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# WHAT'S IN THE BEST INTEREST OF THE CHILD?

A Public Health Perspective on  
Access to Unstructured Play for  
Children in Canada

DISCUSSION DOCUMENT



MARCH 2019

# THE VOICE OF PUBLIC HEALTH

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## **How to cite this document:**

Canadian Public Health Association (CPHA). What's in the Best Interest of the Child? A Public Health Perspective on Access to Unstructured Play for Children in Canada. March 2019. Available at <https://www.cpha.ca/whats-best-interest-child>.

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# What's in the Best Interest of the Child?

## A Public Health Perspective on Access to Unstructured Play for Children in Canada

### Preface

In December 2015, the Lawson Foundation, through its Outdoor Play Strategy, provided a grant to the Canadian Public Health Association (CPHA) to develop a risk mitigation policy toolkit in support of children's access to play. The goal was to *"Improve Canadian children's access to free play, including adventure play areas, through the development of a policy toolkit that provides methodologies and approaches that respond to municipal managers', school board officials' and elected municipal officials' concerns, and parental perceptions regarding the liabilities and risks of risky play."* This work subsequently focused on unstructured play,\* of which risky play is a subset. The results can be found in the *Children's Unstructured Play Toolkit*, of which this paper is a part, together with seven research briefs, five infographics, six policy tools, and a collection of promising practices. The paper also led to CPHA's position statement on [Children's Unstructured Play](#), and the identification of the complex problems that are the subject of this discussion paper.

\* The term unstructured play does not have an academic definition, but has come to be used as a generic term to represent child-led play that takes place preferably outdoors but also indoors, and includes the concept of risky play. Its use was developed to reflect the concerns of decision-makers regarding the use of the term "risky" to describe play.

### Purpose

To identify some complex problems that affect children's access to and participation in unstructured play:

- The changing face of children in Canada;
- Parental, caregiver and educator perceptions;
- Risk communication; and
- Legislation and liability.

### A wicked problem is...

- A complex problem for which there is no simple solution.<sup>1</sup>
- A social or cultural problem that is difficult or impossible to solve due to incomplete or contradictory knowledge, the number of people or opinions involved, the large economic burden, and/or the interconnected nature of the problem with other problems.<sup>2</sup>

### ACKNOWLEDGEMENTS

CPHA acknowledges and thanks the Lawson Foundation for its generous support. We also thank all those who were also funded through the Lawson Foundation's Outdoor Play Strategy for their continuing support in reviewing and providing direction for various components of this work. The Advisory Committee for this project deserves special thanks for its ongoing direction and support that led to the project's successful completion.

## Introduction

Unstructured play is the business of childhood.<sup>3</sup> It is an integral part of every child's healthy development and is embedded as Article 31 of the [Convention on the Rights of the Child](#). All children and youth have a need for time, appropriate space and opportunity to engage in unstructured play, take risks and realize the associated benefits.

Defining 'play,' however, can be a challenge. Many forms of play have been identified and are described elsewhere.<sup>4</sup> For this paper, the discussion will focus on **unstructured play**, which is play that happens when children follow their instincts, ideas and interests without an imposed outcome.<sup>5</sup> It may include challenging forms of play and provide opportunities for exploring boundaries that allow children to determine their own limits in a variety of natural and built environments. Types of unstructured play encompass those categorized as risky play and include: play at heights; play at speed; play with loose parts; rough-and-tumble play; and play where the children can disappear or get lost.<sup>6</sup> Adults may facilitate unstructured play but not prescribe it. Organized sports or screen-time (i.e., time spent in front of the television, computer, gaming console, tablet, smartphone, or any other electronic equipment) are not considered unstructured play. The benefits associated with active outdoor play, a component of unstructured play, have been described in a 2015 position statement released by ParticipACTION and the supporting systematic review.<sup>7</sup> This work is supported by the Council of Chief Medical Officers of Health.<sup>8</sup>

The benefits of unstructured play (both indoors and outdoors) include:

- *Physical health and gross motor skill development:* Active, unstructured play reduces sedentary behaviours, helps promote healthy weights<sup>9</sup> and improves motor skills.<sup>10</sup> It reduces

adiposity (overweight or obesity) and improves musculoskeletal fitness and cardiovascular health.<sup>11</sup>

- *Mental and emotional health:* Unstructured play promotes children's mental and emotional well-being,<sup>7,12</sup> including positive self-concept<sup>13</sup> and self-esteem.<sup>14</sup> It supports the formation and maintenance of friendships that, in turn, promote the maintenance of good mental health,<sup>15</sup> while physically active play may decrease anxiety and depressive symptoms.<sup>11,16</sup> A recent systematic review strengthens our understanding of the benefits of outdoor, unstructured play and substantiates the mental health benefits of interactions with nature for children and teenagers.<sup>17</sup>
- *Social health and team work:* Unstructured play helps children improve their social competence,<sup>11</sup> including emotional intelligence, self-awareness, empathy and the ability to communicate effectively in situations that involve compromise and cooperation.<sup>11,13</sup>
- *Learning and attention at school:* Unstructured play has been shown to promote cognitive skills development (attention, concentration, ability to stay on task, and memory<sup>18</sup>) and improve behaviour in class.<sup>19</sup>
- *Resiliency and risk management skills:* When children experience uncertainty during challenging play, they develop emotional reactions, physical capabilities, coping skills, and improve their capacity to manage adversity.<sup>20-22</sup> Effective coping skills promote resilience and good mental health to thrive in adolescence and adulthood.<sup>23</sup>

By limiting children's engagement in unstructured play, they are more likely to engage in sedentary behaviours, and are deprived of the benefits of healthy emotional, mental, social and physical development that result from unstructured play.<sup>24</sup> The increasingly sedentary lifestyle of children has resulted in a recent

call for Canadian children and youth to “move more for their brain health.”<sup>25</sup> Canadian children, however, are moving less and sitting more with increasing limits placed on them in and out of school. This result is not unique to Canada, as worldwide 23% of adults and 81% of adolescents (aged 11 to 17 years) do not meet the global recommendations for physical activity.<sup>26</sup>

## The intersection of public health and unstructured play

Children’s access to unstructured play provides the foundation for improved physical, psychological and social health, and supports improved resilience as adults. Public health is an approach to maintaining and improving the health of populations that places health promotion, health protection, population health surveillance and the prevention of death, disease, injury and disability as the central tenets of all related initiatives. It is also based on the principles of social justice, attention to human rights and equity, evidence-informed policy and practice and addressing the underlying determinants of health. Public health initiatives are based on evidence of what works or shows promise of working.<sup>27</sup> This intersection makes access to unstructured play both a public health and a health promotion issue.

Within this intersection is an underlying tension between those who wish to reduce the likelihood of injury resulting from children’s unstructured play, and those who recognize the medium- and long-term physical, psychological and emotional benefits of unstructured play with its inherent risks. It is also known that consistent exposure to active, outdoor play further develops movement skills that prevent injury as children are more aware of how their bodies move. The resolution of this tension is difficult as there is substantial evidence supporting the benefits of unstructured play, while the data concerning the

likelihood of injury resulting from play are limited by the description of where and how the injury occurred, thereby making it difficult to identify the actual cause of the injury. Similarly, it is difficult to compare the number of children injured during play, and the severity of those injuries, with the number of injuries that result from participation in organized sports. The reason for this difficulty is that there is no information available in Canada concerning the number of children taking part in unstructured play, or the accumulated exposure (duration), that can be compared to the known number that participate in organized sports. One systematic review has examined the medically-treated injury incident rates (injuries per 100 hours) in organized versus unorganized physical activities.<sup>28</sup> This study identified that the absolute number of injuries was higher in unorganized physical activities as compared to organized physical activities; however, the respective injury incidence rates were generally lower during unorganized leisure time.

Access to unstructured play is a health promotion concern. Health promotion is an upstream approach that fosters developing and maintaining health across the lifespan. In Canada, this notion finds its roots in the Lalonde Report, which proposed that changes in lifestyles or social and physical environments would likely lead to improvements in health.<sup>29</sup> It provided the groundwork for programs that raised awareness of the health risks associated with personal behaviours and lifestyles, including nutrition and fitness. The benefits of health promotion activities were further described in a 1986 report that addressed the social, economic and environmental factors affecting (public) health,<sup>30</sup> as well as the *Ottawa Charter for Health Promotion*.<sup>31</sup> This Charter identified five priority action areas, including: building healthy public policy; creating supportive environments for health; strengthening community action for health; developing skills; and reorienting health services. Federal, Provincial and Territorial (FPT) Ministers

of Health endorsed this approach in 1994,<sup>32</sup> while the concepts were further described in a subsequent discussion paper.<sup>33</sup> In 2010, Ministers of Health issued a declaration that addressed the need to make prevention of illness and injury a priority.<sup>34</sup> Similarly, a recent discussion paper noted the complex series of social, cultural and lifestyle factors that influence youth substance use, and the authors stressed the need for upstream approaches that move from avoiding risk to building resilience.<sup>35</sup>

Canadian Health Ministers have committed to improving the health and well-being of Canadians, and have recognized the benefits of upstream or health promotion approaches, while provincial chief medical officers of health have supported the need for active outdoor play as a health promotion activity. Direction provided by the *Calgary Play Charter*; CPHA's *Children's Unstructured Play Toolkit*; the work of the Healthy Active Living and Obesity Research Group at the CHEO Research Institute; ParticipACTION; the International Play Association (Canada); Outdoor Play Canada; the Child and Nature Alliance of Canada; Earth Day Canada; the Lawson Foundation; the BC Injury Research and Prevention Unit; a thriving academic community; and a brace of local, provincial and national organizations continue to reinforce the benefits of and work to improve access to unstructured play as a means of improving children's health. The questions are then:

- Why is children's access to unstructured play being curtailed? and
- What might be done to reverse the trend?

## The changing face of children in Canada

The O'Brien Institute for Public Health prepared a summary of "reputable sources of data to paint a high level picture of children in Canada."<sup>36</sup> This paper noted that, in 2016, there were approximately

7.8 million children and youth (aged 0 to 19 years). However, as a country, the percentage of seniors (adults 65 years of age and older) now exceeds the number of children and this trend is expected to grow. In terms of a percentage of the population, children in the age group of 0 to 14 years are expected to decrease from 16.6% in 2016 to 15.9% by 2036, while the total number of children is expected to grow as the overall population grows. Complicating this factor is the geographic distribution of these children: the Atlantic Provinces, Quebec and Ontario are expected to have greater percentages of seniors than children, while the Western provinces and Northern territories will likely have greater percentages of children aged 0 to 14 years than seniors. Further complicating these demographics is the diversity of Canada's children. In 2016, approximately 2.2 million were from first- or second-generation immigrant families and this number is expected to increase. The challenge within this cadre is to understand and respond to their cultural perception of play, and to work with the families to provide them with the culturally relevant information necessary to make informed decisions.

Of particular concern is the development of approaches that respond to the needs of Indigenous children. There were over 590,000 Indigenous children (aged 0 to 19 years) in 2016 and this number is expected to grow at a rate greater than that for the total number of children. Indigenous children are especially affected by the racism, colonization, cultural genocide and structural violence that resulted from and continues to exist as a result of the systemic inequities within Canadian law, societal practices, and government bureaucracies, and that resulted in the dislocation of First Nations, Inuit and Métis from their land, culture, spirituality, languages, traditional economies and governance systems. These systemic inequities resulted in the erosion of family and social structures, with subsequent influences on child development. The effects of these actions are described, in part, in the report of the Truth and

Reconciliation Commission<sup>37</sup> and the associated *Calls to Action*.<sup>38</sup>

Indigenous communities face other challenges related to access to unstructured play including limited access to land, limited community infrastructure and aging facilities, and competing community priorities. There are also strengths that include geographical benefits for communities with access to water and land, as well as culture, traditions and values that support unstructured play and Elder teachings. For example, Inuit communities are governed by Inuit law (*maligarjuat*) under which Inuit parents are prohibited from policing or punishing their children. The result is that Inuit children engage more freely in play practices that would be considered risky or dangerous than non-Inuit children. In addition, the community is expected to assist with raising the child and Elders are an important influence in Inuit children's lives.<sup>39</sup>

The challenge in reporting demographic information is that these data have not been consistently collected over the years, thus making the development of a valid projection of future population changes difficult. Despite this shortcoming in the data, it is clear that the increasing number of children from immigrant and Indigenous families will require the development of play opportunities that are culturally appropriate and inclusive in nature.

This scenario is further complicated by the influence of socio-economic status (SES) on the health of children. It is known that those at the lower end of the social gradient are more likely to have poorer health outcomes than those at the higher end, while persons of colour and Indigenous people are overrepresented at the lower end of the social gradient. One study has shown that 76% of low-income children under the age of five in Toronto were visible minorities. Negative health outcomes are especially evident for low SES children, where infant mortality (a common

measure of child health outcomes) was found to be significantly higher in the lower fifth of Canadian urban neighbourhoods (6.5 per 1000), compared to the richest fifth (3.9 per 1000).<sup>40</sup> This effect extends beyond infant mortality to include poorer physical health, emotional and behavioural outcomes, school readiness and learning, low birth weight and obesity. Similarly, children in low SES neighbourhoods appear more likely to suffer fatal and non-fatal injuries. These higher injury rates have been explained by factors such as the quality of housing and lack of availability of safe play areas. The challenge with much of the injury prevention and health data, however, rests in the availability of timely, consistent and comparable national data that provide a clear indication of the nature and severity of the injury, and geographic location where it occurred.

The limited availability of public funding to support the development of play spaces is also problematic. In many situations, funding for these spaces is provided through parent-led fund-raising activities. This option, however, is limited within low SES communities where parents are less likely to have the funds and time necessary to take on fund-raising activities, which reduces the potential for success. As such, it is important to consider the SES of the community when developing play opportunities, and place specific emphasis on communities with lower SES.

## Parental, caregiver and educator perceptions

Today's children spend less time playing outdoors than previous generations. One survey from the United States showed that 70% of mothers reported having played outdoors every day as children compared to only 31% of their children, while 56% said they spent 3 hours or more playing outdoors daily compared to only 22% of their children.<sup>41</sup> A 2016 study

in Western Canada also defined the changing nature of free play in that geographic location and stressed the need for community-based actions to reverse the current trends.<sup>42</sup> There are many reasons for this shift. In particular, societal pressures and parental attitudes toward supervision and overprotection have increased, resulting, in part, from a changing social climate that includes:

- Fewer children per family, which results in increasing parental involvement in a child's activities;
- Marketing of alternatives to active outdoor play, including recreational screen time options;
- Canadians living within a competitive society that values achievement, with scheduled extra-curricular activities before and after school;
- Traditional and social media outlets delivering messages that can provoke fear concerning unstructured, child-led play and contribute to risk-averse perceptions;
- Peer pressure from other parents to either participate in the culture of achievement or to limit a child's participation in self-directed play;
- Parenting norms that see intensive parenting as desirable; and
- Geographic or socio-economic factors that can limit access to safe play spaces in rural or urban environments.

Supervision is needed for infants and toddlers; however, the previously mentioned parental concerns should be balanced against the benefits of age-appropriate unstructured play, especially between the ages of 6 and 12 years. For that age group, “helicopter” parenting, hyper-parenting and other forms of extreme parenting (e.g., tiger parenting, attached parenting, free-range parenting, and dragon mothers)<sup>43</sup> can be perceived as a loss of trust between parents and their children.<sup>44</sup> Hyper-parenting, in particular for children with physical disabilities, may have a detrimental effect on children's mental wellness, resulting in psychological problems and

reduced self-confidence.<sup>45</sup> Over-protective or hyper-parenting can limit a child's ability to freely roam to engage in unstructured play. For example, children's independent mobility (the distances they are allowed to travel without adult supervision) has decreased between generations.<sup>46,47</sup> Independent mobility directly affects a child's access to play<sup>48</sup> as children who can travel greater distances are more likely to meet and play with peers,<sup>49</sup> be more physically active, and play outdoors more regularly.<sup>25</sup> Lack of independent mobility also affects a child's ability to travel (walking or by bicycle) to school by him/herself.

## Risk communication

The reasons for these changes are found in the way parents, caregivers, educators and decision-makers hear, understand and respond to the environmental influences surrounding them. Principal among these influences are the social norms that individuals use within their communities.<sup>50</sup> Social norms are the set of desirable behaviours and informal rules that govern communities. Generally, individuals try to understand the norms present in their community and tend to adapt their own behaviour to comply with their perception of these norms. In addition, within communities there are often individuals (social referents) who have an enhanced ability to transmit information and are thus able to shape behaviours within the network. Social referents are recognized by:<sup>51</sup>

- Having a large number of connections to other members of a social network due to either their status, popularity or superior socialization capacity; or
- Being a leader within a subgroup of a social network.

They are successful when their behaviour makes other members pay attention or respond to their behaviour. This success is often achieved through frequent and personally motivated interactions that



are dynamic, and can be reversed if the connections are disrupted. Within our communities, social referents can either create disruptions that can reduce access to play (for example, leading a movement to close a toboggan hill) or act as a leader to increase access to play spaces.

Complicating this scenario is the way in which individuals hear and interpret information. Social cognitive theory,<sup>\*</sup> in particular heuristics,<sup>†</sup> may influence decision-making by those in authority. In this case, those who are most vocal on a subject or affected by a situation may influence a decision even though they may neither represent the majority viewpoint nor be supported by the evidence. For example, a decision-maker may choose to close a toboggan hill based on the comments provided by a single parent or small group of parents who have been affected by an injury to a child, without fully considering the events leading to the injury.

These perceived social norms can also be acted upon through a strategy whereby countervailing information about the situation is disseminated broadly as a means of counteracting the influence of the undesirable norms (social comparison strategy).<sup>52</sup> This information can be either positive or corrective in nature, but care must be taken to prevent unintended consequences. For example, excessive praise for a specific action may result in a negative response. This effect can be overcome by providing broader summary information rather than highlighting specific cases.

Institutions, for example governments, may also convey information through their decisions, actions or the implementation of new methods or systems. Individuals may then unconsciously assume that these actions reflect desirable or typical behaviours for the group to which the institution caters. In order to facilitate the information transmission via these mechanisms, its sources must be relatable, and considered legitimate and trustworthy. Such an approach can be seen with the development of the *Calgary Play Charter*,<sup>53</sup> which provides an ongoing commitment to the provision of unstructured play in that community. All municipalities could benefit from the development of similar charters. Similarly, an alternative may be to develop and implement a “play friendly city” designation whereby a municipality’s support for unstructured play could be measured against criteria designed to support play initiatives, with the goal of obtaining the designation. Examples of similar initiatives include the child friendly city initiative supported by UNICEF<sup>54</sup> and the safe city designation supported, in Canada, by Parachute.<sup>55</sup>

Social influence strategies are especially relevant to the current use of social media. Social networking sites (SNSs), such as Facebook and Twitter, provide a platform through which new social connections and networks develop and often influence individuals’ behaviours. These interventions generally involve a combination of system- and user-generated content, thereby fostering multidirectional communication that is participatory and engaging.<sup>56</sup> On an individual basis, SNS interventions promote comparison by allowing members to observe each other’s behaviours, which leads them to adjust their behaviour.<sup>57</sup> One large randomized controlled trial showed that prior positive ratings (i.e., up-votes) on social media posts may change the collective opinion of that post by spawning further positive ratings.<sup>58</sup> On the group level, the strategic dissemination of summary information (i.e., “what most people are already doing”) can influence perceived social norms and

\* Social cognitive theory is the view that people learn by watching others – in psychology, it explains personality in terms of how a person thinks about and responds to one’s social environment. (A further description is available [online](#).)

† Heuristics are mental shortcuts that allow people to solve problems and make judgements quickly. These rule-of-thumb strategies shorten decision-making time and allow people to function without continually stopping to think about their next course of action. Heuristics are helpful in many situations, but they can also lead to cognitive biases. For a more complete definition of heuristics please refer to the [Very Well Mind](#).

drive group members' behaviours in the direction of the desired norm. These interventions are more likely to successfully nudge users to adopt behaviours congruent with the desired values, and may prime users to accept certain information more readily.

When these approaches are applied to play, it should be possible to counter the influence of those who choose to limit access to play (either intentionally or unintentionally) by developing and providing evidence-informed information to the parent, guardian, educator, child care practitioner or decision-maker in a form and structure with which they are comfortable. The messages could focus on the benefits of unstructured play, and the importance of child independence in play, while reframing perceptions of risk. Decision-makers are especially important to influence so that they are knowledgeable and capable of responding to those who would limit access to unstructured play.

## Legislation and liability

In Canada, the legislative and regulatory authorities that influence children's access to play are the responsibility of provinces and territories. These authorities include Acts that deal with education, define requirements for early childhood care, and affect liability. The assignment of these responsibilities to provinces and territories allows those jurisdictions to develop and implement programs that meet the needs of their citizens, as these interests may vary from province-to-province and territory-to-territory. It also establishes a tapestry of authorities, roles and responsibilities that limits the development of a national perspective. Irrespective of this concern, there are several considerations that affect access to play in all provinces and territories.

## Education acts

Each of the thirteen education acts in Canada provides a framework of requirements for educating the children of the province or territory. The responsibility for implementing these requirements is delegated to local school boards that can establish policies and programs to meet the needs of the school district, while implementation is often assigned to the local school. This complex series of relations can influence decision-making at all levels and result in inconsistencies in the application of programs and decisions concerning, for example, the effect of inclement weather on access to outdoor recess or when recess may be withheld as a disciplinary measure. This scenario is further influenced by educators' collective agreements that define, among other things, supervision requirements and ratios.

Of particular concern is the effect of these influences on children's activities during recess. Recess is the time during children's school day when they should participate in active outdoor play that is of their choosing and with minimal incursion by adults. On returning to the class they are then better able to undertake the tasks at hand. A systematic review has found positive associations between recess and cognitive skills development (attention, concentration, ability to stay on task, and memory).<sup>59</sup> Outdoor play and play at recess has also been shown to strengthen problem solving and conflict resolution skills<sup>60-62</sup> while providing opportunity for social and emotional learning such as the ability to control aggression and regulate feelings of anger and frustration.<sup>63</sup>

Unfortunately, access to unstructured play during school is often limited, in part, due to:

- A lack of designated teacher supervision time within collective agreements that can reduce the willingness to allow unstructured play opportunities;

- Curriculum structures that focus on prescriptive, gross motor play experiences (i.e., organized activity in gym class), which diverge from the importance of creating free time for unstructured play;
- Restricting unstructured activities at recess by use of excessive safety rules;
- Withholding recess as a disciplinary action; and
- Restricting or prohibiting outdoor play or recess periods during inclement weather.

Complicating this scenario is the perception, by some educators, that they may be held liable or disciplined if a child is injured while under their supervision. This concern is embedded in the duty of care educators have that is described in provincial or territorial education acts (that of a careful and judicious parent or similar to that of a kind, firm and judicious parent (*loco parentis*)) coupled with the perceived standard of care. Similarly, educators often believe that they do not have adequate training in or direction to promote physical activity, and that expected practices limit their ability to promote unstructured play.<sup>64</sup> Similarly, within a childcare setting, those practitioners may prioritize child supervision and safety over their need to be physically active.<sup>65</sup> Complicating this concern are: the time needed to prepare children for outdoor environments; and the challenges faced in providing watchful guidance.<sup>66</sup> Although these findings are related to the provision of services in childcare centres, similar responses were provided during our interviews of educators.<sup>67</sup> As a result, educators' responsibilities regarding access to recess should be clarified and consistently applied across school board jurisdictions.

## Childcare acts

In addition to education acts, each province and territory has developed and implemented childcare, daycare, early learning or early years' acts, with the name of the act dependent on the

province or territory. These acts generally define the responsibilities and requirements of facility managers and/or early childhood educators, including supervision and programming details and supervisory and operational requirements. These acts also typically provide licensing and compliance schemes, funding and allocation of resources to childcare, childcare accommodations and implementation in specific provinces or territories. Information may also be provided to help families appropriately choose childcare services and programs. As such, families can have better understanding of information relating to childcare and how childcare services and programs operate. Childcare acts are continually reconfigured to better reflect the goal of providing children and families with adequate care for the early years of children's lives. They are influenced by the perspectives of parents and families to better reflect the world in which the children live.

The level of direction contained in these acts is often in stark contrast to that provided by education acts, which deal principally with the duties to support the safety and education of students, while the provision of services is defined in school board policy and operationalized at the school level. This difference is especially evident when early childhood education and care (ECEC) programs are co-housed within schools as rules affecting the provision of ECEC services are often substantially different from those used when school is in session. Also, failure to adhere to childcare acts and their regulations can result in administrative penalties, fines, compliance orders, and other penalties that are relative to the length and severity of violations.

While these acts define requirements for ECEC programs they are often limited by a lack of recognition of the benefits for the children participating in such programs including increased socialization and transferable academic skills (i.e., language, literacy, and math skills). These benefits

have been described in two evidence reviews,<sup>68,69</sup> and advocacy has been undertaken to press for the development of universal ECEC programs.<sup>70,71</sup>

Efforts should be made by provinces and territories to provide consistent, evidence-informed direction at a similar level of detail across both education and childcare acts. Consideration should also be given to establishing legislation that supports universally available ECEC programs. The need for such programs is based on their established benefits coupled with the increasing need and demand for child care in Canada resulting from, for example, the increased number of women in the workforce and one-parent families. Indeed, 46% of parents of children aged 14 or under in 2011 used a type of childcare for their children, with the trend suggesting an increase in demand and need for childcare.<sup>72</sup>

### **Liability and negligence**

As with education and childcare acts, liability and negligence falls within the responsibilities of provinces and territories, with each providing its own legislative base. Six provinces have developed a provincial occupier's liability act (BC, AB, MB, ON, NS and PEI) while three others and the three territories rely on common law, case law and related statutes (SK, NL, NB, NWT, NU and YT). The province of Quebec relies on its Civil Code and case law. Although the uniqueness of these approaches may limit the applicability of jurisprudence from one province or territory to another, they are all based on the owner's responsibility to make their premise "*reasonably*" safe and are affected by *joint and several liability*. Such an approach is in stark contrast to that used in Norway. This country supports a lifestyle that embraces outdoor living, including access to unstructured or risky play. In supporting this approach, the responsibility for managing risk falls on the person entering the property, as opposed to the Canadian approach that places responsibility on the owner

of the property. It is recognized that these are two fundamentally opposing approaches to addressing a single issue, but it hints at the core societal shifts in Canada that have resulted in the movement away from unstructured play.

The interviews that were undertaken for this work have shown that, in Canada, municipalities and school boards are concerned with the possibility of child injury on their properties, and the likelihood of encountering a legal claim (often driven by parent or caregiver complaints) with its resultant effects on decision-making.<sup>67</sup> Municipalities have, for similar reasons, implemented by-laws to restrict play, including fines for climbing trees, bans on street hockey or street play, or requiring permits to access public space for play. These safety requirements are often implemented without consideration of child development needs, the actual likelihood of an accident, or the potential severity of injury. Such decision-making limits (e.g., prohibiting tobogganing on hills) come into effect when, for example, play apparatus, structures, activities or opportunities are removed in order to reduce the likelihood of injury. Such decisions appear to run against the notion of maintaining a "reasonably safe" play space.

The challenge is to separate the consideration of safety (the removal of hazards from the site) with access to challenging play (the ability for children to test their limits). The view of many play experts is that play spaces should be 'as safe as necessary,' not 'as safe as possible.' That is, hazards need to be removed, but acceptable risks ought to remain in order to permit the long-term benefits of unstructured play. This separation is complicated by the Canadian Standards Association's (CSA) standard for "Children's Play Spaces and Equipment" (CAN/CSA-Z614). This standard provides a foundation for playground safety that is designed to minimize the likelihood of serious and/or life-threatening injuries, but is not intended to address child development needs. It is voluntary



and its *intended use* is not specified. Therefore, the user determines its application. Common practices associated with play spaces, however, are strongly influenced by this standard as they may be applied as a minimum safety requirement or safety guideline by decision-makers. As such, injury prevention is valued while the social, psychological and physical benefits of unstructured play may not be considered.

This concern has been the subject of a recent international discussion document concerning risk, liability and children's play in public spaces.<sup>73</sup> It has highlighted, in part, the need for: better data on the cost and prevalence of litigation; engagement of insurers, risk managers, and the legal profession in risk-benefit discussions; promotion of a risk-benefit analysis approach to assessing safety; and developing a proportionate risk management approach. Such approaches are also required in Canada and could be supported by a community consultation process across the country. The goal of such a consultation would be to gain an understanding of the local concerns of all stakeholders, and evaluate the benefits and challenges associated with supporting unstructured play in communities. As a result, a common approach could be developed that supports children's happiness while permitting the development of the skills and competencies necessary to succeed as adults.

### Joint and several liability

Underlying the concerns associated with liability and negligence is the principle of *joint and several liability*, whereby a successful plaintiff (the injured party) in a liability lawsuit may recover up to 100% of the compensation awarded from the defendant who is able to pay, regardless of the degree to which that defendant is found to be negligent. Due to this principle, school boards and municipalities are often included in lawsuits even though they may have minimal responsibility for the underlying incident.

As a result, some municipalities and school boards have been known to eliminate activities that have elements of risk, and to install processes and play equipment that minimize the possibility of injury. While some insurance providers have demonstrated a willingness to settle out of court rather than to pursue a judicial outcome, others have assumed a claims philosophy where they only pay when there is negligence. As such, consistent approaches concerning the assessment of risk and the payment of claims would provide support for improved implementation of play policies, and provide a basis on which to develop a risk-benefit analysis approach that provides children with the opportunity to receive the benefits associated with unstructured play. Steps should be taken to reform joint and several liability so that the compensation paid towards an injured party is directly proportional to the degree to which the defendant is negligent.

One province has reconsidered the assignment of negligence payments. The Province of Saskatchewan's Negligence Act provides for the "apportionment of damage or loss" and dictates that if a defendant cannot afford their proportion of the liability damages, the remaining amount will be equally apportioned among all parties. This could include the plaintiff if they are found partially negligent. Such an approach appears to reduce the costs that may result from a successful lawsuit in Saskatchewan, but further analysis is required to determine its applicability to other provinces and territories.

## Summary

A common theme of this discussion is that our legal framework, organizational structures and the decisions taken by institutions may be inadvertently resulting in long-term harms to Canadian children, while providing minimal short-term benefits. Available data have shown that Canadian children are less physically fit, and have greater incidence

of mental, emotional and psychological challenges than previous generations. These data, however, are limited due to their age, comparability, and the lack of detail that is necessary to inform decision-making. At the same time, our children are playing less both indoors and outdoors, and there are increasing numbers of constraints placed on their access to unstructured play. Although it is difficult to demonstrate a causal relationship, strong inferences can be drawn that support the relationship between the ongoing systematic societal and governmental structural changes and their effects on children. Such systematic negative effects have been described as *structural violence* within human rights literature. It is defined as the societal structures, agencies or power distributions that prevent or restrict the obtainment of basic human need.<sup>74</sup>

Structural violence is often associated with poverty, race and social suffering, and efforts are being undertaken by many aspects of society to identify and respond to those institutions that have developed, implemented and maintained systematic approaches and processes that cause others harm. Structural violence can also manifest itself when any basic need is interrupted.<sup>75</sup> One of the overlooked interruptions is the basic need for children to engage in unstructured play. Throughout this discussion paper, efforts have been made to identify those challenges resulting from current societal, judicial and legislative approaches that have unwittingly resulted in limiting the emotional, social, physical, and mental potential of our children. The challenge is to identify where these harms are occurring and to determine how best to reverse them.

## Recommendations

Throughout Canada, there is a growing cadre of individuals and organizations that recognize the benefits of children's unstructured play and the challenges caused by a shifting social and regulatory

landscape. They are working to address these challenges at local, provincial, territorial and national levels, and are having success in reversing the trends away from structured play. There are, however, several wicked problems that limit their activities but could provide clues to reversing the movement away from unstructured play. These challenges have been separated into three broad categories, and suggestions are made to address these issues.

### The changing face of children in Canada

Canada is a country of many cultures. As a result of this diversity, steps must be taken to be culturally aware, sensitive and attentive to the needs and concerns of these cultures. This is especially true as we respond to the harms caused to Indigenous peoples and the *Calls to Action* of the Truth and Reconciliation Commission. Complicating these actions is the influence of socio-economic status on access to play.

To address these concerns, the following recommendations are provided:

- Provide cultural humility, competence and sensitivity training for all involved in providing access to play for children.
- Facilitate access to play so that every child in Canada has equal access to safe play sites and locations, and programs that support unstructured play.
- Support Indigenous peoples' development and implementation of play programs for their children.
- Provide funding for safe play site developments and play programs for low socio-economic status communities.
- Encourage a social climate where outdoor play is normal and valued in a variety of settings.

## Parental, caregiver and educator perceptions and risk communication

Parents, caregivers, educators, children and decision-makers are all subject to the influences of our changing communications landscape. These influences can range from the influence of parental peer pressure, to the way in which decision-makers respond to a complaint. It also speaks to the way that people hear, perceive and assimilate information. These influences can be counteracted by providing the best available information to those who need it in a format that is clear, concise and understandable. Such approaches would include, for example, the use of social media to influence the general population, provision of evidence-supported information to decision-makers, and identifying and supporting local champions. Similarly, governmental and corporate interests can influence how people react to information and the decisions they make by taking actions that provide clear support for and programs that foster access to play.

To address these concerns, the following recommendations are provided:

- Develop and implement overarching communications and social media strategies that provide information on the benefits of unstructured play for use by parents, caregivers and educators.
- Building on the success of the *Calgary Play Charter*, support and develop similar efforts in other municipalities, to further influence communities across Canada.
- Consider developing a play friendly city designation that supports the development of a National Play Charter and provides a road map for communities to become play friendly.
- Invest in a creative, multi-level, multi-sectoral, multi-modal, sustained national outdoor play communications and social media campaign.

## Legislation and liability

The provinces and territories provide the overarching legislative framework that addresses access to play. This situation allows each jurisdiction to tailor its approaches to meet the needs of its citizenry. It also provides a level of complexity that limits the development and implementation of national approaches. Similarly, within each province and territory there are specific acts and regulations that address education, the provision of childcare, and liability and negligence law with their associated complexities that could result in inconsistencies in approaches.

To address these concerns, the following recommendations are provided:

- Develop a discussion document summarizing the legislative, regulatory and insurance differences in Canada.
- Develop a summary of the available jurisprudence concerning play-based litigation.
- Prepare a comparison document summarizing the legislative and regulatory differences of peer-countries.

## Education and childcare

In their simplest form, education acts describe the requirements and processes necessary to provide education for children. This direction is used by school boards to develop programs and approaches in the communities they serve, and provide it to schools for implementation. As this direction moves through the various systems, inconsistencies in application can develop between school boards and among schools. Underlying these concerns is the concept that educators should manage children as would a careful and judicious parent (*loco parentis*) without providing an underlying framework on which to assess whether the requirement is being met. Notable among these considerations are the rules concerning access to recess. Childcare acts, on the other hand, provide

specific direction concerning the development of childcare spaces, with limited direction on programming.

To address these concerns, the following recommendations are provided:

- Within each province and territory, develop and implement programs and policies consistently among school boards and between schools.
- Within each province and territory, review education and childcare acts with respect to their consistencies and inconsistencies and then develop and implement legislation or administrative processes that support consistent access to unstructured play in both settings.
- Develop and implement consistent approaches to recess as a means of ensuring that every child has access to unstructured play in the school setting every day.
- Develop a framework on which to assess whether an action meets the *loco parentis* requirement of the law.
- Develop and implement legislation in support of universal, professionally delivered ECEC programs.

## Liability and negligence

The issues of liability and negligence also fall under provincial and territorial law. Under the current statutes, six provinces have established occupier's liability acts, three provinces and three territories rely on common and case law, while Quebec has established an approach based on their Common Law. Underpinning each situation is the concept of what might be done by a *reasonable person*, while leaving the Courts the ability to determine whether an action is *reasonable*. A second challenging principle is that of joint and several liability, which provides direction on how an award should be paid and may result in the inclusion of school boards and municipalities in lawsuits for circumstances in which they have limited influence. An additional concern is the manner

in which risks and hazards are assessed, and by extension the notion of "reasonableness." In Canada, the principal standard used in assessing play products and spaces was developed from the perspective of injury prevention, without considering child development requirements. A risk-benefit analysis framework and approach would provide a more equitable balance between injury prevention and child development while potentially addressing the concept of reasonableness.

To address these concerns, the following recommendations are provided:

- Review the available jurisprudence concerning liability and negligence related to children's play with a view to establishing a framework to describe "reasonableness" that could be considered nationally.
- Reform joint and several liability with a view to providing greater agreement between the degree of responsibility of the defendant and the amount of the award that must be paid.
- Develop an approach to risk-benefit analysis for children's play spaces based on current Canadian law and seek concurrence for its use by all partners and stakeholders.

Underlying many of these concerns is the need for timely, accurate and comparable data and information that can be used to develop effective policy that balances the elimination of hazard with the benefits of unstructured play. Currently available data are often dated, and do not provide the level of detail necessary to make informed decisions or to effectively compare information from different jurisdictions. Efforts are necessary to renew the current approaches and develop the underlying processes and procedures to provide clear easily assimilated information that reflects the Canadian situation to those who need it.



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