

# WAIVER & RELEASE

## Claim Case Studies & Legislation for Waivers

### Facts

The Plaintiff was enrolled in an introductory motorcycle riding course offered by the College. She had never ridden a motorcycle before and was seriously injured during a riding exercise when she lost control of the bike and hit a concrete barrier. The Plaintiff signed a waiver of liability in favour of the College.

The Plaintiff brought an action against the College for her injuries. The waiver was presented to students after the course registration had taken place and tuition had been paid. No refunds were offered if a student chose not to sign the waiver. Students were not advised that they would have to sign a waiver when they registered for the course.

### Issue

The issue before the court was whether the waiver presented a complete defence to this action.

### Law

The onus of proving the validity of an exclusion clause or waiver lies on the party who claims it (*Snucins v. Conquest Tours et al*, [1990]). The defendants drafted the waiver and therefore any ambiguity is resolved against the drafter (*Reid Crowther & Partners Ltd. v. Simcoe & Erie General*

*Insurance Co.*, [1993]). Should the waiver be found to be ambiguous then it is deemed ineffective and cannot be enforced (*Snucins v. Conquest Tours et al*, [1990]).

### Outcome

The Plaintiff argued that the waiver was not a valid contractual document because it was ambiguous and therefore unenforceable. The College argued that good consideration was given to the wording of the waiver and therefore it was a valid contract. The Court found that the waiver should have been very precise in describing and listing the risks and dangers of the activity. Further, the Court found that the wording was not broad or clear enough to exonerate the College from its own negligence and that the College should have recognized the presence of the concrete barrier on the training course as a foreseeable danger. Also, there was no evidence to suggest that the Plaintiff had been advised about having to sign a waiver of liability, nor was the waiver fully explained to her.

The motion to have the waiver found valid was dismissed. The College was found to be 80% at fault and the Plaintiff was found to be 20% at fault. Damages were for \$365,000 plus costs.

## Lessons Learned

This case helps to illustrate the ongoing battle of contractual waivers. Many organizations attempt to limit or remove liability to potential claimants through the use of waivers. When the validity of a waiver is challenged, it is up to the Courts to undertake an analysis of the waiver and decide whether or not it is enforceable. Each case is decided on its particular facts, the rules set out in the waiver of liability and the Defendant's wrongdoing.

Although liability waivers can be an excellent risk management practice, they will not allow an organization to be completely absolved from their liability for negligent operations. For further information on waivers of liability, please see the Centre of Excellence article "Risk Management Considerations for Waivers of Liability".

While Intact Public Entities Inc. does its best to provide useful general information and guidance on matters of interest to its clients, statutes, regulations and the common law continually change and evolve, vary from jurisdiction to jurisdiction, and are subject to differing interpretations and opinions. The information provided by Intact Public Entities Inc. is not intended to replace legal or other professional advice or services. The information provided by Intact Public Entities Inc. herein is provided "as is" and without any warranty, either express or implied, as to its fitness, quality, accuracy, applicability or timeliness. Before taking any action, consult an appropriate professional and satisfy yourself about the fitness, accuracy, applicability or timeliness of any information or opinions contained herein. Intact Public Entities Inc. assumes no liability whatsoever for any errors or omissions associated with the information provided herein and furthermore assumes no liability for any decision or action taken in reliance on the information contained in these materials or for any damages, losses, costs or expenses in a way connected to it. Intact Public Entities Inc. is operated by a wholly owned subsidiary of Intact Financial Corporation. Intact Design® and Risk Management Centre of Excellence® are registered trademarks of Intact Financial Corporation or its affiliates. All other trademarks are properties of their respective owners. TM & © 2021 Intact Public Entities Inc. and/or its affiliates. All Rights Reserved.