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An Insurance Primer for Churches and Charities

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**Insurance 101:
A Primer for Churches and Charities**



Presented by Kenneth A. Hall, B.A.

Church & Charity Law Seminar 2008

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1: Insuring Charitable Property



- Fire Insurance: The traditional responsibility of trustees and board members
- The cost of non-residential building construction (including labour and building materials) has risen drastically across Canada over the past 5 years
 - 30% or more in Central Canada and the Maritimes
 - 60% to 100% in British Columbia and Alberta
- Accumulation of higher value contents in the 21st century church (i.e. computer, video, sound and telecommunications equipment)
- Importance of up-to-date property appraisals or formal contractor's opinions (replacement cost versus market value)
- Increasing incidence of underinsured claims in partial and total losses
- Implications of the standard Co-insurance Clause and Penalty

Co-insurance

The Formula:

$$\frac{\text{Insurance Carried ("Did")}}{\text{Insurance Required ("Should")}} \times \text{Amount of Loss} = \text{Claim Settlement}$$

Insurance Claim Case Study:

- Church building size – 16,000 square feet
- Current cost per square foot to replace - \$150.00
- Building replacement value - \$2,400,000
- Insurance coverage limit - \$1,000,000
- Partial fire claim amount of loss - \$600,000
- Policy Co-insurance Clause – 90%


Co-insurance.... continued

Actual Claim Calculation:


$$\frac{\$1,000,000}{\$2,400,000 \times 90\%} = 46.3\% \times \$600,000 = \$277,800 \text{ Claim Settlement}$$

Implications:

- *Because the building was insured for significantly less than current replacement value, the church is a co-insurer and is now responsible for paying the balance of the loss, \$322,200 of a \$600,000 claim*
- *The church also has an unusable building until they are able to come up with \$322,200 for its share of the claim under the terms of the co-insurance clause*

Property Insurance Checklist 

- Agreed Value Clause
- No Same Site Replacement Requirement
- Replacement Cost versus Actual Cash Value
- Building By-Laws, Demolition and Debris Removal
- Broad Form (i.e. "All Risks") versus Fire & Extended Coverage (i.e. "Named Perils")
- Beware of Exclusions for:
 - Flood, earthquake and sewer backup
 - Equipment Breakdown
 - Personal Property
 - Off Premises Coverage

2: Hidden Claims Cost 

- The cost of repairing or replacing buildings destroyed by fire, wind or water is often only the beginning of the loss or damage costs sustained by a charity in a claim
- Loss of revenue and the additional costs of reproducing original documents, renting alternate facilities, telecommunications and computer installations, advertising temporary locations and storage of salvaged contents can equal the cost of repairing bricks and mortar

Loss Expense Checklist

- Loss of Revenue
- Other Loss Expense Coverage Extensions, including:
 - Extra Expenses
 - Expediting Expenses
 - Preservation of Property
 - By-laws, Demolition and Debris Removal
 - Fire Department Service Charges
 - Professional Fees
 - Valuable Papers and Records
- Flexible Aggregate Extension Limit versus Sub-limits

3: Liability Insurance: "The Fine Print"

- Sometimes in order to save a few dollars, consumers make costly mistakes when purchasing important liability protection because of common myths and misunderstandings about insurance
- Gaps in coverage can adversely affect the assets and financial survival of the organization, and threaten the personal assets of directors, officers and members

Common Myths

Myth #1: All Liability Policies are the Same

Reality: Differences between insurance policies can be significant and are often contained in the "fine print" of insuring agreements, conditions, limitations, definitions, exclusions and endorsements

Myth #2: Charities only Need One Kind of Liability Coverage

Reality: Almost all churches and charities require at least two kinds of liability protection to cover against the entire range of insurance liability risks, including General Liability and Directors & Officers Liability. Some churches and charities, due to the nature of their structure, assets, operations and ministries may also require other forms of liability protection, including Professional Liability, Fiduciary Liability, Media Liability and Third Party Liability.

Forms of Liability Protection

General Liability (CGL)	Directors & Officers Liability (D&O)
<p>Bodily Injury Physical injury, disease, death, mental injury, etc.</p> <p>Property Damage Damage to tangible "third party" property</p> <p>Personal Injury Libel, slander, defamation, invasion of privacy, etc.</p>	<p>Negligent Acts, Errors, Omissions, Misstatements, Breaches or Neglect of Duty, etc.</p> <p>Examples:</p> <ul style="list-style-type: none"> - Wrongful Dismissal - Other Employment Practices - Discriminatory Practices - Discipline Proceedings - Financial Mismanagement - Breaches of Contract

General Liability Checklist

- Directors, Officers, Trustees, Board Members, Committee Members included as "Insureds"
- Employees, Members, Adherents and Volunteers included as "Insured's"
- Coverage for all insurable Civil Damages ("Compensatory plus Punitive, Exemplary and Aggravated)
- Worldwide Policy Territory (suits brought in Canada and the U.S.)
- Legal Defense Costs in excess of Policy Limit
- Participants Coverage (sports, recreation, camps, etc.)
- Blanket Counselling ("professional" versus "lay"; and "religious" versus "other")
- Broad Form Personal Injury coverage including mental anguish, humiliation, harassment and discrimination
- Non-Owned Automobiles, Watercraft and Aircraft

4: Abuse Liability Protection

Abuse claims remain the #1 liability risk for Christian Charities in Canada!

The good news! Over 70% of our client organizations now have an approved prevention plan in place for their children's and youth ministries and programs

The sobering fact is that abuse claims continue to happen! Churches and youth-serving charities are extremely vulnerable and must guard against complacency by maintaining the policies, procedures and screening in their preventions plans

- Standard IBC policies now contain a common Abuse Exclusion
- Only a handful of Canadian insurers offer coverage for abuse claims
- Coverage for abuse claims varies significantly between insurance companies
- All insurers offering abuse protection require evidence of a prevention plan

Abuse Coverage Checklist

- "Occurrence" coverage versus "Claims-made" coverage
- Coverage for all insurable Civil Damages (Compensatory plus Punitive, Exemplary and Aggravated Damages)
- Criminal Defense Costs for Wrongful Accusation
- No-fault Therapy and Counselling Benefits for Victims
- Exclusions and restrictions to beware of:
 - Insured versus Insured Claims
 - Failure to comply with CFSA or other statutes
 - Grounds to Suspect
 - Restrictions on Stacking of Coverage Limits
 - Claims caused by other parties on premises
 - Coverage Territory

5: Directors and Officers Liability Checklist

- Claims-made coverage with a retroactive feature for "Prior Unknown Acts"
- Entity coverage, including coverage for:
 - a) claims against directors and officers
 - b) claims the organization is required to indemnify directors and officers
 - c) claims against the organization entity
- Directors, Officers, Trustees, Board Members, Committees as "Insured's"
- Employees, Members, Adherents and Volunteers as "Insured's"
- All insurable Civil Damages covered
- Worldwide Policy Territory (suits brought in Canada and the U.S.)
- Legal Defense Costs in excess of Policy Limit

Continued...

Directors and Officers Liability Checklist...continued

- Employment Practices coverage, including wrongful dismissal and employment-related humiliation, harassment and discrimination
- Outside Directorships
- Newly-Acquired or Newly-Formed Non-Profit Subsidiaries
- Spousal Endorsement
- Penal Defense Costs
- Accreditation, Certification, Assessment, Standard Setting and Peer Review
- Administrative Tribunals/Boards of Inquiry
- Optional Extended Reporting/Discovery Period (minimum 12 months)

6: Outside User Groups

- Direct Insurance versus Indirect Insurance
- The negligence of third user groups renting or using premises can greatly increase the liability risk for the host organization, especially if the user group is uninsured
- Examples of third party user groups:
 - Other churches and charities
 - Community associations
 - Businesses
 - Private groups and individuals
 - Contractors working on premises

Outside User Groups....continued

- Host organizations should always maintain adequate liability protection to cover their own responsibility for the safety of the building and premises, but they should never be left "holding the bag" for the negligent actions of user groups and their leaders, volunteers, participants and guests in causing bodily injury or property damage
- By allowing uninsured outside user groups, or by trying to add them to the host church policy as a rider, resultant lawsuits and insurance claims caused by the negligence of the user group can adversely affect the legal liability, insurance premiums and insurability of the host church

Outside User Groups....continued

- The extra risk created by outside user groups underscores the importance of establishing sound property risk management guidelines, including:
 - Clear written property use guidelines which spell out prohibited occupancies and proper rules/regulations for outside user groups
 - Formal rental/occupancy agreements requiring outside user groups to provide proof of primary General Liability coverage (minimum \$2,000,000) including the host organization as additional insured
 - Contractors, sub-trades, landscaping and snow removal services should also be required to provide proof of General Liability coverage (minimum \$2,000,000) for their negligence in causing bodily injury or property damage on the premises, and including the host organization as additional insured

7: Canadian Charities Abroad



- "I've a feeling we're not in Kansas anymore!"... North Americans in the developing world
- Church, mission, relief and development organizations operating outside of Canada face a unique set of risk management, legal liability and insurance issues
- Career missionaries versus short-term missions
- "Church to church" missions = greater responsibilities for local church boards
- Operating orphanages and residential facilities outside Canada (no abuse coverage available)

Missions, Relief and Development Risk Management and Insurance Checklist



- Insurance for real property (bricks and mortar) outside Canada
- Worldwide Property Floaters (equipment)
- "No-fault" out of country Medical Insurance
- Full Worldwide Liability Policy Territory (civil suits brought in Canada & the U.S.)
- Kidnap, Ransom and Extortion Insurance
- Umbrella Liability – Excess and Drop-down Protection (including non-owned vehicles)
- Directors & Officers Liability
 - Due Diligence: Informed consent, travel advisories and foreign national partners
 - Joint Ministry Agreements and Agency Agreements versus Contracts for Service

Thank You!



Disclaimer: The information contained in this seminar has been compiled by Robertson Hall Insurance Inc. to assist churches, charitable organizations and their leaders in better understanding insurance and legal issues and to help in reducing or eliminating foreseeable and preventable risks associated with their ministries, programs, operations and events. However, your organization may have insurance requirements and risks that are unique to your premises or operations which are not addressed by this seminar and should be specifically reviewed with the appropriate qualified professional. This publication may not be reproduced in any way without the written consent of Robertson Hall Insurance Inc.

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