

# Table of Contents

<i>Preface</i> .....	<i>iii</i>
<i>Biographical Notes</i> .....	<i>v</i>
<i>Table of Cases</i> .....	<i>xiii</i>
<b>Chapter 1 Introduction</b> .....	1
<b>Chapter 2 Duty of Care</b>	
2:10 Introduction .....	9
2:20 Foreseeability .....	13
2:30 Proximity .....	18
2:30.10 <i>Players</i> .....	19
2:30.20 <i>Providers</i> .....	23
2:30.20.1 <i>Occupiers</i> .....	24
2:30.20.2 “Ground level” <i>Providers</i> .....	31
2:30.20.3 <i>Organizers, Promoters, Sponsors</i> .....	33
2:30.20.4 <i>Vicariously Liable Providers</i> .....	38
2:30.30 <i>Spectators</i> .....	40
2:30.30.1 <i>On-Site Spectators</i> .....	41
2:30.30.2 <i>Off-Site Spectators</i> .....	44
2:40 Policy .....	47
<b>Chapter 3 Standard of Care</b>	
3:10 Introduction .....	51
3:20 The Likelihood of a Known or Foreseeable Harm .....	54
3:30 The Gravity of the Harm .....	64
3:40 The Burden or Cost to Prevent an Injury .....	65
3:50 External Indicators of Reasonable Conduct .....	70
3:50.10 <i>Custom</i> .....	71

## *Sports and Recreation Liability Law in Canada*

3:50.20 <i>Rules and Guidelines</i> .....	75
3:50.30 <i>Statutory and Regulatory Standards</i> .....	79
3:50.40 <i>Standard of Care of Government Agencies</i> .....	84
3:50.50 <i>Standard of Care of Teachers/Coaches</i> .....	87
3:60 Conclusions.....	91

### **Chapter 4 Causation**

4:10 Cause-in-Fact: Application of the <i>But For</i> Test .....	98
4:20 Cause-in-Fact: <i>Reverse Onus</i> and <i>Material Contribution</i> Tests .....	103
4:30 Remoteness, or Cause-in-Law.....	106
4:40 Conclusion .....	109

### **Chapter 5 Managing Risk through Contract**

5:10 Introduction.....	111
5:20 Waivers.....	113
5:20.10 Does the Waiver Apply to the Facts of the Case?.....	114
5:20.10.1 Intended Beneficiaries of the Waiver .....	114
5:20.10.2 Provider's Fault, Participant's Own Fault, Unusual Risks? .....	119
5:20.10.3 Is the Waiver Binding?.....	124
5:20.20 Unconscionability.....	136
5:20.30 Public Policy .....	137
5:30 Transferring the Risks .....	141
5:30.10 Indemnity Agreements .....	141
5:30.20 Covenants to Insure .....	145
5:30.30 Agreements Concerning Conduct.....	149
5:40 Conclusion .....	152

### **Chapter 6 Defences in Tort**

6:10 Introduction.....	155
6:20 Contributory Negligence .....	155
6:30 Apportionment of Fault.....	166
6:30.10 Multiple Defendants.....	171
6:30.20 Statutory Apportionment .....	172

## *Table of Contents*

6:40 Voluntary Assumption of Risk .....	176
6:50 Conclusion .....	180

### **Chapter 7 Damages**

7:10 Introduction .....	183
7:20 Non-Pecuniary Losses in Personal Injury Cases — What is the Loss of Ability to Participate in Sports or Recreation Worth?.....	184
7:30 Pecuniary losses .....	188
7:40 Cost of Future Care.....	191
7:50 Aggravated and Punitive Damages.....	192
7:50.10 Aggravated Damages .....	193
7:50.20 Punitive Damages.....	196
7:60 Healthcare Cost Recovery Legislation .....	198

### **Chapter 8 Specific Sports and Recreational Activities — Individual**

8:10 Introduction .....	201
8:20 “Individual” Sports and Recreational Activities.....	203
8:20.10 <i>Running &amp; Walking</i> .....	203
8:20.20 <i>Cycling</i> .....	207
8:20.30 <i>Swimming</i> .....	210
8:20.40 <i>Working Out and Personal Training – Gyms and Clubs</i> .....	216
8:20.50 <i>Equipment Rental - Rollerblades, Bicycles, Boats</i> .....	220
8:20.60 <i>Recreational Use of Land</i> .....	223
8:20.70 <i>Racquet Sports</i> .....	231
8:30 Conclusion .....	234

### **Chapter 9 Specific Sports and Recreational Activities — Group**

9:10 Introduction .....	237
9:10.10 <i>Skating</i> .....	237
9:10.20 <i>Golf</i> .....	242
9:10.30 <i>Skiing</i> .....	247
9:10.40 <i>Tobogganing, Sledding, Tubing</i> .....	256
9:10.50 <i>Horseback Riding</i> .....	258

*Sports and Recreation Liability Law in Canada*

9:20 Conclusion .....	263
-----------------------	-----

**Chapter 10 Specific Sports and Recreational Activities — Team and Extreme Sports**

10:10 Introduction .....	265
10:20 Baseball/softball/cricket .....	266
10:30 Soccer .....	271
10:40 Football & Rugby.....	274
10:50 Grass/Ball Hockey .....	277
10:60 Ice Hockey .....	280
10:70 Boxing, Wrestling, Martial Arts.....	289
10:80 “Extreme” Sports.....	290
10:80.10 <i>Motorized Sports</i> .....	290
10:80.10.1 <i>Automotive</i> .....	291
10:80.10.2 <i>Go-Carting</i> .....	293
10:80.10.3 <i>Recreational Motorized Vehicles</i> .....	294
10:80.20 <i>Skydiving, Parachuting, Hang-gliding</i> .....	297
10:80.30 <i>Surface Water Sports</i> .....	299
10:80.40 <i>Underwater Diving</i> .....	304
10:90 Ballistics .....	307
10:100 Conclusion .....	311

**Chapter 11 Special Risks**

11:10 Special Facilities.....	313
11:20 Special Events .....	319
11:30 The Provision or Sale of Liquor at Special Events .....	322
11:40 Special Risks – Marine .....	329
11:50 Special Providers – Public Bodies .....	338
11:60 Conclusion .....	345

**Chapter 12 Risk Management and Insurance**

12:10 Reducing Undesired Risk .....	347
12:20 Sports and Recreation Insurance .....	350
12:20.10 Who is Covered - Additional Named Insureds .....	352

*Table of Contents*

12:20.20 Indemnities .....	357
12:20.30 Coverage Issues .....	359
12:20.30.1 “Other Insurance” Clauses .....	359
12:20.30.2 Breach of Policy Terms – Duty to Notify of Claims.....	361
12:20.30.3 Specific Exclusions.....	363
(i) Intentional Act Exclusion.....	363
(ii) Professional Liability Exclusion.....	367
(iii) Sport-Specific Exclusions .....	367
(iv) Motor Vehicle Exclusion .....	368
(v) Watercraft Exclusion .....	371
(vi) Pollution Exclusion.....	371
Appendix A: Municipal Statutory Protections .....	373
<i>Index.....</i>	383