

Report to Municipal Council



Meeting Date: August 14, 2024	Report Date: August 7, 2024
Reason Before Council: Policy Direction / Approval	Priority: Normal
Department: Parks & Recreation	Type of Meeting: Regular Meeting

Report Title: Update - Fitness Center – Age Limit Policy

Recommended Resolution:

That Council review correspondence from lawyer together with the draft Policy and waiver and determine the minimum age to be allowed in the Fitness Center and direct staff to prepare a Policy to be adopted.

Options:

1. Remain at current age limit of 14 years old;
2. Lower to +/- 9 years of age per request;
3. Pick an age in between 9 and 14 years old.

From the legal review, it would not seem to be any different from a legal point of view 14 vs 12 vs 9 other than the accepted risk.

Limitation of hours:

1. Impose no limitation;
2. Restrict to a specific time. From discussions with various patrons of the gym the busiest time is between 4:30 pm and 6:30 pm from Monday to Friday.

Because of:

- The limited space in the gym;
- Fitness center is closed from Monday to Thursday from 9 am to 4:30 pm (open 1 hr at noon);
- High usage of equipment; and,
- Small / crowded space may deter some patron.



If Council so wishes, the only restriction recommended would be to limit access to youth during those times.

Analysis & Background:

From the last meeting, staff received the opinion from the lawyer. The lawyer reviewed and made minor corrections to the proposed Policy and waiver which are attached for Council review.

From the opinion below and the past comments from our insurance provider, it all comes down to what amount of risk the Municipality wishes to assume. Nothing prevents or compels us to lower the age limits.

“Good afternoon Mr. Turcot,

Please see below (and attached) for our responses to your questions regarding the age limit for your fitness center.

What are the risks to the municipality in lowering the age limit to 9 or anywhere under 14 or even the current 14 to 16?

There is no specific law in Canada that creates mandatory age limits for fitness/ gym facilities. Therefore, it is not “illegal” for the municipality to lower the age limit requirement in the gym’s policies.

The municipality must of course ensure that they are in compliance with their insurance policy to maintain coverage. We agree that children under 16 should be supervised at all times and that specific rules and requirements related to children under 16 should be spelled out in a policy.

With respect to waivers, children under the age of 18 cannot legally enter into contracts in Ontario. Further, it is unclear whether parental waivers are legally enforceable in Ontario, which provides some risk to the municipality. We would suggest maintaining a parental waiver requirement for all individuals under 18, as well as a parental agreement to indemnify the municipality for any claims by the child. More on this below.

Otherwise – our opinion is that the risk exposure to liability in negligence, whether under the Occupier’s Liability Act or otherwise, would not be significantly impacted by the decision to lower the age limit; the



municipality will always have risk of liability by virtue of being the occupier/ operator of the facility.

What are the protections that a waiver would provide for the municipality in respect to a child under 16?

In theory, a waiver would protect the municipality from being sued for injuries sustained by patrons of the facility while they used the facility. However, as mentioned above, it is unclear whether parental waivers are enforceable in Ontario with respect to a minor.

There is no Ontario case law at present that addresses the enforceability of a waiver of liability signed by a minor or by a parent/guardian on behalf of a minor. In Wong v. Lok's Martial Arts Centre Inc., a British Columbia case, the court determined that a contract containing a waiver of liability for a minor was not enforceable due to the provisions of BC's Infants Act. Notably, Ontario does not have similar legislation, therefore, it is unclear whether a minor, or their parent, can waive the minor's rights.

That said, there is certainly value in requiring a parental waiver, as it is possible that the waiver will be found by an Ontario court to be enforceable. Further, a waiver may have the effect of dissuading a party who is injured at the facility from commencing a lawsuit.

We note that for a waiver to be enforceable, the waiver must explicitly state the specific event or activity and must also specifically reference the potential risks and injuries that could occur as a result of the event. Further, the waiver must be sufficiently brought to the attention of the person signing, and the contents of the waiver should be reviewed with the person signing.

Finally, given the uncertainty around the enforceability of a waiver with respect to a minor, we would suggest ensuring that the parent also signs an agreement wherein they agree to indemnify the municipality in full for any successful claim made by their child against the municipality.

I have attached a draft policy and waiver. Are they sufficient, or should they be beefed up?

See the attached policy and waiver with our comments.

In the event of an incident/injury, what are the implications for the municipality?



As the occupier of the facility, the municipality has a duty under the Occupier's Liability Act to make the premises reasonably safe for persons entering them by taking reasonable steps to protect such persons from harm that is foreseeable. This duty applies whether the danger is caused by a condition of the premises, or by an activity that is carried on at the premises. However, the act states that it does not apply to risks that are willingly assumed by the person who enters on to the premises.

Therefore, the municipality is exposed to liability as the occupier of the premises and must take care to protect patrons from harm that is reasonably foreseeable. This requires ensuring, for example, that there are no hazardous conditions in the facility which could cause harm. Further, this duty requires specific care with respect to the activities being done at the facility. This would require, for example, ensuring that the equipment is in a reasonable state of repair and does not pose a danger to users.

In the event of an incident or injury – the municipality could be found liable if it was determined that the injury occurred as a result of a failure by the municipality to make the premises safe or reduce the possibility of the incident, provided the incident was reasonably foreseeable. If, however, the incident was the result of the negligence by the patron, or if it was not foreseeable, the municipality is unlikely to be held liable.

There is certainly some inherent risk of injury when exercising and some of these risks could be considered to be willingly assumed by the patrons. Accordingly, we would advise the municipality to place warning signage within the area to warn of these risks. Particularly, we would advise that the municipality ensure there is signage warning of the dangers of the activities to younger children, and place signage reminding that children under 16 are to be supervised at all times.

If we do end up allowing <14 or even continuing to allow under the age of 16 to the gym with parental supervision, other than the parent, who could be deemed parental supervision? Legal guardian?, Grandparents? Sibling over 16 (though we wish not to allow that)?

The Ontario Child, Youth and Family Services Act states that no person having charge of a child younger than 16 shall leave the child without making provision for the child's supervision and care that is reasonable in the circumstances. Therefore, it is the ultimate responsibility of the child's parent or legal guardian to provide for adequate supervision for a



child under 16. In light of this, our opinion is that it is not the responsibility of the municipality to determine who must supervise a child. We also note that there is no minimum age specified for a person to be the guardian of a minor child under the Children's Law Reform Act. In theory, a person under the age of majority could be the legal guardian of a child.

Otherwise, most legal rights to decision making and guardianship in Ontario are given to persons who have reached the age of majority. If the municipality does not wish to limit supervision to the child's parent or legal guardian, our suggestion is that the supervisor be an individual over the age of 18 years old. It is not necessary that this be a family member. At present, the draft policy you provided states that supervision must be by the child's parent or legal guardian.

We trust this opinion will be of assistance. Please do not hesitate to reach out with any further questions."

Attachments:

- Draft Policy with comments
- Draft waiver with comments

Prepared By: Denis Turcot, CAO