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PANELLISTS' RESPONSE TO "BEYOND PPE, WHAT ABOUT ME" Q&A SESSION

Invited Panellists:

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Legal	
Question	Panellist Response
Assuming that an incident happens during a camp activity-	As a preliminary point, note that for any compensation claim to succeed (whether by a victim, their parents, or their school), four elements must be present: i. Duty of care ii. Breach of duty iii. Damages or losses iv. The losses must have been caused by the breach and be foreseeable. If any of the four elements are missing, the claim will not succeed. Please always bear this in mind.
1) Is the onus on the activity I/C to prove that the duty of care is discharged?	1) No. The burden is on the complainant to prove that there has been negligent conduct. The service provider may raise a defence to rebut the allegations, and the court will decide based on the specific facts of the incident. The standard of proof required to establish negligence is the "balance of probabilities," meaning that if the court finds there is at least 51% evidence of negligent conduct, the claimant will succeed.
2) Can the activity I/C demonstrate that he/she had fulfilled the required duty of care, without any proof of documentation (e.g. RAMs form)? Vice versa, if the activity I/C has proven that he/she has completed all required documentation to ensure that Risk Assessment is done for the activity, could he/she still be charged for not fulfilling the required duty of care?	2) Whether the duty of care has been discharged depends on the facts. Evidence of proper documentation, safety checks, risk management, etc., may strengthen the service provider's case, but the absence of these does not automatically mean the claimant will succeed or that the service provider is negligent. For example, a climbing centre may have completed documentation, RAMs forms, safety briefings, equipment checks, etc., but could still be found liable for negligence if it allowed an unqualified instructor to conduct the activity. In such a situation, the centre's documentation, RAMs forms, safety briefings, and equipment checks would carry little weight.
If an incident happens due to a pre-existing condition of a participant that was not made known to me (As a service provider/activity I/C), could I be charged for failing to fulfil my required duty of care?	It all depends on the facts. If a student had a pre-existing spinal condition that he did not disclose and subsequently injured his back from a fall during a rappelling activity due to equipment failure or instructor negligence, the

Legal	
Question	Panellist Response
	instructor cannot evade liability on the grounds of non-disclosure of the pre-existing injury. This is because it is foreseeable that a fall from height could result in spinal or orthopaedic injuries. Conversely, if a student had a pre-existing heart condition that was undisclosed, and he faints or collapses at the start of a rope challenge course (due to height-induced stress or fear), it can be argued that the service provider could not reasonably foresee the student's reaction. The service provider can operate under the assumption that any participant enrolling in a rope challenge course understands the inherent risks, including the activity being conducted at height. In any case, note that a service provider cannot be held liable merely for breaching a duty of care. As outlined in Q1 above, for a negligence claim to succeed, all four elements must be established. The complainant cannot succeed in a claim solely based on a breach of duty. Even if the service provider breached the duty of care, if the complainant did not suffer injury, or if the breach did not cause the injury, or the injury was not foreseeable, the claim will fail.

Insurance	
Question	Panellist Response
Is there a minimum insurance coverage that OAE providers must offer to freelancers, and if so, what are the specific areas of coverage?	There is currently no specific minimum insurance coverage that OAE providers must offer, at least until such time when it becomes mandatory under the Industry Standards Framework. However, as Michael explained during the session, there is a clear need to consider some form of coverage for freelancers in case of potential litigation arising from their work on behalf of the operators. It is advisable to have coverage for the entity (operators), their employees, and the freelancers themselves.
In the context of freelance work in the OAE sector, what are the key considerations for obtaining insurance coverage?	There are two areas to consider for freelance work within the OAE sector. One is their general duty of care or liability under tort law, and the other is their duty of care in a professional capacity when providing expertise and professional services to clients. The basic policies to consider would include both Public Liability insurance and Professional Indemnity insurance.
Can my professional indemnity insurance cover me if I were providing advice in my personal capacity outside of work?	This would depend on how you define "outside of work." Traditionally, professional indemnity insurance seeks to cover advice or actions taken in the capacity of the profession for which the individual is qualified or accredited. Providing advice in a professional capacity, whether paid or unpaid, may still have legal implications if the person receiving the advice relies on it and suffers financially or otherwise as a result. Intent is crucial in such situations. The key point here is not whether the claimant will ultimately succeed in their case, but rather the potentially tedious and expensive legal costs involved.

Council-related	
Question	Council Secretariat's Response
In view of the uncertain and variable nature of legal matters, insurance coverage and employment rights, what then can the Council provide to freelancers to give them a peace of mind?	As independent contractors, freelancers should prioritise self-education on their rights and responsibilities by seeking information from agencies such as NTUC's Freelancers and Self-Employed Unit (U FSE), MOM, and NLB. These agencies offer valuable resources, including sample contracts and reading materials, to equip freelancers with essential knowledge. Practitioners are encouraged to stay informed about the progress of a group insurance plan focused on Public Liability (PL) and Professional Indemnity (PI) coverage by connecting with the National Instructors and Coaches Association (NICA). The OAE Council is currently engaged in various initiatives aimed at enhancing the sector. We encourage you to stay updated on the Council's initiatives and gain additional insights through its website (SingaporeOAE.sg).
When the Standard is established, will it be legally binding for all OAE providers to comply with the Standards?	The Singapore Standard for OAE Activities will serve as a code of practice for all OAE providers in Singapore. It will outline the expected level of OAE practices for providers and practitioners in the country. While it is not a legally binding document, the standard may be used in dispute resolution or legal proceedings to assess whether the required duty of care has been fulfilled by the parties involved.

Cross-Specialisations	
Question	Panellist Response
How can operators navigate instances where clients insist on specific aspects such as the use of personal protective equipment (PPE) and the conduct of activities?	Providers and practitioners are advised to: i. Evaluate requests against known standards and legal requirements. ii. Set and enforce safety rules. iii. Ensure proper provision, maintenance, and usage of equipment. With the establishment of the Singapore Standard for OAE Activities, providers who adopt and meet the requirements of the Standard can assure clients that their services conform to national standards. While accommodating client-specific requests for unique contexts, ensure these do not conflict with established standards. We recommend maintaining open communication and discussing any concerns or conflicts. Clarify whether the main contractor will be providing the specified PPE or if fair compensation is offered for subcontracting the supplies. Adherence to the Workplace Safety and Health Act (WSHA) 2006 is mandatory. The law takes a dim view of: i. Providing defective equipment ii. Failing to maintain equipment properly iii. Not ensuring correct equipment usage iv. Deferring to clients on safety matters against your professional judgment These lapses can have serious legal consequences. Always prioritise safety and compliance in your operations.

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