

Commentary

Concussion Safety Law Should be Enacted in all Canadian Provinces and Territories

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The concussion crisis in sports remains an important public health issue. Indeed, it is cited by 97% of Canadians as a major public health concern.¹

In 2018, one province – Ontario – enacted an important piece of concussion legislation. *Rowan's Law*² was named for a girls' rugby player who died from the dangerous repetitive concussion injury known as Second Impact Syndrome.³ *Rowan's Law* and the associated *Regulations Regarding Rowan's Law and Codes of Conduct* included several measures holding promise of improving concussion safety in amateur sport. One important measure was concussion education. Under the law, athletes and their parents/guardians, coaches, officials, trainers and other sport safety community members are required to confirm to their sports organisation their review of concussion awareness resources prior to participation. Another important measure is legally mandated concussion management protocols. Where a concussion is suspected, sports community members must follow these protocols to remove the athlete from play and only allow them to resume participation once corresponding return-to-play protocols have been satisfied. Together, these two aspects of the law are designed to foster proper concussion recognition and management, rather than leaving these to chance – or whatever knowledge and attitude the relevant sports community member happens to have. A third important measure in *Rowan's Law*, spelled out in the regulations, is requiring sports organisations to establish a code of conduct for community members, intended to instill a concussion safety culture (Ontario, 2019). These codes require sport community members to commit to fair play and respect, transparency regarding potential concussive injuries along with support of the protocols and where applicable acknowledging a strict disciplinary regime for misconduct that raises concussion risk. The role of the codes is to induce safer play and to cultivate a safety culture needed to support compliance with the previously mentioned provisions on education and protocols. Here again, the law 'adds value' by providing an external push to the necessary culture change, which otherwise may be defeated by internal resistance based on

'old school' ethics of roughness and toughness in sports and/or winning at all costs.

Further, it is important to note that *Rowan's Law* is not relevant only to reducing the secondary risk of repetitive concussions or complications as took the life of its namesake. Certainly, the law's educational measures and protocols aim to do that. However, our hope is that the law will also aid primary prevention of initial concussions. For example, similar to the mandated warnings on cigarette cartons, increased concussion awareness inherently emphasises to sport community members the seriousness of concussive injuries, leading them to consider *all the ways* they can reduce the risk of concussions in their sport. The law thereby invests in community members' own sport-specific expertise, as an implicit but important additional preventive measure. Mandating the protocols reinforces this, by underlining the seriousness of the injury in warranting a legal mandate, and the seriousness of ignoring these proper injury-management practices as action that violates the law. The codes of conduct go even further to promote primary prevention. In requiring community members to commit themselves to fair play and respect and in fostering a safety culture, the codes directly address activity that affects the risk of all concussions including initial concussions. As well, sports organisations' responsibility, in collaboration with their community, to develop and implement a code, draws the attention of all involved in this to concussion-preventing exercises like working out the code's precise elements, what concussion-safe play entails and enjoins, and what disciplinary consequences would be useful in deterring injurious play or defiance of the other measures.

We do not suggest that a concussion safety law like *Rowan's Law* is a one-stop solution to the concussion crisis in sports. However, we do believe that it is an important part of the picture. As well, its legal status allows it to link up with other legal mechanisms, creating a network effect with the potential to improve concussion safety in sports. For example, *Rowan's Law* has been critiqued for not including enforcement mechanisms.⁴ However, it establishes clear standards of behaviour that can be leveraged by other legal mechanisms that do have 'teeth'. For example,

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defying *Rowan's Law* would almost certainly influence evaluation of a suit for negligence under tort law, under the guidance set out in *R. v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205 (1983). Tort law therefore helps enforce *Rowan's Law*, through the enhanced liability risk of non-compliance. Relatedly, sports injury insurance policies often require the insured to comply with all applicable laws, and exclude coverage where the insured has not done so. Thus, insurance contracts can further help enforce concussion safety laws without necessarily a need for quasi-criminal sanctions under the concussion law itself.

Besides *Rowan's Law* in Ontario, there are broadly similar laws in all 50 US states. These followed the lead of the *Zachary Lystedt Law* in Washington state, spurred like *Rowan's Law* by a youth suffering a catastrophic second impact injury.⁵ What concerns the authors is that other Canadian provinces have still not enacted concussion laws like *Rowan's Law* in Ontario and the Lystedt laws in the United States. We ask rhetorically: What are they waiting for? If they are waiting for proof that *Rowan's Law* works, it is not likely to be available soon enough, in part because of the *positive* paradox that enhanced concussion awareness enhances reporting, plus the cost and difficulty of ascertaining results across 60+ sports and countless individual sports organizations. We suggest that in the years to come, society will see concussion sports safety laws as being as obviously necessary as motor vehicle safety laws – laws which themselves were deferred too long with devastating consequences. If, as we believe, these laws are inevitable, the question becomes: Must more preventable tragedies like those suffered by Rowan and Zachary be left to occur in the provinces still dragging their feet, in order to muster the political will to pass concussion sports safety laws as more than 50 other neighbouring jurisdictions already had?

Conclusion

Concussion safety laws are an important part of public health measures available to address the concussion crisis in sports. The need for them can be compared to motor vehicle safety – the only cause of

more concussions than sports. It is vital to bring attention back to the unfinished business of enacting concussion safety laws to protect the health of athletes – especially children and youth – in all Canadian jurisdictions, not just Ontario. We call on Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, PEI, Québec, Saskatchewan, Nunavut, NWT and Yukon to pass a concussion safety bill.

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