

## Web Sites, Chat Lines, Internet

Many OWHA Teams, Associations and Leagues post information on web sites. These are great promotional and communication vehicles. They can also be negative and destructive with the potential for great harm to individual safety and well-being. OWHA delegates have heard, on many occasions over the past few years, evidence of serious hurt caused to players through email and internet postings which are often made public through anonymous posts.

### IMPORTANT POINTS TO CONSIDER

- \* images and pictures of teams, players and team members on web sites and/or in publications for the purpose of marketing or providing information about the organization. It is important to be familiar with Canadian case law and the Protection of Personal Information and Electronics Documents Act ("PIPEDA") to understand the risks and liabilities associated with publicly displaying pictures when consent to do so has not been obtained.
- \* Personality rights encompass the exclusive right of an individual to market, control and profit from the commercial use of his/her name, image, likeness and persona. The distinctive characteristics of one's image, likeness or persona include but are not limited to name, face, body or recognizable body part, voice or voice impersonation, photograph, look-alike, signature phrase, paraphernalia or action, costume or personals signature. For example, Wayne Gretzky's number '99' is synonymous with the celebrity of Gretzky himself and a commercial use of '99' in Canada, the hockey community or sporting world would likely be perceived as an association with him.
- \* Personality rights, generally speaking, consist of two types of rights, the right to privacy and the right of publicity. The right of privacy is the right to keep one's image and likeness from exploitation without permission or compensation and generally applies to members of the general public. The right of publicity is the exclusive right of an individual to market his or her image, likeness or persona for financial gain.
- \* Organizations in Ontario must also be mindful of their obligations under PIPEDA. PIPEDA requires an organization to determine if information is, first and foremost, personal information and secondly, if the information is being disclosed during a commercial activity. All marketing initiatives are considered to be of a commercial nature and are therefore subject to PIPEDA. A best practice would entail only posting personal information where consent has been obtained from all affected individuals, or from a person who is legally authorized to consent on the individual's behalf.

### PIPEDA

The Personal Information Protection and Electronic Documents Act, or PIPEDA, sets out rules for the collection, use and disclosure of personal information by businesses and organizations, including sport organizations. PIPEDA allows for several exceptions, but none of them relate to the use or disclosure of photo images. Consent must be obtained from an individual prior to the collection, use, disclosure or selling of personal information. The purpose for which information is being collected, used, or disclosed must be made clear to the individual at the time of collection, when their consent is obtained.

It is important for staff and leaders of sport organizations to not only think critically about what is being posted on their web sites and published in their newsletters, but also to make others in the organization aware of the importance of obtaining consent. With careful planning and forethought, consent can usually be obtained without much difficulty. When consent is not obtained, an organization may have to take steps after the fact to correct an escalating problem, which will consume far more time and energy than would have been required to obtain consent in the first place. The organization also runs the risk of being challenged legally under the complaint procedures of PIPEDA.

**As a general principle, organizations should not post personal information on their web sites or in other publications without obtaining written consent of the individual to whom the information relates.**

**There are several different types of personal information, some of which is more sensitive than others. When consent is obtained, the following personal information might be appropriate to post publicly:**

- **Photographs of athletes, coaches, volunteers and staff**
- **Name of athletes, coaches, and volunteers participating in a special event**
- **Name of athletes, coaches and volunteers who have received an award or prize**
- **The results of a competition**

In contrast, the following information is highly sensitive and should probably never be included on a web site or in a publication:

- **Health information**
- **Personal contact information such as home address or home phone number**
- **Financial information**
- **Date of birth**

Although some individuals may never be concerned about their personal information being published or posted on web sites, others will be more apprehensive. In general, consent to post or publish an individual's personal information should be obtained in advance, and should be obtained in writing. Such consent must be informed consent, meaning that the individual understands precisely what information is being published and the potential consequences of such disclosure. As well, the individual should have the right to revoke their consent at any time.

Who gives consent depends on the age of the individual. For individuals under the age of majority (18 in Ontario), a parent or the person having lawful custody should sign the consent form. Where the parents are separated or divorced, the parent with lawful custody should sign the consent. In cases of joint custody, either parent may sign. Individuals over the age of 18 years have the power to contract and may sign the consent form without any additional signature from a parent or legal guardian.

## **Conclusion**

Canadian case law has developed two torts that allow for an individual to seek damages for the use of their personal image: the "misappropriation of personality" and the "passing off" of personality. Sport organizations should be aware of both torts so that they have a clear understanding of what the law permits them to do, and what recourse an individual might have if the organization fails to act within the law.

Section 2(b) of the Canadian Charter of Rights and Freedoms allows the media to use images of individuals if the subject is a newsworthy event or a matter of public interest. Therefore consent is not required in this context, but sport organizations are not deemed to be part of the media. This means that they will have to obtain consent to publish news stories and images on their web sites and in other media communications.

The Personal Information Protection and Electronic Documents Act establishes requirements for the collection, use and disclosure of personal information. It provides a number of exceptions, but basically consent must be obtained from an individual prior to the collection, use and disclosure of personal information. As part of obtaining consent, the organization must also clearly specify the purpose for which the information is being collected.

The solution for sport organizations wishing to use photo images or other personal information in their publicity and communications is simple – obtain prior consent. Consent that is properly obtained will protect the organization from claims of "passing off" or "misappropriation of personality". Consent can be obtained at the start of the season, or at the time an individual athlete or a team registers for an event or competition. Consent can be obtained through the addition of a consent clause in a registration form, or through a stand-alone consent agreement. Templates of both, which may be adapted to suit each specific sport organizations' circumstances, are shown below:

**Example Clause for Registration Form**

I hereby consent to the collection and use of my personal images, statistics and team information, by posting on the web site of \_\_\_\_\_ and/or publishing in the newsletter of \_\_\_\_\_. I understand that my personal information can be viewed by anyone who accesses \_\_\_\_\_ website or publications and that my consent can be withdrawn at any time.

**Example Consent Form for Minors**

I, \_\_\_\_\_, parent/legal guardian of \_\_\_\_\_, consent to the disclosure of personal information about \_\_\_\_\_ by posting it on the web site of ABC and publishing it in its newsletter. This consent only applies to the following:

- 1. Photographs of (name of athlete)
- 2. Athletic results of (name of athlete)
- 3. Awards, scholarships, prizes received by (name of athlete)
- 4. (Other specific items identified by the organization)

I am aware that by giving this consent, I am permitting personal information about (name of athlete) to be published, which can be viewed by anyone who accesses ABC's web site or publications, and that if consent were withheld, this posting and publication would not occur.

I further understand that this consent may be withdrawn by me at any time, upon written notice.

I give this consent voluntarily.

Dated: \_\_\_\_\_, 2004 \_\_\_\_\_

Parent/Guardian signature

Dated: \_\_\_\_\_, 2004 \_\_\_\_\_

Witness

**Model Consent Form for an Adult**

I, \_\_\_\_\_, consent to the disclosure of personal information about me by posting it on the web site of ABC and publishing it in its newsletter. This consent only applies to the following:

- 5. Photographs of (name of athlete)
- 6. Athletic Results of (name of athlete)
- 7. Awards, scholarships, prizes received by (name of athlete)
- 8. (Other specific items identified by the organization)

I am aware that by giving this consent, I am permitting personal information about (name of athlete) to be published, which can be viewed by anyone who accesses ABC's web site or publications, and that if consent were withheld, this posting and publication would not occur.

I further understand that this consent may be withdrawn by me at any time, upon written notice.

I give this consent voluntarily.

Dated: \_\_\_\_\_, 2004

\_\_\_\_\_  
Signature