

Sports and safety inside and outside the stadium Legal challenges

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Macdonald R.I. Allen¹

WeirFoulds LLP
4100 – 66 Wellington Street West
M5K 1B7, Canada
1(416)365-1110
mallen@weirfoulds.com

Macdonald R.I. Allen, WeirFoulds LLP, Toronto, Canada

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¹ Associate at WeirFoulds LLP.

Questionnaire

1. General Safety Aspects

1.1 What is the legal framework applicable to the general safety aspects of big sports events in your country (prevention of violence, access and behavior inside the venues)?

In Canada various federal and provincial statutes establish the framework for the conduct of big sports events. The *Constitution Act, 1867*² assigns different subject matter to the federal Parliament and the provincial legislatures. Under section 91 of the *Constitution Act, 1867* Parliament has the jurisdiction to make criminal laws. The *Criminal Code*³ keeps people safe and secure by setting the general standards of safety and morality, outlawing the most violent sports, and prohibiting harmful or violent conduct.⁴

“Violence refers to any intentional and unjustified use of intense physical force that is likely to cause personal injury, damage or death; in brief, violence means unlawful physical aggression.”⁵ The following passage from *Sports and the Law in Canada*, is instructive of the various ways sports and violence mix:

Criminal law interacts with sport and sports violence in a number of ways: some destructive sports are declared illegal so that it is an offence to organize such events or to participate in them; players of lawful games may commit offences against public order or against the person (e.g. assaults during play); or sports events may be the occasion for misconduct by spectators. Riots by fans can be classified according to FORCE: frustration, outlawry, remonstrance, confrontation and expressive emotion. The types include acts of mass criminality, protest or celebration, or confrontations that reflect social divisions and political rivalry.⁶

The *Criminal Code* prohibits causing a disturbance in or near a public place by being drunk, fighting, screaming, shouting, swearing, singing or using insulting or obscene language⁷, assaults⁸, assault with a weapon⁹, and unlawfully causing bodily harm¹⁰. The *Criminal Code* prohibits an unlawful assembly of three or

² *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

³ *Criminal Code*, RSC 1985, c C-47.

⁴ John Barnes, *Sports and the Law in Canada*, 3d ed (Markham: Butterworth, 1996) at 35 [Barnes].

⁵ *Ibid.* at p 251.

⁶ *Ibid.* at 252 [citations omitted].

⁷ *Criminal Code*, *supra* note 3 at s 175.

⁸ *Ibid.* at s 265.

⁹ *Ibid.* at s 267.

¹⁰ *Ibid.* at s 268.

more persons who cause persons to fear on reasonable grounds that they will riot. A riot is an unlawful assembly that has begun to disturb the peace tumultuously.¹¹

Under section 92 of the *Constitution Act, 1867* the provinces have jurisdiction to make laws in relation to property, civil rights, and general matters of a local or private nature. Provincially, Ontario's legislature¹² has enacted statutes concerning access¹³, occupier liability¹⁴, trespass to property¹⁵ and the sale of alcohol¹⁶ that are generally applicable to big sports events.

The *Accessibility for Ontarians with Disabilities Act, 2005* ("AODA") was passed in 2005 and establishes standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, employment, buildings, structures and premises.¹⁷ As of January 1, 2012 the AODA legally requires all organizations that provide goods, services or facilities, or owns or occupies a building, structure or premises to provide accessible customer service to persons of all ability levels.¹⁸

The *Occupiers' Liability Act*, "replaced with a common statutory duty of care the complex, arcane and inadequate rules relating to liability of occupiers of property to trespassers, licensees and invitees."¹⁹ The *Occupiers' Liability Act* establishes a statutory duty that the organizers of sports events must meet to ensure the safety of their spectators. An "occupier" includes, (a) a person who is in physical possession of premises, or (b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises, despite the fact that there is more than one occupier of the same premises.²⁰ An occupier owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises are reasonably safe while there.²¹ This duty of care applies whether the danger is caused by the condition of the premises or by an activity conducted on the premises.²² This duty of care does not apply in respect of risks willingly assumed by the person who enters on the premises. In that case the occupier owes

¹¹ *Criminal Code*, *supra* note 3 at ss 63,64.

¹² The majority of this National Report will deal with the legal challenges faced by sports events in Ontario. While challenges in other provinces may be similar, the author of this report has not investigated the statutory framework applicable in provinces other than Ontario.

¹³ *Accessibility for Ontarians with Disabilities Act, 2005*, SO 2005, c 11 [AODA].

¹⁴ *Occupiers' Liability Act*, RSO 1990, c O.2.

¹⁵ *Trespass to Property Act*, RSO 1990, c T.21.

¹⁶ *Liquor Licence Act*, RSO 1990, c L.19.

¹⁷ *AODA*, *supra* note 13 at s 1(a).

¹⁸ *Ibid.* at s 6(3).

¹⁹ *Moody v Toronto (City)* (1996), 31 OR (3d) 53.

²⁰ *Occupiers Liability Act*, *supra* note 14 at s 1.

²¹ *Ibid.* at s 3(1).

²² *Ibid.* at s 3(2).

a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property.²³ A person who is on the premises with the intention of committing, or in the commission of, a criminal act or where the entry is prohibited under the *Trespass to Property Act* shall be deemed to have willingly assumed all risks.²⁴

The *Trespass to Property Act* makes it an offence for a person to enter an occupier's premises, or engage in an activity on premises when the activity is prohibited, without the express permission of the occupier.²⁵ The *Trespass to Property Act* is used to control access to many areas inside and outside of sports stadiums.

The *Private Security and Investigative Services Act, 2005*²⁶ requires that a person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property must be licensed.²⁷ A person holding a licence under this Act is normally prohibited from holding himself, herself or itself out as providing services or performing duties connected with police.²⁸ However, in 2013 the Ontario legislature amended the regulations under this Act to allow licensed security guards to assist the police force during the 2015 Pan American and Parapan American Games that are going to be held in Southern Ontario.²⁹

Under the *Liquor Licence Act* no person or organization is permitted to sell liquor unless they have a licence or a permit issued under this Act.³⁰ When you mix alcohol, crowds and sports events, it is a recipe for noise, violence, foul language and a number of other peace disturbing and possible illegal activities. In addition to provincial legislation various municipal by-laws³¹ are aimed at maintaining the safety and regulation of large crowds of people while they congregate for sports events.

Further, there remains the underlying potential for civil liability should employees, volunteers, participants, or spectators misbehave. Individuals may attract civil liability on the basis of tort and/or negligence law. In addition to being

²³ *Ibid.* at s 4(1).

²⁴ *Ibid.* at s 4(2), (3).

²⁵ *Trespass to Property Act*, *supra* note 15 at s 2(1).

²⁶ *Private Security and Investigative Services Act, 2005*, SO 2005, c 34.

²⁷ *Ibid.* at ss 2(4), 6.

²⁸ *Ibid.* at s 39.

²⁹ O.Reg. 435/07, s 5 as amended by O.Reg 256/13, s 1(1). This section is revoked on March 31, 2016 following the 2015 Pan American Parapan American Games.

³⁰ *Liquor Licence Act*, *supra* note 16 at s 6.

³¹ See *City of Toronto Municipal Code*, chapters 591 Noise, 608 Parks, 743 Use of Streets and Sidewalks, 915 Parking on Private or Municipal Property.

found liable in negligence organizations may also be vicariously liable for the actions of their employees or volunteers.

Various legal requirements impact the safety at big sports events and paying particular attention to those requirements prior to staging an event will improve the quality of the event for all those involved.

1.2 Are there any legal regulations applicable to specific sports or events?

The *Criminal Code* makes it illegal for anyone who:

- a. engages as a principle in a prize fight;
- b. advises, encourages or promotes a prize fight, or
- c. is present at a prize fight as an aid, second, surgeon, umpire, backer or reporter.³²

The definition of “prize fight” under the *Criminal Code* excludes, “a boxing contest or mixed martial arts contest held in a province with the permission or under the authority of an athletic board, commission or similar body established by or under the authority of the province’s legislature for the control of sport within the province.”³³ In Ontario, the legislature has enacted the *Athletics Control Act*³⁴ to regulate professional boxing and mixed martial arts. Under this statute every person conducting a professional boxing or mixed martial arts contest must pay to the Minister in charge of administering the Act not less than 1 per cent and not more than 5 per cent of the gross receipts in respect of such contest or exhibition.³⁵ Notably, the *Athletics Control Act* only regulates professional bouts, amateur bouts may still be illegal under the *Criminal Code*. All of the other applicable regulations are of a general application to sport and non-sport organizations in Ontario.

1.3 Who is responsible for the enforcement of the relevant legal provisions during the event (owner of the facilities, promoter, organizer, police ...)?

The responsibility for the enforcement of the relevant legal provisions varies under the applicable legislation.

Under the AODA the owner of the building, structure or premises has an obligation to ensure it meets the required accessibility standard for disabled

³² *Criminal Code*, *supra* note 3 at s 83(1).

³³ *Ibid.* at s 83(2)(d).

³⁴ *Athletics Control Act*, RSO 1990, c A.34.

³⁵ *Ibid.* at s 5(1).

persons.³⁶ An organization that is using the building, structure or premises to provide goods, services, or facilities has an obligation to meet the customer service accessibility standard prescribed by the regulations.³⁷ Further, to ensure compliance under the AODA inspectors are empowered to carry out inspections during regular business hours without a warrant.³⁸

Under the *Occupier's Liability Act*, an occupier, independent contractor³⁹ or landlord⁴⁰ may owe a duty of care to anyone permitted or invited onto the premises. The owner of the facilities, promoter or organizer will normally have its security, employees and/or volunteers trained and alert to the potential liabilities that can arise under this act.

Under the *Trespass to Property Act* a police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of the act.⁴¹ This gives stadium security the power to restrict access to parts of the stadium, and to detain individuals who attempt to access restricted areas, or who engage in prohibited activities on the premises.

Police officers must enforce relevant legal provisions whenever they can be categorized as one of their prescribed duties. In Ontario police duties are prescribed by the *Police Services Act*⁴² and include amongst other things:

- a. preserving the peace;
- b. preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- c. assisting victims of crime;
- d. apprehending criminals and other offenders and others who may lawfully be taken into custody;
- e. performing the lawful duties that the chief of police assigns; and
- f. in the case of a municipal police force to enforce municipal by-laws.⁴³

Being aware of, paying attention to, and effectively enforcing the applicable legal regulations in Canada is an important aspect of effective risk management during big sports events.

³⁶ *AODA*, *supra* note 13 at s 6(3).

³⁷ *Ibid.*

³⁸ *Ibid.* at s 19.

³⁹ *Occupiers' Liability Act*, *supra* note 14 at s 6(1).

⁴⁰ *Ibid.* at s 8(1).

⁴¹ *Trespass to Property Act*, *supra* note 15 at s 9.

⁴² *Police Services Act*, RSO 1990, c P.15.

⁴³ *Ibid.* at s 42(1).

1.4 What are the competent authorities as regards the enforcement of the relevant legal provisions?

Authorities responsible for the enforcement of the relevant legal positions vary depending on the legislation involved:

- The Ministry of Economic Development, Trade and Employment is responsible for administering the AODA in Ontario.
- The Ministry of Consumer Services, and Ontario's Athletics Commissioner oversees and enforces the law and guidelines governing mixed martial arts (MMA), boxing and kickboxing.
- The Alcohol and Gaming Commission of Ontario is established under the *Alcohol and Gaming Regulation and Public Protection Act, 1996*⁴⁴ to administer the *Liquor Licence Act* and its regulations.⁴⁵
- Under the *Courts of Justice Act*⁴⁶ the Ontario Superior Court of Justice⁴⁷, and the Small Claims Court⁴⁸ have jurisdiction in civil matters that arise from breaches of the *Occupiers Liability Act*, or the *Trespass to Property Act*. The Ontario Court of Justice⁴⁹ has jurisdiction for criminal matters that arise from violations of the *Criminal Code*.

2. Insurance Coverage

2.1 Are there specific legal provisions applicable to the insurance coverage of big sports events in your country?

The development of a risk management strategy in Canada for big sports events requires a consideration of two types of loss: (i) loss caused by personal injury to the insured (accident insurance); and (ii) loss caused by the insured's legal liability to others (liability insurance). Specifically, "program operators and individual supervisors or instructors are well advised to secure adequate liability insurance. Operators, associations and event organizers must in particular arrange coverage for the various forms of liability that may be incurred on premises, during transportation or through the activities of employees."⁵⁰

⁴⁴ *Alcohol and Gaming Regulation and Public Protection Act, 1996*, SO 1996, c 26, Sched.

⁴⁵ *Ibid.* at s 3(2).

⁴⁶ *Courts of Justice Act*, RSO 1990, c C.43.

⁴⁷ *Ibid.* at s 11.

⁴⁸ *Ibid.* at s 22.

⁴⁹ *Ibid.* at s 34.

⁵⁰ Barnes, *supra* note 4 at p 316.

2.2 What is the mandatory insurance coverage to be contracted as regards the celebration of big sports events? What are the minimum risks to be covered according to law?

“Among the fundamental considerations in sports event planning are risk management and insurance coverage. Insurance often comes first; it is the gatekeeper to the event in the sense that proof of it may be required before the inception of any subsequent agreements.”⁵¹ When conducting a sports event in Canada the organizer should consider coverage by comprehensive general liability and commercial general liability forms and pay particular attention to insurance coverage for specified risks that can include: business interruption, event cancellation, owners’, landlords; and tenants’ liability, occupiers’ liability, contractual liability, personal injury liability, employers’ and volunteers’ liability, and liquor liability.⁵²

General liability insurance policies cover those sums that the insured becomes legally obligated to pay as compensatory damages because of bodily injury to or damage to property of others, such as spectators, passerby, property owners and others resulting from the organization’s operations or actions. Coverage under these policies may also cover the organizations legal liability for injury to participants.

2.3 Who is legally bound to contract the relevant insurance policies in connection with big sports events?

Prior to the event negotiations between the interested parties should determine who is legally bound to contract the relevant insurance policies. The contracts governing the relationship between the participants in most cases determines who is responsible for procuring adequate insurance coverage and who in effect must undertake to be the event’s risk manager. If the owner of the facilities happens to be different than the organizer or tenant a condition of the contract for the use of the premises will likely require that the organizer obtain adequate insurance coverage for the risks identified above.

Additionally, directors and officers of corporations have a duty to the public pursuant to certain statutes that may expose them to liability if they breach those duties. For example, every director and officer of a corporation has a duty to take all reasonable care to prevent the corporation from committing an offence under

⁵¹ Vered, Yakovee, “Legal Aspects of Big Sports Event Management – Part I: Risk Management – Insurance Coverage for Business Interruption and Event Cancellation” (2006-2007) 24 Ent & Sports Law. 1 at 1, 24-31.

⁵² Gordon G. Hilliker, *Liability Insurance in Canada*, 5th ed (Markham: LexisNexis Canada, 2011) at p 4.

the AODA.⁵³ The Ontario *Business and Corporations Act*⁵⁴, and the *Canada Business Corporations Act*⁵⁵ provide that a corporation may purchase insurance to indemnify a director or officer where the individual acted honestly and in good faith with a view to the best interests of the corporation.⁵⁶

3. Organizers: Potential Liabilities

3.1 What are the potential liabilities that might be faced in connection with big sports events (civil, administrative, criminal liabilities) and by whom?

Criminal, civil and administrative liabilities in connection with big sports events may be faced by spectators, participants, and organizers in different circumstances.

Spectators are the most likely to be exposed to criminal liabilities arising out of big sports events. In 1994 and again in 2011 following the defeat of the Vancouver Canucks in the Stanley Cup Playoffs spectators, fans and bystanders embarked on a course of destruction throughout downtown Vancouver, British Columbia. The impact of the 2011 riot was summarized in *R v Renderos*⁵⁷ by the Provincial Court of British Columbia as follows:

- 297 riot events were identified, many involving hundreds of perpetrators, and the breakdown was as follows:
 - (a) 26 arsons;
 - (b) 193 acts of mischief;
 - (c) 26 break and enters
 - (d) 52 assaults on civilians (18), police officers (32, one officer assaulted twice) and 1 firefighter;
- 116 arrests were made in the area, and during the time, of the riot;
- 112 businesses were damaged;
- 122 vehicles were damaged or destroyed, 24 of which were emergency service vehicles belonging to either the police or fire department;
- there is no comprehensive assessment of the monetary losses sustained as a result of the riot but as of February 2, 2012 the reported losses were calculated at \$3,778,190.59.⁵⁸

⁵³ Similar liability exists for directors and officers for offences by the corporation under the *Liquor Licence Act*.

⁵⁴ *Business Corporations Act*, RSO 1990, c B.16 [OBCA].

⁵⁵ *Canada Business Corporations Act*, RSC 1985, c C-44 [CBCA].

⁵⁶ OBCA, *supra* note 54 s 136 and CBCA, *ibid.* at s 124.

⁵⁷ *R v Renderos*, 2012 BCPC 467.

⁵⁸ *Ibid.* at para 4.

In total 291 people have been charged in connection with the 2011 riot and additional criminal charges may still be pending.⁵⁹ While this is an extreme example, it remains an illustration of the power of sports to motivate a collective group of people on a course of action aimed at violence and destruction.

“The distinctively Canadian contribution to the law of sports has been the criminal prosecution of players for in-play acts.”⁶⁰ In *R v McSorley*⁶¹ a National Hockey League (“NHL”) player, Marty McSorley, was charged and convicted of assault with a weapon when he struck another player, Donald Brashar, with his hockey stick during a game on February 21, 2000. In extending the application of the criminal law to incidents on the ice, the court reiterated a passage from *R v Watson*, where the judge said:

Hockey is a fast, vigorous, competitive game involving much body contact. were the kind of body contact that routinely occurs in a hockey game to occur outside the playing area or on the street, it would, in most cases, constitute an assault to which the sanctions of the criminal law would apply. Patently, when one engages in a hockey game, one accepts that some assaults, which would otherwise be criminal, will occur and consents to such assaults. It is equally patent, however, that to engage in a game of hockey is not to enter a forum to which the criminal law does not extend. To hold otherwise would be to create the hockey arena a sanctuary for unbridled violence to which the law of Parliament and the Queen’s justice could not apply.⁶²

In *R v Bertuzzi*⁶³, another NHL player, Todd Bertuzzi, was criminally charged and subsequently pled guilty to assault when he punched an opposing player, Steve Moore, from behind during a game on March 8, 2004. Bertuzzi was enacting retribution for an incident in an earlier game where Mr. Moore had given the Vancouver Canucks’ s, Markus Naslund a concussion. Bertuzzi received a conditional discharge, however his legal issues and for that matter the legal issues of his employer, the Vancouver Canucks, did not end there. Moore launched a civil lawsuit against Bertuzzi, and the Vancouver Canucks on February 14, 2006.

Participants, employees, their employer’s, volunteers, and organizations may be exposed to civil liabilities arising out of big sports events on the basis of tort or negligence law.

Civil actions in respect of sport-related injury (sports torts) are the most common type of case in sports law. The plaintiff is usually a participant or spectator. The defendant may be another participant or a person or organization that has somehow facilitated the event: this could be

⁵⁹ Tiffany Crawford, “14 more charged for Vancouver’s Stanley Cup riot”, The Vancouver Sun (20 February 2014) online: Vancouver Sun <<http://www.vancouversun.com>>.

⁶⁰ Barnes, *supra* note 4 at p 255.

⁶¹ *R v McSorley*, 2000 BPC 116.

⁶² *R v Watson*, (1975) 26 CCC (2d) 150 at 156.

⁶³ *R v Bertuzzi*, 2004 BCPC 472.

an organizer, school, instructor, supervisor or other party. The usual remedy is an award of damages to compensate the plaintiff for actual and anticipated losses – ordinary damages are calculated on a restitutionary, not punitive, basis.⁶⁴

In *Moore v Bertuzzi*⁶⁵, Moore claims for pecuniary and non-pecuniary damages arising out of the assault as well as aggravated and punitive damages. In addition to naming Bertuzzi in the lawsuit Moore alleges that the Vancouver Canucks are vicariously liable for the actions of their player and directly liable, “as a result of persons in a position of management encouraging players to effect retribution against and failing to take reasonable measures to prevent violence against Moore.”⁶⁶

There are a number of requirements for vicarious liability to exist in the employment context: (i) an employment relationship must exist; (ii) there must be a legal fault on the part of the employee; and (iii) the tort of the employee must have been committed in the course, or within the scope, of their employment.⁶⁷ In analyzing the potential for NHL’s franchises to be subject to the doctrine of vicarious liability following the Marty McSorley incident, Jeffrey Citron and Mark Abelman eerily predicted the situation that subsequently arose in *Moore v Bertuzzi*:

In that environment of escalating violence and serious injuries, the doctrine of vicarious liability may inevitably bite an NHL team that fosters or enhances the risk of an environment in which a McSorley-type incident might occur. If a player suffers a career-ending injury and the consequent loss of substantial future income, the offending player’s team faces a real possibility of a claim for liability.⁶⁸

The trial in *Moore v Bertuzzi* was scheduled to begin on September 8, 2014. A final decision on the merits of the case has not yet been rendered and could set a precedent for players injured by the actions of an opposing player to hold the opposing team vicariously and directly liable.

In a negligence action, the plaintiff must establish that the defendant owed them a duty, that the defendant breached that duty, and that the breach of that duty resulted in the plaintiff’s injury. The duty of care owed to a spectator at a sporting event, “does not impose an obligation to provide safety in all circumstances, but rather to make the premises reasonably safe; to use reasonable care to prevent injury or damage from danger which is known or which ought to be known. If the

⁶⁴ Barnes, *supra* note 4 at 270.

⁶⁵ *Moore v Bertuzzi*, 2012 ONSC 597.

⁶⁶ *Ibid.* at para 7.

⁶⁷ Jeffrey A. Citron, Mark Ableman, “Civil Liability in the Arena of Professional Sports” (2003) 36 UBC L. Rev. 193 at pp 215-216.

⁶⁸ *Ibid.* at p 226.

danger is unusual and not foreseeable no liability extends to it.”⁶⁹ Courts have tended to look at the protection normally provided in facilities designed for the viewing of a particular sport to determine what constitutes reasonable protection.⁷⁰

In *Hagerman v City of Niagara Falls*⁷¹ the plaintiff, a spectator, was hit in the eye by a puck during a hockey game played in the defendant’s arena. The Ontario court held that the duty owed to the plaintiff was to make the premises reasonably safe. Having met this duty by installing a reasonable amount of Plexiglas around the ice surface, the defendant was under no further duty to protect the plaintiff from the inherent risks of the game.

In sports cases, it is open to the defendant to assert two defences to a negligence claim: (i) there was a voluntary assumption of risk that operates as a willing acceptance and full appreciation of the risk and an express or implied agreement to give up any cause of action; and (ii) there are inherent risks in sports that by playing or attending events involve certain necessary and inevitable risks from flying objects or flying bodies.⁷² If the defendant is successful in either of these defences then they will not be found liable for the injuries suffered during the event.

Certain legislation applicable to sports events prescribes limits on the monetary penalties that can be recovered as a result of their breach. Under AODA a corporation may be liable to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues to occur.⁷³ Similarly, a director or officer who fails to carry out their duty under AODA is liable to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues to occur.⁷⁴

Under the *Liquor Licence Act* a corporation is liable to a fine of not more than \$250,000, and where the corporation is liable for a prohibited sale to a minor the fine can reach up to \$500,000.⁷⁵ Similarly, a director or officer of a corporation who caused, authorized, permitted or participated in an offence under this Act may be liable of a fine of not more than \$100,000 or to imprisonment for a term of not more than one year or both.⁷⁶

⁶⁹ *Hagerman v City of Niagara Falls* (1980), 29 OR (2d) 609 [*Hagerman*] referring to the principles set out in *Payne v Maple Leaf Gardens*, [1949] OR 26 (ONCA).

⁷⁰ *Ibid.*

⁷¹ *Hagerman*, *supra* note 69.

⁷² Barnes, *supra* note 4 at p 276.

⁷³ AODA, *supra* note 13 at s 37(3).

⁷⁴ *Ibid.* at s 37(5).

⁷⁵ *Liquor Licence Act*, *supra* note 16 at s 61.

⁷⁶ *Ibid.*

Interestingly, the Ontario courts have found corporate sponsors to be outside the scope of potential defendants in cases of injury at sports events. In *Boudreau v Bank of Montreal*⁷⁷ the Ontario Court of Appeal held that corporate sponsors who provide financial support to a sporting event should not be held liable in the event that a participant gets injured by participating in the event. The Court of Appeal's position was that the corporate sponsor played no organizational role in operating the league or the specific game in which the participant was injured, apart from their status as sponsors; they had no possession, control or responsibility for the facility where the participant was injured; and they had no role in overseeing or selecting the insurance coverage for the participant.⁷⁸

3.2 Distribution of liability: is it possible to distinguish liabilities arising from sports events to an extent where each of the involved parties is held liable only for damage resulting from some specific risks or situations?

The distribution of liability will usually be left to be determined by the courts. The operation of legal concepts such as negligence, vicarious liability, and contributory negligence are all issues that the court will consider in apportioning liability amongst the wrongdoers.

There is usually an onus on all the parties, including the owners of the premises, organizers, employee's, volunteer's and security to ensure that the applicable legal regulations are complied with. The owners of the premises and the organizers of the sports event will normally negotiate and apportion liability amongst themselves through contractual provisions that require one party to agree to indemnify the other for any liability that arises out of the event.

Finally, if the organizers have properly assessed their potential risks most liabilities that arise during sports events should be covered by insurance.

3.3 On the contrary, might someone be held liable for any damage occurred during the celebration of some sports event (owner of the facilities, promoter, organizer, police ...)?

In Canada, there must be a relationship of sufficient proximity in order to hold someone liable for any damage that occurs during the celebration of some sports event. Therefore, in order to hold the owner of the facilities, or an organizer of the event or even the police responsible the damage must have been caused on the premises in violation of one of the applicable statutes or alternatively by one of the members of their staff in the course of their duties as an employee. It is

⁷⁷ *Boudreau v Bank of Montreal*, 2013 ONCA 211.

⁷⁸ *Ibid.* at para 8.

unlikely that an owner, organizer, promoter or the police will be held liable for the actions of an unrelated third party.

3.4 As an attendee, what legal action may I take in case of suffering damage on the game day? Against whom?

An attendee who suffers damage on game day will have a civil cause of action against the individual or organization directly responsible for the damage suffered. An attendee should within two years of the date of the incident commence an action naming as defendants anyone who may even remotely have a relationship to the cause of the damage they have suffered.⁷⁹

If the attendee suffers damage as a result of the conduct of another attendee they may have recourse to the criminal and/or civil law. If they have been the victim of a criminal act they should report it to the police. It is the police's duty to investigate and the crown attorney's duty to lay charges stemming from the investigation. A criminal act can form the basis of a civil action based in tort or negligence.

If the attendee suffers damage as a result of the conduct of an employee at the event they may have a cause of action against the individual employee and against the organization that employs the employee. Similar considerations should apply if the damage was suffered as the result of conduct by security or police personnel.

If the attendee suffers damage as a result of inherent risks of the game they should assess whether the owner of the premises, organizer, or promoter has done enough to protect the attendee from those risks. If there is a chance that the entity responsible for the event could reasonably have done more to protect the attendee then the attendee should commence an action in negligence against all those who possibly owed them a duty of safety during the event.

⁷⁹ *Limitations Act, 2002*, SO 2002, c 24, Sched B, s 4.