may find themselves exposed to skills gaps, leadership shortages and reduced governance capacity. From a risk management perspective, the sustainability of governance may ultimately depend less on formal structures and more on an organisation's ability to recruit, develop and retain capable volunteers willing to undertake increasingly complex responsibilities.

Governance as an Insurance Issue

Good governance should not be measured by the number of policies adopted or governance standards satisfied. Its real value lies in enabling better decisions, stronger accountability and earlier identification of risk. For insurers, governance increasingly serves as a proxy for organisational resilience. Strong governance can reduce the likelihood of disputes, strengthen safeguarding and compliance frameworks, improve crisis management and mitigate the severity of losses when incidents occur.

For lawyers advising sporting organisations, governance is no longer a narrow compliance exercise. It is a core component of risk management that influences regulatory exposure, claims prevention, reputational protection and long-term sustainability.

The most effective sporting organisations understand that governance is not a destination reached through compliance alone. It is an ongoing discipline requiring continuous review, constructive challenge and a culture that supports sound decision-making. In an increasingly complex sporting environment, governance is not simply a legal obligation. It is a critical risk management and insurance consideration that helps protect organisations, their leaders, their participants and their future opponent.

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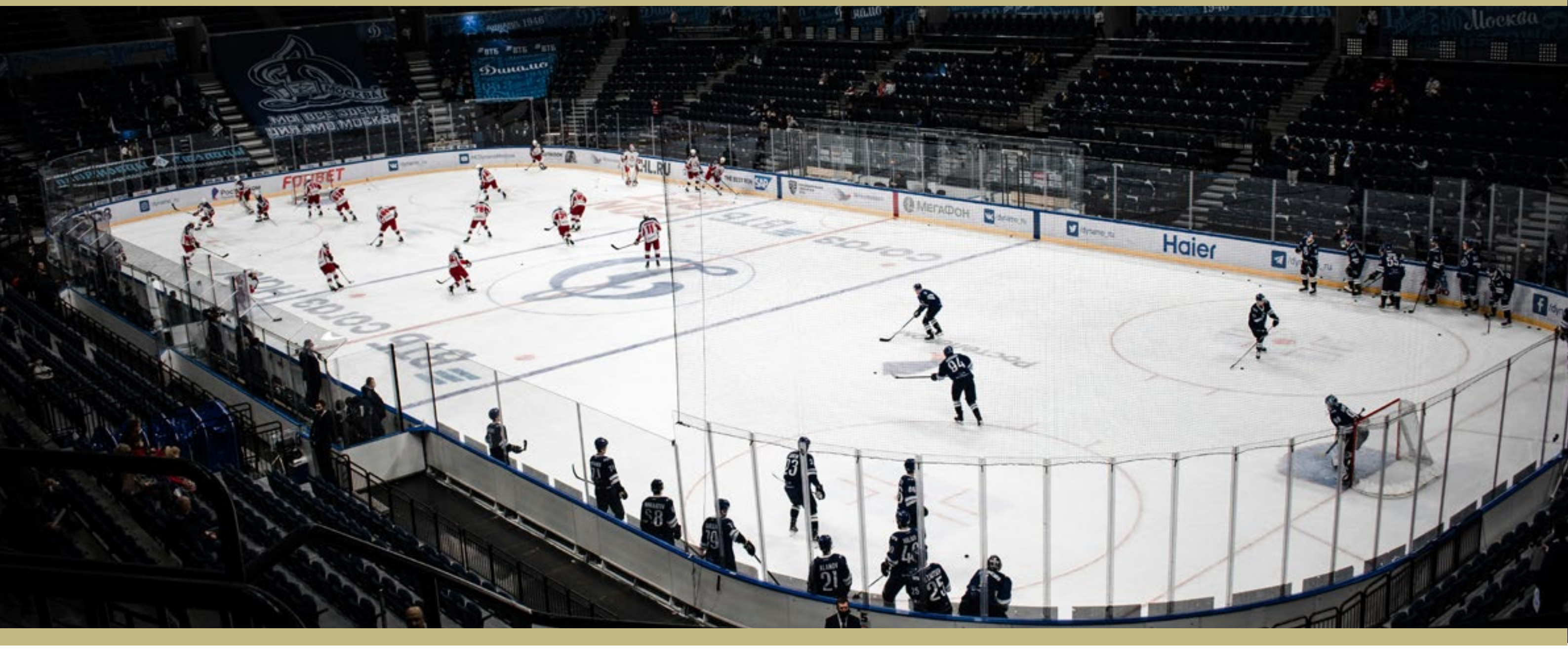


John Tavares Takes on the CRA: Legal Implications for the Canadian Sports Industry

On July 1, 2018, John Tavares signed a 7-year, $77 million (USD) contract with the Toronto Maple Leafs. This contract included a signing bonus of $15.25 million payable in the 2018 tax year. Traditionally, signing bonuses have been a useful tax planning tool for athletes to leverage in contract negotiations to maximize net revenue. For Tavares, the signing bonus structure that the Maple Leafs were able to offer was "integral" in his decision to sign. Signing bonuses are also an important mechanism for professional sports teams to lure top talent. This is why, when the Canada Revenue Agency ("**CRA**") knocks on your door requesting the return of over $8 million (inclusive of arrears interest), the implications for the Canadian sports industry are significant.

The Reassessment

The CRA reassessed Tavares' 2018 income tax return, by notice dated November 2, 2022 (the "Reassessment"). The result of this reassessment is that, six years later, Tavares now owes the CRA over $8 million. On January 1, 2024, Tavares filed a Notice of Appeal (the "**NOA**") with the Tax Court of Canada (the "**Court**"), arguing that the CRA miscalculated the income tax owed on his 2018 signing bonus.

The Significant Issues to be Determined

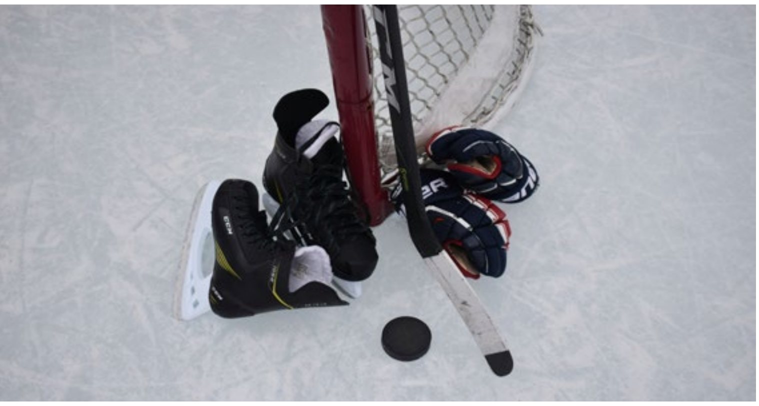
This dispute comes down to one single question: Should the 2018 signing bonus be taxed at a rate of 15% or 38%? So, why is there such a stark difference in the positions of Tavares and the CRA?

The Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital (**the "Treaty"**) sets out an important rule relevant to this issue. Section 4 to Article XVI states that:

> an amount paid by a resident of a Contracting State to a resident of the other Contracting State as an inducement to sign an agreement relating to the performance of the services of an athlete…may be taxed in the first-mentioned State, but the tax so charged shall not exceed 15 per cent of the gross amount of such payment.

This rule effectively creates an exception for income that constitutes an "inducement" from being taxed as conventional employment income or wages and instead being capped at a more favourable rate of 15%.

In response to the NOA, the Attorney General of Canada (the "**AGC**") argues that: (i) on July 1, 2018, Tavares was a resident of Canada for tax purposes, and therefore, the Treaty does not apply to Tavares, and (ii) if the Treaty does apply, the signing bonus paid to Tavares was not an inducement within the meaning of Article XVI of the Treaty. These two issues are currently before the Court.



Residency Status

Prior to signing with Toronto, Tavares was a member of the New York Islanders. This case may fall on certain factual determinations, such as whether or not Tavares was in fact a United States resident prior to July 1, 2018, when and if his status changed to Canadian resident, and his status on the date that the signing bonus was received (July 1, 2018).

Several factors are generally considered in determining an individuals' residency status, such as: location of real property, location of the individual's spouse and/or dependents, social ties, economic ties, etc. The professional sports context will make this an intriguing analysis for the Court to undertake. Professional athletes often travel between Canada and the United States with regularity, spend the entire off-season away from their place of work, and sometimes even have arrangements where their family lives in a separate country on a full-time basis.

This issue was not addressed in the NOA. However, the Court will be required to determine Tavares' residency status on the date in question in accordance with the evidence submitted by the parties.

Interpretation of an "Inducement"

"Inducement" is not defined in the Treaty or the Income Tax Act. In the NOA, Tavares appears to rely on the definition of the term in the ordinary sense, in that the signing bonus was an integral factor persuading him to sign in Toronto. In fact, Tavares noted that he had competing offers from US teams that, on its face, were for a significantly greater financial sum.

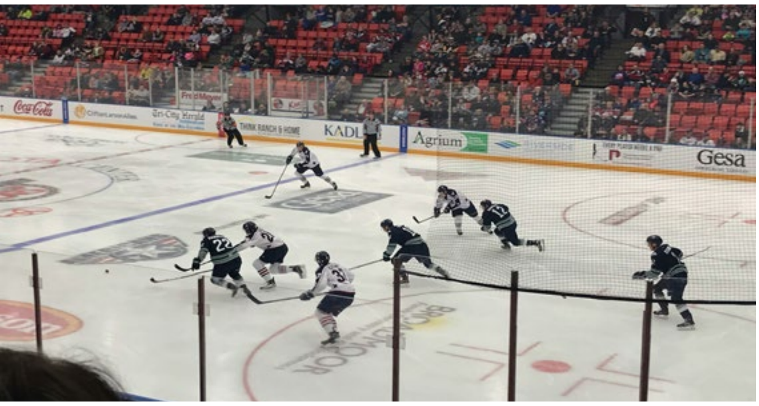
In 1998, the CRA interpreted a signing bonus to be:

an amount paid simply to induce an athlete to sign a player contract. In other words, the signing bonus is to induce the athlete to sign, and to become bound by, a player contract to play for the team paying the bonus and, by doing so, the athlete agrees not to enter into a player contract with any other team. The payment of the signing bonus should not be dependent on the athlete actually playing for the team and it should not be subject to conditions other than the signing of the player contract.

In 2020, with specific regard to the Treaty, the CRA took the position that a signing bonus is not "an inducement to sign an agreement" where there are conditions in the contract, beyond the mere signing of the agreement, where the athlete would not be entitled to the full amount of the signing bonus. In support of its interpretation, the CRA referenced the Court's decision in *Nikolai Khabibulin v Her Majesty The Queen*, [2000 DTC 1426], a case pertaining to similar issues involving a former NHL goaltender. In that case, the Court concluded that the amount received was not a true signing bonus because the athlete would not be entitled to further installments if he refused to perform employment services for the team.

The Court will be tasked with determining whether or not the signing bonus paid to Tavares on July 1, 2018, was a true inducement. To do this, the Court will analyze the terms and conditions contained in Tavares' contract and the surrounding circumstances. The NOA provides some insight into the contractual terms at play. Specifically, if "Tavares breaches the Contract, voluntarily retires, withholds his services, or leaves his club without consent, Tavares shall only be entitled to retain a pro rata portion of the signing bonus."

We anticipate that the AGC will argue that facts pertaining to Tavares' contract warrant the same result as in *Khabibulin*.



Implications for the Canadian Sport Industry

Generally speaking, from a tax perspective, Canadian professional sports franchises are already at a disadvantage in terms of attracting marquee talent as compared to their American counterparts. Tavares has asked the Court to confirm the legitimacy of a negotiation strategy that was once predictable: relying on the ability to negotiate a signing bonus to safely lower tax liability. The CRA has effectively placed doubt on the outcome of this strategy. Thus, the Court's decision will directly impact the number of high-profile free agents that will decide to take their talents north of the border.

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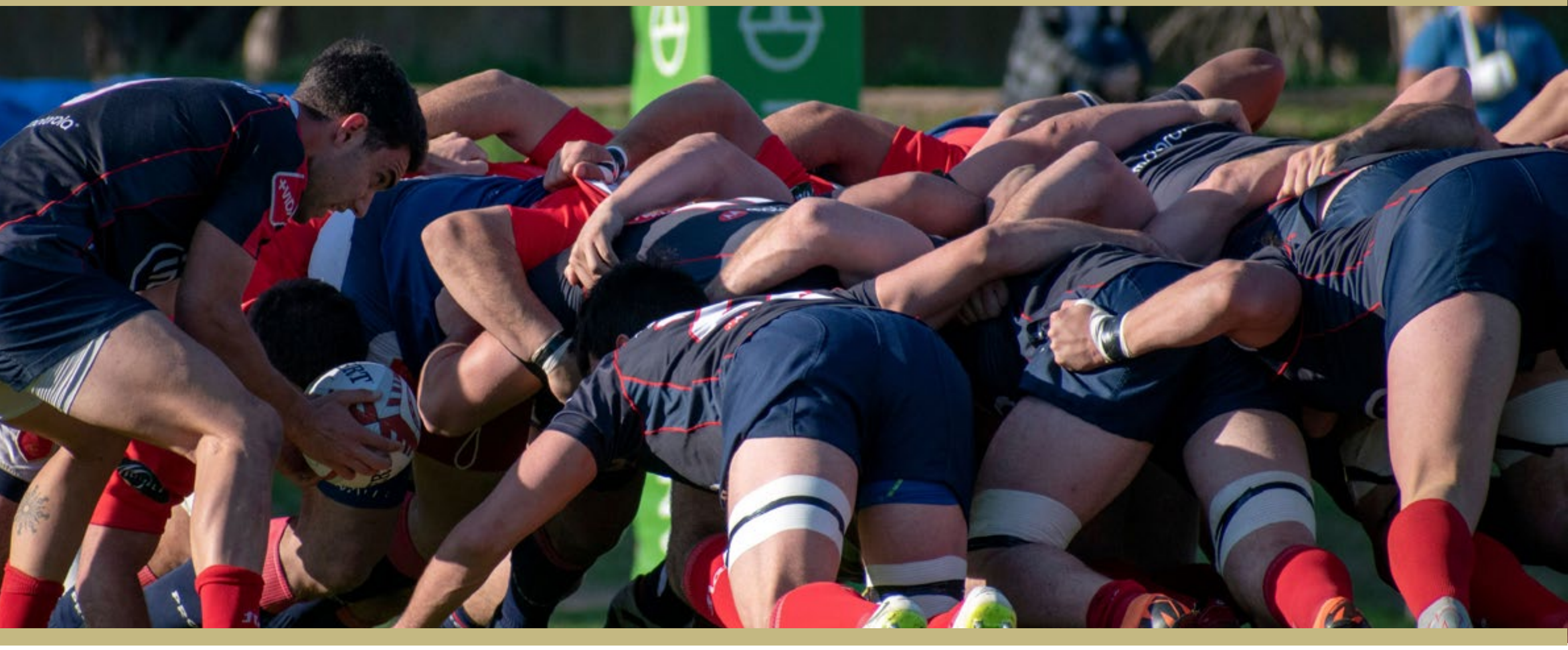


The future of contact sport: Is global liability heading in the right direction?

More than 5.8 million people attended the last football and rugby World Cups combined. The spectacle remains as compelling as ever, with packed stadiums, global television audiences and athletes competing on the biggest stage. Yet behind the commercial success of these tournaments, a more difficult conversation is unfolding.

Across many jurisdictions, courts are increasingly being asked to consider whether governing bodies of sports owe a duty of care to participants and, if so, whether they did enough to protect them from the long-term consequences of repeated head impacts. What began as a player welfare issue is gradually evolving into a broader debate about liability, governance and risk assessment. For international sports federations and their insurers, the questions being raised are no longer confined to any single country.

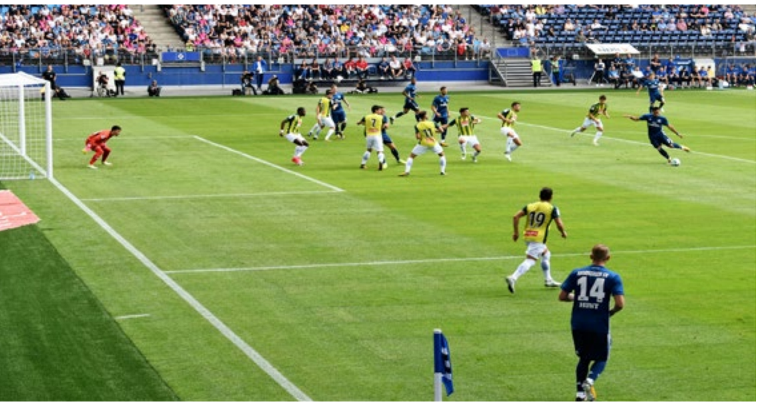
The UK has become one of the focal points of that debate. Rugby authorities have been defending litigation brought by former players for several years, while football faces separate claims relating to any long-term impact of heading the ball. In the football proceedings, former players allege that repeated heading during their careers contributed to neurological injury later in life and that the sport's governing bodies failed to take adequate steps to protect them from those risks.

Why these cases resonate beyond the UK

Modern sport is governed by international federations, national associations, leagues and clubs. Decisions made in one part of that ecosystem rarely stay there for long. A judgment in favour of claimants delivered in one jurisdiction may encourage claims in another. Media coverage and social media debate ensure that developments travel quickly.

There is also a practical challenge for organisations operating internationally. Approaches that may be regarded as appropriate in England may not necessarily align with those in South Africa, France, Australia or the United States.

At the same time, governing bodies are under pressure to demonstrate consistency, particularly when player safety is concerned. That tension is becoming increasingly difficult to manage, especially as global sports require international standards, but legal and regulatory requirements are implemented at national level.



The science, the law and the public debate

Part of the difficulty stems from the fact that several separate conversations are taking place at once.

The first concerns the management of acute head injuries and concussion. On that issue, there has been continued progress over the last two decades as medical knowledge and research have developed, building on measures that were already in place. Professional sports have introduced enhanced concussion protocols, independent on-field medical assessments, graduated return-to-play procedures and continued guidance.

The second conversation concerns whether participation in contact sport contributes to the development of neurodegenerative conditions many years later. This question sits at the centre of much of the current litigation, but it is also where the scientific and legal debates become most complex.

For governing bodies, however, the challenge extends beyond the courtroom. Public expectations are often shaped by individual stories and lived experiences rather than legal thresholds or evidential standards. In this technological and social media-driven age, the scope for misinformation has, perhaps perversely, increased significantly. As a result, organisations can find themselves responding simultaneously to purported scientific uncertainty, legal scrutiny and reputational pressure.

Similar discussions have emerged in other jurisdictions and across a range of sports, most notably in North America, where "concussion-related" litigation has already had an impact on attitudes towards player safety in several professional sports, particularly in American football.

The balancing act facing international governing bodies

All responsible organisations have player welfare as a central guiding principle. In the face of such uncertainty, it is of course appropriate for governing bodies to implement precautionary measures while research continues.

Nevertheless, such precautionary measures, if not communicated clearly, risk adding to misinformation and contributing to a misleading picture, which results in calls for all "contact" to be removed from "contact" sports.

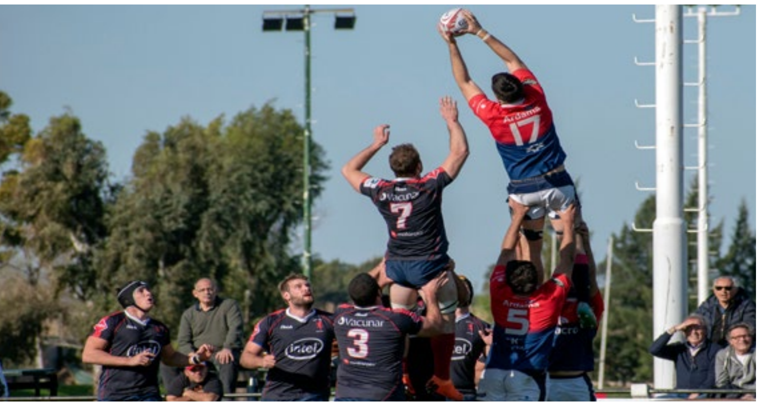
This becomes even more challenging when different jurisdictions move at different speeds. A governing body may find itself managing one set of expectations in Europe, another in Australasia and a third in North America. Maintaining a coherent position across multiple markets requires careful coordination between legal, medical, regulatory and communications teams.

Why insurers are paying close attention

From an insurance perspective, brain injury claims raise several familiar concerns. Causation and foreseeability of risk remain critical issues.

This needs to be considered in the context that, as a matter of law in the UK, contributing to any increased risk of injury is not sufficient to establish a causal connection except in limited circumstances.

Alleged injuries may not become apparent for decades, and scientific understanding is far from complete when it comes to whether contact sports have any effect on the brain over the long term. Exposure can span multiple policy periods, generations of participants and numerous jurisdictions. Those features make this type of litigation fundamentally different from many conventional personal injury claims, and incredibly difficult to model for risk.



The international dimension adds another layer of complexity. Different legal systems can take different approaches to the questions of legal causation, limitation and damages. Equally, claimant firms are increasingly willing to look beyond their domestic markets when identifying potential litigation opportunities.

Insurers are therefore focusing not only on individual claims, but also on how governing bodies identify, assess and respond to emerging risks.

Looking ahead

Governing bodies, regulators and insurers will continue to operate in an environment where expectations evolve faster than the science reported in the media can provide definitive answers. The organisations that are best prepared for that reality will be those that view player welfare, governance and risk management as interconnected issues. While it is sensible to introduce precautionary measures, it is equally important to separate the “wheat from the chaff” and obtain the correct expert evidence before definitive policy decisions are made.

For international sports organisations, this is becoming a broader governance issue that cuts across borders, sporting codes and insurance markets. Those that are able to block out or limit the impact of “background noise” and focus on the real scientific evidence based on sound research will be able to steer a path through the litigation maze. If decisions are taken for reasons of expediency, there is a double risk of encouraging and supporting more claims and jeopardising insurance cover.

It is important to remember that dementia and other conditions that may be related to head injuries are not unique to those who played sport. Therefore, the research and funding needed to support those with dementia must be focused beyond those who played sport. Considering the risks of head injury must be balanced against the wider benefits of participation in sport, which is generally a healthy activity, mentally and physically: we are encouraged to exercise and keep fit.

Whether it is enjoying the spectacle of the World Cup with athletes displaying skill of the highest level, or participating in your local community club, sports have many benefits.

Weightmans

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NASUWT raises red flag over concerns regarding chemicals in 3G sports pitches

NASUWT raises alarms over harmful chemicals in 3G sports pitches, urging for research on potential risks to teachers and students during sports activities.

The Metro has reported that teaching union NASUWT has raised concerns about exposure to harmful chemicals and carcinogens contained within the rubber crumb found in artificial grass pitches. The rubber crumb is often sourced from used car tyres, and benzene, lead and mercury are commonly identified within the same. In a 2019 study, 300 chemicals were traced in rubber crumb, and two thirds of these are said to be potentially carcinogenic.

NASUWT has highlighted that teachers and pupils are being frequently exposed to these chemicals during PE and sports lessons as well as during after-school sports clubs. The chemicals can be ingested via a number of means, including skin contact and inhalation. It has also been reported that other teaching unions have raised similar concerns and have suggested that further research needs to be carried out into the long-term effects of this exposure.

Whilst the EU is looking to ban the use of rubber crumb by 2031, this target is not currently mirrored in the UK. There are said to be 3,013 full size sports pitches in England alone, with a further 4,419 mini-artificial football pitches alongside these.

It is clear that there is a significant pool of potential claimants, should a harmful link be established between exposure from 3G sports pitches and any related injuries. The pool is possibly further widened should it be found that there is potential exposure by family members of teachers and pupils, should there be a link identified between traces of rubber crumb being carried home on clothing and footwear.

Whilst there is no indication that any claims have been brought to date, the interest of trade unions is clearly an indicator that this is something on their radar, and therefore it is imperative that if there is any revised guidance issued concerning the use or restriction of use of 3G pitches, that employers, including schools, adhere to the same and take any necessary action.

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