

Municipalities Open Door to Mandatory Four-Sided Pool Fencing

Dr. Robert Lyons

Drowning remains the second leading cause of accidental death of Canadian children aged one to four. For every child in this age group who drowns, three suffer permanent brain damage due to near drowning. Seventy percent of these accidents occur in swimming pools. Public education has failed to change the perception of individual risk or adequately modify parental behaviour in regard to backyard pools. Drowning is silent and takes only minutes. Yet, parents still think *their 24/7 supervision alone* is up to the task.

Stakeholders involved with swimming pool safety are left wondering what needs to change to reduce the incidence of pool drowning and near drowning of young children. Legislation to make backyard pools and spas safer for children is now talked about.

Four-sided Fencing

The most recent initiative under scrutiny in Canada is mandatory



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“four-sided fencing” – so called because the legislation does not recognize the side of the home that faces the pool as the fourth side of a property fence. The legislation would apply to any water feature more than 24 inches deep, i.e. pools, hot tubs, and many ponds.

Three sided fencing encloses the pool, but uses the house as a fourth side. Unless a child-proof dead bolt is installed, and manually inserted, a resident child can potentially gain access to the pool from this fourth side. (For reasons of fire safety, external doors cannot be key or combination locked from the inside.) More seriously, many backyards have a recreation or BBQ area, even a play area, with direct pool access. Four-sided fencing, which allows the property fence to comprise up to three sides, encloses all four sides of the pool so that both neighbour and resident/visiting children are protected.

In 2008, despite vigorous opposition from the pool industry, Toronto passed a by-law making a 1.2 metre

four-sided fence with an approved self-latching gate mandatory when constructing a new pool or replacing a fence or enclosure on a property where there is a pool. On the other hand, Ontario’s second largest city, Ottawa, briefly considered four-sided fencing then quietly let the matter drop. In February 2009, the Middlesex-London Board of Health voted to ask the county’s municipalities to adopt a by-law similar to Toronto’s.

Smaller municipalities – for example the Township of East Gwillimbury, north of Toronto – have engaged their citizens in a public discussion of four-sided pool fencing. That township is now considering amending an existing by-law to make four-sided fencing a requirement for new pool installations.

The first goal of advocates on both sides is not always to be informed and inform; it is too often to mobilize opinion to their “side.” This is not necessarily in the interest of children, the object of the exercise.

Facts and Experiences

No one has all the answers, but we should at least start with the facts and learn from the experience of other juris-

dictions, which have passed and amended laws to make backyard pools safer:

1. Unlike legislation requiring seat belts in all new cars, legislation applied to new pools only will take a very long time to influence drowning rates, notwithstanding new pool owners are statistically a higher risk group. On the other hand, applying legislation retroactively to pool owners raises administration, implementation, and probably enforcement costs per installation. An administratively practical compromise requiring compliance when any home is sold can accelerate proliferation.

2. Federal and provincial governments are better equipped to prescribe common building code safety standards than municipalities. A patchwork of municipal regulations will, even in the best case, be much less cost effective and problematic for the pool industry.

3. Federal and state governments are taking the lead in other western countries, but Canada's federal and provincial governments are so far missing in action. These levels of government surely can't imagine the risk to children is localized to particular communities. Communities that

haven't yet experienced the tragedy of a pool drowning are at no less risk of it happening in the future.

4. No layer of protection, including four-sided fencing, is entirely *passive*; all are ultimately tools for individual caregivers. A critical factor in reducing drowning is therefore *engaging families to make personal choices*. The US Consumer Product Safety Commission, backed by years of research, adopted this in its recommendations to parents and state legislators.

5. All enacted US federal and state (with the exception of New York and Connecticut, which require a pool alarm) legislation allows more than one approved compliance measure among: barriers; alarms on doors, gates and for pool; and safety covers. France does likewise.

6. Australia, on the other hand, in 2006, mandated four-sided fencing of all residential pools. In response to an upward spike in drowning that has persisted since December 2007, mandatory annual inspection of pool fences is now being hotly debated. There is strenuous opposition to this measure – responsible people paying for the irresponsible who don't maintain their fences.

7. Parents need to be an *active* applicant of any layer of protection around

their pool. They are the biggest stakeholders and can't be bypassed.

It is disappointing to hear misleading slogans propagated by "professionals" who should know better, such as the latest: "Four-sided fencing is the only passive strategy that is proven to reduce drowning." This claim defies common sense, but rather than repudiate it, let's just call it "unscientific." Is the claimant actually aware of *all* worldwide research into drowning prevention? It is intended to influence, rather enlighten. Note the loaded words "only" and "proven," and the ambiguous word "passive."

Not a Silver Bullet

Just as cars come with seat belts, pools should come with in-built perimeter barriers. Then, just as the public has come to respect and use car seat belts, the pool owning public should come to respect and use a four-sided barrier around the pool. Legislation that furthers this long-term goal is laudable; badly constructed or administered legislation is counterproductive. While drowning is always preventable, preventing drowning is very difficult, and four-sided fence law is not a silver bullet. Beware single-minded, blinkered advocacy. [MW](#)

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