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Insurance for Outdoor Learning in Canada

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Congratulations on exploring, investigating and or beginning your outdoor adventure/sporting business, camp, activity or event. Seeing how so many talented Canadians can utilize their skill sets, training, expertise, and experience to help serve others enjoying the great outdoors is always exciting. However, the realities of a growing litigious society means that insurance should be an essential consideration for most outdoor learning endeavours. This chapter explains the various terms and choices to be made in securing insurance. Insurance considerations are rarely given adequate in-depth consideration well in advance. Far too frequently, insurance coverage is a complete afterthought.

One initially important legal consideration is whether the business will be a sole proprietorship, a partnership, a for-profit corporation or a non-profit corporation? Although that decision may seem more for your lawyer and accountant to hash out, please remember a sole proprietor or partnership means liability and other obligations flow to you directly as a person or group of

people. Alternatively, a corporation, as a separate legal entity, will keep almost all obligations at the corporate level and away from you personally. This can be a crucial point, since it is unlikely that a plaintiff can access your personal assets, if you are incorporated. An insurance provider will need to know if you will be incorporated or not.

Commercial General Liability

Commercial General Liability (CGL) is the first and most important coverage you will require. Therefore, consider CGL to be essential for your core liability protection. The author often refers to it in conversations as the “Blood & Gore Policy,” because it applies to bodily injury incidents and property damage claims. As the number of frivolous lawsuits mount, these will need legal defense against claims. For the genuine litigation that succeeds, and where negligence may be established, insurance can cover the financial losses that will ensue. The CGL generally has numerous valuable extensions beyond bodily injury and property damage. Here are some.

- Personal & Advertising Injury Liability (ie. a non bodily injury like libel, slander or defamation)
- Products and Completed Operations (ie. cover for products sold or your completed work projects)
- Tenant's Legal Liability (ie. damages to a rented premise, even a short term hotel rental)
- Non-Owned Auto Liability (ie. a vehicle temporarily in your control or used for your business)
- Employer's Liability/Contingent Employer's Liability (In Canada, provincial workers' compensation plans may well apply but some employee injuries may fall out of scope).
- Fire Fighting Expenses
- Employment Practices
- Many additional extensions

Take for instance, the imaginary "Mary's Guided Hikes." This was a sole proprietorship where business had taken off at an amazing pace. Mary was fully booked on practically every hiking opportunity and she was very pleased that her life experience, passion, and training were really paying off.

On one guided hike, an unexpected rain had made the trails slightly slippery. At a particularly steep spot, Mary slipped and lost her balance. As she dropped her cell phone, and attempted to recover it in midair, however, she fell backward and collided with one of her many clients: Samantha. As a result of the collision, Samantha then fell backward on the only challenging part of the trail and rolled down the slope to hit her head on a rock. While her initial injury "did not seem that bad" and she was talking and confirming that she "felt just fine" and needed to rest, Samantha was soon nauseated and vomiting with the risk of a traumatic brain injury assessed as both scary and potentially severe.

Despite prior risk management planning and appropriate accident response procedures (all discussed in other chapters in this text), accidents can and will happen. Luckily, Mary had CGL cov-

erage and, afterward, she carefully reviewed her insurance policy. Mary did not incorporate her business, so she had to rely on her CGL coverage to fund a legal defence against claims arising from Samantha's injury and to pay for any court judgements or negotiated settlements that might follow. In this instance, Mary was covered for findings up to the \$1 million limit plus defense costs. However, beyond that amount, if the findings exceeded her limit, then she would be expected to pay the difference from her personal assets, since she was not incorporated.

Outdoor adventure and sport insurance can be a difficult insurance coverage to obtain in Canada. Mary did indeed seek insurance coverage as she was about to begin business operations. She reached out to both insurance brokerages which she routinely dealt with for home, auto, and health insurance products. Two weeks into her business start-up the brokers still had not received any offers from insurance providers, as all of their insurance carriers had declined coverage by citing trail exposure concerns that were outside of their desire. This was shocking to Mary: "can't anyone get insurance on whatever they wish just when they want it?"

Business insurance is not always straight forward. Commercial insurance availability tends to go through cyclical soft and hard markets, but specialty commercial insurance needs can be even more challenging. Although guided hiking is only a "modest" risk activity, as in Mary's case, a vast collection of other outdoor businesses are deemed much higher risks. Insurers struggled greatly through the hard insurance markets, which have made some classes of insurance overly difficult or unreasonably expensive to get.

Coverage for a long list of activities has proven difficult to secure. Guided operators and rentals operators have struggled to find coverage for motorized off-road vehicles, boat or personal watercraft rentals, and non motorized hiking, biking, zip lining, parasailing, gliding, rafting, rock climbing, and mountaineering. Contact sports, organized sports, race and speed events of all types have extended their efforts to find cover-

age in recent years. Various sports and product sales have also faced difficult challenges due to the frequency of injuries and, for electric bikes, fire exposure from charging batteries. Sadly, obtaining insurance coverage is just not always available at the rates and terms the clients envision without restrictive limitations.

In Canada, the good news is that some insurers, managing general agents, Lloyds coverholders, and specialty brokers have stepped up to try and meet the consumer needs through this hard market. Business owners seeking to find coverage options are wise to ask similar operations about their insurance providers and coverages. In most cases, the coverages exist in Canada from a specialty provider, but may be hard to access without a knowledgeable broker. The good news is that one's current broker, if familiar with the markets, should be able to access these specialty providers.

Participant Exclusion

Returning to Mary's situation, she found a helpful insurance broker who was more commercially aware than her regular insurance provider. Discovered from a quick internet search, the new broker was skilled in accessing the specialty markets. The broker found a couple of solutions within one week through managing general agents. However, now Mary had to learn new insurance jargon. Both new quotes insisted that waivers must be utilized and signed by the participants. This common practice among adventure activity providers is discussed elsewhere in this book. The quotes were as follows:

1. Optional CGL limits of \$1, \$2, or \$5 million.
2. Same limits as the above quote, but premiums priced 40% lower due to an extra provision of participant exclusion.

All policy exclusions are of vital importance and must be well understood by the insurance purchaser. Participant exclusion refers to not covering the people engaged in the adventure activity. Obviously, avoiding such exclusions is in the best interests of the purchaser, when possible.

However, the insurers may see such activities as overly dangerous and may feel that injuries will occasionally happen for this class of business. Therefore, they simply refuse to defend or pay claims of this nature when arising from the participants injury.

How Much is Enough?

One of the more frequent questions asked is how much liability should I carry? The simple answer is as much as you can reasonably afford given the possible outcomes of the activities undertaken. Higher limits are certainly better, but only if feasible, reasonable, and affordable for a business operation and budget. Sadly, extremely horrific incidents occur rarely and practically no limit of coverage is likely to be adequate.

Along with the great pleasures of enjoying the great outdoors comes a degree of risk which goes along with all of these wonderful activities people truly enjoy. Unfortunately, in rare instances, negative outcomes can result and whilst this frequency and severity may not have changed throughout history, the society has become increasingly litigious with unprecedented consequences to those who may be seen to hold a degree of liability. At times, one may be held liable; even though one's contributory negligence was only slight. In some situations, through strict liability, if the injured party cannot recover from the other defendants, then the operator might just be on hook fully! Be cautious, be careful, and consider these additional coverages for insurance.

Medical Expenses

A small amount of medical expenses are often built into most CGL's. The limits of coverage are generally low at a \$25,000 or \$50,000 maximum and may have a small \$2,500 or \$5,000 maximum limit per person. Check to be certain that this coverage does extend to the actual participants and not just third parties. The best part of medical coverage is that it normally applies regardless of fault and/or waivers signed.

Accidental Death & Dismemberment

An Accidental Death and Dismemberment policy (AD&D) is very similar to the medical expenses discussed earlier. Generally, it is an optional extra coverage outside of the CGL, but may have low policy with limits of coverage. Coverage would apply despite any waivers signed, but limits of cover tend to be modestly low: often \$25,000 or \$50,000. Covered losses are only as specifically shown in the schedule provided by the insurance broker.

Non Profit Entities in Canada

Non-profits, such as outdoor clubs and other community or special interest groups, need the same CGL insurance coverage as for-profit entities in Canada. The provinces, cities, municipalities and landowners are increasing offloading their liability exposures onto the nonprofits and other parties involved in delivering outdoor recreation and other leisure services. They need and want the help of non-profits to broaden and deepen the opportunities for the citizenry, but local governments are also thrilled to offload their liability exposure. So non-profits will need to seek suitable insurance coverage as well as for-profits.

Directors and Officers Liability

In addition to the CGL, non-profits and for-profits ought to acquire a Directors and Officers (D&O) policy to protect their board and executive members. This is not the same as the CGL coverages that protects against bodily injury type of claims. When individuals agree to serve on a board, they do accept some legal obligations that can flow to them personally. They must comply with the different levels of regulations and laws from municipal through provincial to national. They must have their organization's best interests at heart and ensure that funds are spent in an acceptable fashion. The risks of employment practices need to be managed such as discrimination, wrongful termination, and sexual harassment. They need to avoid conflict of interest and avoid improper self-dealings. Although being elected

or selected for these roles can be flattering, the lack of a good D&O policy can turn serving into a risky proposition, since personal assets become exposed. Many D&O suits do eventually get dismissed, but the defense may take years and can be very expensive. D&O policies are written on a "claim made basis" which is often different from CGL policies. Oversimplified, this means the policy will only cover "claims made" during the policy term of coverage. Therefore, keep D&O policies active, avoid lapses, and continue to renew these even after the organization ceases. Ask an insurance broker to fully explain this coverage and its limitations.

Professional Errors & Omissions

For many professions, including those in outdoor learning, Errors & Omissions (E&O) coverage is worth considering, but can be expensive, since professionals carry more exposure than can be covered by a CGL alone, such as malpractice and acts of omission or commission. The more highly specialized one's training is and the more professional affiliations and certifications held, the higher the standard that person may be held to in terms of liability and the more likely an E&O policy may be required.

Other Coverages

While greatly over simplified in this chapter, insurance coverage varies widely. Depending on the type of business being operated, adding extra coverage may be prudent. Coverage can be extended for commercial building property, equipment needs, and cyber or data breach. If outdoor businesses cannot obtain high enough liability limits, then excess liability or umbrella liability policies may be warranted. Lastly, in Canada, very different from the USA, employee injury coverage is available through provincial workers compensation. However, a business may also want to carry contingent employees coverage. Ask your broker for an explanation.