

Sport Law & Strategy Group

Legal Issues in Curling

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Sport Law & Strategy Group

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

- Legal Solutions
- Planning & Governance
- Strategic Communications
- Events and Marketing
- Knowledge Development



AGENDA

- 1) Negligence
- 2) Concussions
- 3) Risk Management



NEGLIGENCE/ACCIDENTS

Negligence occurs only when:

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



DUTY OF CARE

To whom do you owe a duty of care?

“To anyone who you ought to know could be affected by your actions”

Coaches → Athletes

Club → Participants

STANDARD OF CARE



- **Written/published standards**

- Equipment standards
- Organization policies & rules
- Code of Conduct
- Coaching/teaching/leadership manuals

- **Unwritten/unpublished standards**

- New developments and Trends
- Network
- Pursue and Participate in Professional Development.

- **Case law**

- **Common sense**

- Intuition
- Knowledge
- Experience
- Gut

Myers v. Peel Country Board of Education (1981)

- Fifteen year old boy suffers broken neck while dismounting rings in a gymnastic class.
- Defendant liable on two bases:
 - Failure to provide adequate matting
 - Failure to supervise
- Standard of Care required of a coach is that of a careful or prudent parent.

What we learned from *Myers*

The potential for accidents will be reduced if the following four tests are met:

1. Activity is suitable to the participant's age and condition (mental and physical);
2. Participant is progressively trained to do activity properly;
3. Equipment is adequate and suitably arranged;
and
4. The performance is properly supervised.

Hamstra v. BC Rugby Union (1989)

- Rendered quadriplegic when scrum collapsed.
- Sued coach for mismatching athletes playing the prop positions.
- Test for negligence “whether [the coach] acted in accordance with the ordinary skill and care of a coach in similar circumstances.”
- Test requires the coach to:
 - Properly apply the laws of the game;
 - Act in the same way as any other coach would have in similar circumstances.

Case Law Summary

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

STANDARD OF CARE



*Behaviour is
not negligent*

Highest possible level of care

- risk is eliminated

**Reasonable standard of care in the
circumstances** - risk is appropriately
managed

*Behaviour is
negligent*

Failure to exercise any care

- risk is ignored

Managing Concussions

■ Awareness

- Falls
- Accidents
- Collisions
- Head Trauma

■ Symptoms

- Nausea
- Poor Concentration
- Amnesia
- Fatigue
- Sensitivity to Light

■ After Incident

- Call Emergency
- Notify the Parent/Other
- Ensure a Ride Home
- Isolate in a dark room
- Reduce stimulus
- Remain with Athlete
- Encourage consultation of Physician

Return to Play

- Cognitive and Physical Rest
- Light Exercise
- Sport Specific Activity (Short Period of Time)
- Full Practice once cleared by Physician
- Return to unrestricted training and competition

RESEARCH/LEGISLATION

- Queens Study – Patterns of Injury in Recreational Curlers (1993-2011)
 - 86.6% of curling injuries due to falls on the ice
 - 20% led to major injury
 - 75% believe curling specific footwear should be mandatory
 - 94% believed that helmets are necessary in some instances but stigma remains a barrier
- Rowans' Law (Ontario) – mandates:
 - Increased education and awareness on concussion injuries
 - Better tools for coaches and trainers to identify concussion
 - Concussion policies for all school boards and sports associations
 - Increased education and training for healthcare professionals to better treat and manage concussions

RISK MANAGEMENT

PHYSICAL RISK

The risks, dangers and hazards that are inherent in the sport activity. These risks are unavoidable, reasonable and in many cases, desirable

LEGAL RISK

The risk that the organizers of the sport activity will behave negligently. This risk is not inherent in the sport, nor is it desirable, reasonable or acceptable



EVOLUTION IN RISK MANAGEMENT

- Traditional approach (1980s)
 - Preventing injury
- Modern approach (1990s)
 - Avoiding legal issues and exposure to damages
- Organizational Performance (today)
 - Approach to improve organizational performance: effective governance, efficient planning, relevant programs, safe, welcoming and rewarding environment

RISK MANAGEMENT 101

- **Identify risks** – ask, what are the things that can go wrong?
- **Measure and evaluate risks** – ask, what is the chance it will go wrong, what are the consequences if it does?
- **Control risks** – ask, what can I do about it?

IDENTIFY RISKS – obvious, foreseeable....



IDENTIFY RISKS – not obvious, not foreseeable....



IDENTIFY RISKS –
foreseeable perhaps – but to this severity?



MEASURE THE RISK

- Unlikely – less likely to happen than not
- Possible – just as likely to happen as not
- Probable – more likely to happen than not
- Almost Certain – sure to happen

EVALUATE RISK

Low: will have an impact on achievement but can be dealt with through internal adjustments

Medium: will have an impact on some aspect of achievement but that will require changes to strategy or program delivery

High: will significantly impact the achievement and the organization

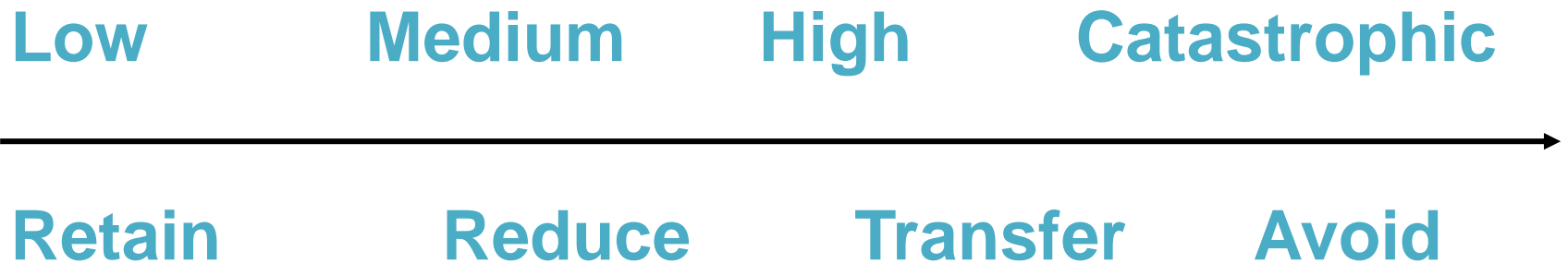
Catastrophic: will have a debilitating impact on the achievement and the organization

CONTROLLING THE RISK

- **Retain the risks** → you don't do anything because the risk is inherent in the sport
- **Reduce the risks** → you take steps to reduce the likelihood of occurrence, and/or the consequences, largely by changing human behavior
- **Transfer the risks** → you accept the level of risk but you transfer this risk to others through contracts (insurance, waivers, other business contracts)
- **Avoid the risks** → you decide simply to NOT do something

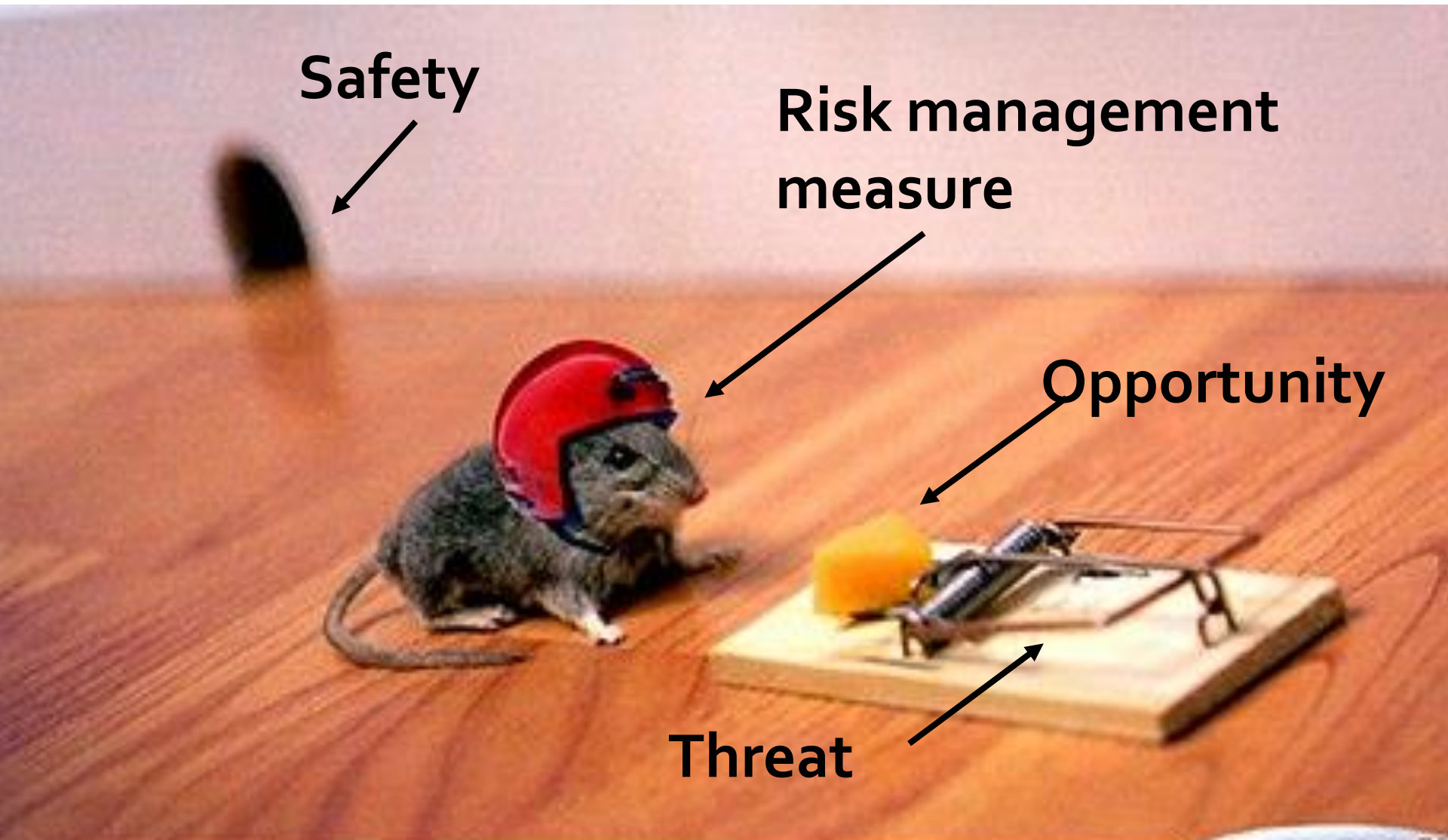
Choice of Strategy

Risks occur along a continuum from low to high ...



Treatment strategies tend to follow a pattern also ...

Most times the solutions are easy



RISK MANAGEMENT PLAN

Step 1 – Use brainstorming techniques to identify risks (use best judgment)

Step 2 - Measure risks using the low, moderate, high categories (use best judgment)

Step 3 - Identify appropriate measures to control risks

Step 4 - Implement measures

Step 5 - Review and adjust your plan on a regular basis

REALITY CHECK

The law does not cut you slack because you are **‘volunteer-based’ or ‘volunteer-led’**.

But Remember...

The law never expects perfection, it only expects reasonableness

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