

CARTERS

BARRISTERS
SOLICITORS
TRADEMARK AGENTS

The 2016 Annual *Church & Charity Law*TM Seminar

Mississauga – November 10, 2016

DUTY OF CARE INVOLVING TRAVEL AND FOREIGN ACTIVITIES

By Kenneth Hall, B.A. (Hons), Insurance Broker

khall@robertsonhall.com

Are you good to go?

DUTY OF CARE: TRAVEL AND FOREIGN ACTIVITIES

ROBERTSON HALL
INSURANCE

2016 Church & Charity Law Seminar

Injury and Liability Risk

What is Legal "Duty of Care"?

Based on common law precedents and confirmed in Supreme Court of Canada decisions, employers and sponsoring organizations owe a duty of care to individuals carrying out their work, whether for-profit or not-for-profit, including while travelling and/or working abroad

Legal Liability is based on the following key questions...

Foreseeability i.e. To what degree could and should the risks associated with the work being done that caused injury, illness, or loss of property harm have been foreseen, reduced or eliminated by the organization as the employer or sponsoring organization?

Duty of Care i.e. What would a reasonable and prudent person or organization do, or not do, in order to prevent harm or loss of property, based on foreseeable risks?

"In tort law, a duty of care is a legal obligation imposed on individuals or organizations to adhere to a standard of reasonable care while performing any activities that could foreseeably harm others"

Injury and Liability Risk

What is Legal "Duty of Care"? continued

Civil courts and common law precedents have long held there is no difference between **Actual Knowledge** (facts or information you have at hand) and **Implied Knowledge** (facts or information you could obtain by making reasonable inquiries) when it comes to the negligence of an organization and its leaders for injuries or illness suffered as the result of sponsored operations and activities

There is no defense based on ignorance, or because your organization is doing good work, with respect to the safety and security of your staff, short-term mission participants or expatriate missionaries. From a legal standpoint, your organization is held to be the expert!

Directors, officers, ministry personnel and trip leaders all have a legal duty of care and responsibility for the health and safety of workers while abroad, just as with any other sponsored program or ministry here in Canada.

Foreign Activity Risk Foreseeability

Harm to Persons

- Injury, Disability, Death
- Serious and Permanent Illness
- Mental Health
- Kidnapping, Abduction
- Terrorism

Financial Harm

- Insured or Uninsured Lawsuits
- Directors' Personal Liability
- Joint and Several Liability for Partners
- Misuse of Donor Funds Overseas
- Funds Transfer Fraud/Cyber Crimes

Reputational Harm

- Loss of Good Will
- Reduced Donor Support
- Revocation of Charitable Status
- Civil Liability Awards
- Bill C-45

Legal Liability Risk for Missions, Relief and Development Organizations (Claims Examples)

- ❖ Resident in children's orphanage in Africa operated by Canadian charity obtains landed immigrant status as an adult and sues organization and its director for alleged abuse
- ❖ Teenager from U.S. volunteering with Canadian church on mission team in Europe is injured as passenger in an automobile accident and sues church and board members
- ❖ Adult on mission trip building homes suffers heart attack, is airlifted to nearest country, incurs over \$200,000 of uninsured medical bills and sues sponsoring organization
- ❖ Over \$20,000 in donor funds to purchase equipment goes missing and is untraceable from international money wire transfers to partner organizations in the field
- ❖ Teenager on short-term mission trip falls from hotel balcony in the Dominican Republic resulting in quadriplegia and in a \$17,000,000 lawsuit against sponsoring organization and church leaders on the trip for inadequate supervision and unsafe conditions
- ❖ Kidnapping of a Christian aid worker in Sudan involved months of captivity before release. Resulted in a lawsuit for civil damages against the charity and directors based on alleged willfully ignoring the threat of abduction, putting the worker in a dangerous situation and causing mental anguish during and since her abduction.

Mission Worker Risk

Similarities to For-Profit Global Workers and Executives:

- Advancing the organization's objects and purposes
- Long term residency outside Canada, often with family
- Need for effective health care services and insurance protection
- Need for pro-active and emergency security and medical advice, support and consulting services (e.g. civil unrest, war, terrorism, natural disaster, kidnapping, cardiovascular events, malaria, etc.)

Mission Worker Risk



Differences to For-Profit Global Workers and Executives:

- Involved in charitable work to advance the lives of others, sometimes 24/7, including an incredible variety of mission, relief and development around the world
- Lack of corporate financial resources, often raising their own support for expenses on the mission field
- Lack comprehensive medical insurance and health care support
- Lack pro-active and emergency security and medical advice, support and consulting services (e.g. civil unrest, war, terrorism, natural disaster, kidnapping, cardiovascular events, malaria, etc.)

These Differences create a potential "gap" in the ability to meet legal duty of care for mission workers!

Legal Liability Risk for Missions, Relief and Development Organizations (Source of Claimants)



Highest to lowest risk for lawsuits:

1. SHORT TERM MISSION PARTICIPANTS
2. STAFF MEMBERS OVERSEAS
3. EXPATRIATE MISSIONARIES
4. FOREIGN CITIZENS
 - a) Employees and Volunteers
 - b) Clients/Program Recipients
 - c) Other Third Parties

The Rise of Short-Term Missions



Between 1979 and 2006 the number of annual short-term mission trip participants in the U.S. and Canada increased from 24,200 to 1,760,000 *

In the 1970s you could count on one hand the number of youth groups engaging in short-term missions!

Now it's an annual experience, a rite of passage and an expression of faith in action including for teenagers in many churches across Canada

* From "The Impact of Short-Term Missions at the Local Church Level" – By Gary Wagner

Legal Liability Risk for Missions, Relief and Development Organizations (Source of Claimants continued)



The largest single legal and financial risk to your organization, assets and leaders associated with international missions, relief and development activities is bodily injury, sickness, disease or death to one or more workers, especially short-term mission participants!

Why?

- Compared to career missionaries, most short-term mission participants have temporary or limited commitment to the mission-sponsoring organization
- Unlike career missionaries in the field, individuals on short-term missions are much more dependent on the supervision and care of the organization and its leaders for their safety and security
- Short-Term Mission participants are returning to families, jobs and financial commitments
- However well-meaning, a short-term missionary (or their spouse and survivors) who is permanently or seriously injured, disabled, killed or who acquires a life-threatening disease, may have no financial recourse but to sue
- Legal Liability Waivers signed by or behalf of youth (i.e. minors) on short-term missions are generally considered legally unenforceable

Short Term Missions Risk Best Practices



We've put together a **5-Point Checklist of Best Practices** with practical tips, tools and resources to help your leaders **identify, reduce, eliminate, and transfer** risks associated with short mission trips abroad, plus some notes on the unique challenges and risks associated with trips involving youth (copies available upon request).

These best practices can help your organization to:

- Avoid unnecessary risk, injury and harm to your mission trip participants
- Provide a positive testimony for your church or charity to participants, to loved ones, and to your congregation and your supporters
- Reduce the possibility of exposing your organization to preventable lawsuits, including personal liability of board members

Overview of Mission Risks



Security

- Violent Crimes
- Kidnap & Ransom
- War, Civil War & Insurrection
- Terrorism

Health & Medical

- Infectious Diseases (HIV/AIDS, Ebola, Hepatitis B)
- Tropical Diseases (Malaria, Dengue Fever, Chagas)
- Poisonous Bites and Stings
- Cardiovascular Health (Heart Attacks, Strokes, etc.)
- Mental Illness

Injury & Liability

- Construction and Agricultural Injuries
- Automobile Accidents
- Other Transportation (e.g. Watercraft, Aircraft)
- Abuse and Molestation

Security Risk

Duty of Care Resources – Security and Health



Check with Global Affairs Canada (GAC) www.travel.gc.ca/travelling/advisories

- ❖ Travel Reports and Warnings for current safety and security issues, local laws and customs, entry requirements, health and other important travel information before planning or leaving on a trip. The reports are extremely helpful for planning purposes. Countries subject to a Travel Warning may indicate a recommendation that Canadians avoid non-essential travel, or avoid all travel to that country, or to a specific region within that country. **Note:** Warnings are subject to change and should be checked right up to date of departure and during the term of expat residency.
- ❖ Registration of Canadians abroad in advance of your planned trip so that GAC can contact and assist your group in the event of an emergency in a foreign country, such as a national disaster, civil unrest or notification of a family emergency at home
- ❖ Customized Medical and Security Warnings and Alerts are available through reputable private assistance companies such as International SOS, but only if your organization has access through comprehensive membership

Security Risk

GAC Travel Reports and Warnings (09/26/16)



Important Note: Warnings can be both by county and by region within countries

Level One – Exercise Normal Degree of Caution (e.g. U.S.A., Australia, Singapore)

- Individuals or groups are approved to travel to these countries or regions

Level Two – Exercise High Degree of Caution (e.g. Mexico*, Philippines*, China, Ukraine*)

- Individuals or groups are only recommended to travel to these countries or regions under the supervision of experienced leaders with the support and resources of recognized NGO's and local trusted partners in the field

Level Three – Avoid Non-Essential Travel (e.g. Egypt, Mexico (US Border), Nigeria, Sudan)

- Individuals or groups should limit travel to these regions to health care workers or other needed professionals who are under the supervision of experienced leaders with the support, security and resources of recognized NGO's and local trusted partners in the field

Level Four – Avoid All Travel (e.g. Afghanistan, Syria, Mali, Somalia, South Sudan)

- Individuals and groups should not be travelling to these countries or regions. **Note:** The only exception is as part of government-sponsored international relief initiatives with full security under the supervision of national or international police or peacekeeping forces.

* Indicates countries with heightened regional advisories

Security Risk

Duty of Care Resources



- ❖ Partner with international charities and agencies who already operate in the area you are working or travelling and/or utilize local individuals, churches, missionaries and organizations who can provide you with invaluable local insight, guidance, security and protection
- ❖ Create a medical emergency response plan (MERP) in advance including key medical, transportation, security and consular contact information for trip leaders and expats
- ❖ Work with a recognized medical and security assistance provider who can provide valuable resources before and during your duration of travel including travel advisories, travel trackers, assistance apps and the capability to provide 24/7 advice, evacuation and access to international-grade medical clinics. There's a world of difference in an emergency between a 1-800 number on the back of a Travel Insurance card versus having a truly global assistance company on your side!

Security Risk

Kidnap, Ransom and Security



- ❖ Violence, abductions and other crimes suffered by Westerners for political, ideological, religious and monetary reasons has been on the rise in the past decade
- ❖ Kidnap and ransom has become epidemic in certain Latin American, Asian and African countries
- ❖ The target victims of kidnappers have expanded from politicians and business executives to any foreigners and is increasingly being perpetrated by gangs for strictly monetary reasons, including express kidnappings

Security Risk

Kidnap and Ransom Insurance



- ❖ Kidnap and Ransom (K&R) insurance protection is available only through a handful of specialty insurers
- ❖ Policy coverage scope includes kidnap, ransom, hijack, wrongful detention, extortion and expenses related to crisis response hostage negotiation and legal services
- ❖ Coverage options can include Political and Security Evacuation
- ❖ Premiums are dependant on areas of operation, number of persons insured, frequency of travel and amount of coverage
- ❖ Concerns about purchasing K&R insurance by religious charities for workers and volunteers:
 - Faith and ethical objections
 - Coverage makes workers more of a target
- ❖ Emphasis on confidentiality for organizations with K&R coverage

Security Risk

Important Caution About Terrorism and Liability Insurance



Recent proliferation of terrorism and terrorist groups, even in regions previously considered lower risk including Tunisia, Mali, Burkina Faso, Kenya, Nigeria, Egypt, Somalia, Turkey, Ukraine, The Philippines, Indonesia, etc., in the past year alone

Higher terrorism threat to aid and missionary workers from Christian charities and NGO's in northern and sub-Saharan Africa, the Middle East and Southern Asia

In the aftermath of 9/11, virtually all liability insurance policies issued in the western world contain an absolute exclusion for terrorism, including potential negligence that an employer or sponsoring organization may have for a lack of care that results in injuries, fatalities, or third party property damage as the result of a terrorist act

Health and Medical Risk



Checklist for Foreign Travel:

Check with the Public Health Agency of Canada www.publichealth.gc.ca for information on Travel Health Notices, Clinics, Travel Booklet and recommended immunization for tropical and infectious diseases for yourself and your group, including the following:

Tropical Diseases	Other Infectious Diseases
Malaria Dengue fever Yellow fever Meningococcal River Blindness Cholera	Influenza (general) Avian Flu AIDS/HIV Hepatitis B Polio Ebola Zika Virus

Health and Medical Risk



Checklist for Foreign Travel:

Carefully screen missionary candidates, work teams and short-term mission volunteers for pre-existing medical conditions and any food or drug allergies, in order to avoid placing them in life-threatening situations and medical emergencies due to strenuous work projects, extreme weather conditions, high altitudes and only limited health care available

Have participants obtain permission from their doctor (especially travellers age 55 and older or with existing medical conditions) and ensure they take the appropriate vaccinations and medications as prescribed for infectious tropical diseases in advance of travel

- Examples:
- Antimalarial drugs
 - Twinrix (Hepatitis A and B)
 - Up-to-date Tetanus/Diphtheria vaccine
 - Typhoid vaccine

Visit an infectious diseases clinic for immunization 6 weeks in advance of travel for maximum vaccine efficacy

Health and Medical Risk



Checklist for Foreign Travel:

Emergency First Aid supplies should be carried with your worker appropriate to the regions and conditions in which you are operating

Examples:

- Epipens for use in case of severe and life-threatening anaphylactic to food, insects etc., in remote locations
- Antivenom supplies in either liquid form (must be refrigerated) or freeze-dried ampules for use in case of bites or stings by poisonous snakes, spiders, scorpions and frogs
- Sterile disposable hypodermic needles for use in case of emergency medical treatment and medications administered in local hospitals and medical clinics, or better yet contract with an international medical assistance company.

Health and Medical Risk



Remember!

In developing countries, hospitals and clinics could be hours or days away and the healthcare and medical supplies provided may be inferior or non-sterile by Western standards. The incidence of HIV/AIDS in many southern African countries exceeds 25% of the general population, (including medical workers) making blood transfusions potentially unsafe.

Note: Recognized Medical and Security Assistance providers (e.g. International SOS) have a network of certified international-grade hospitals and clinics located around the globe including safe, reliable ground transportation and air medical and security evacuation.

Health and Medical Risk



Hospital's ER "scary" for Canadians travelling abroad

"It was a shock when I got there with what the hospital was like", John said. The ER is scary as hell! When you're on the island and the resorts are beautiful and what you see is all really nice, but you get into Santa Clara and it was a real shock."

"There was no running water, no antiseptic and no blankets. The hospital was open to the environment, the beds were stained and staff wore their street clothes in the intensive care unit."

"I don't think the doctors there realized that the flight crew (i.e. medical evacuation) had better equipment than they had at the hospital."

"There's a million Canadians down there that have no idea what's going to happen to them if they get sick. Be prepared when you go down there. Have an emergency plan and make sure you're aware of the dangers."

From one Canadian Family's experience as told in a Winnipeg Free Press article titled "Oak Lake Family Reeling from Cuba Tragedy" – January 9, 2016

Health and Medical Risk



Checklist for Foreign Travel:

A Note About Mental Health Awareness, Especially For Youth

❖ A recent study at the University of Michigan titled *Psychological Resilience in Students on Overseas Experiences* confirmed the significant incidence of mental health events triggered by the stresses associated with travelling and studying abroad

❖ The vast majority of mental illness episodes and events reported by non-governmental organizations relate to young people under the age of 25, according to Dr. Robert Quigley, Regional Medical Director for the Americas, International SOS.

Health and Medical Risk



Checklist for Foreign Travel:

Mandatory Travel Insurance for ALL participants and leaders, including:

- ❖ Emergency Out-of-Province Medical Insurance
- ❖ Excess Hospital and Medical Benefits
- ❖ Prescription Drug Reimbursement
- ❖ Accidental Dental Expense
- ❖ Medical Evacuation and Special Transportation
- ❖ Ground and Air Expense
- ❖ Repatriation Benefit
- ❖ Life Insurance
- ❖ Accidental Death and Injury Benefits
- ❖ Optional Trip Cancellation and Interruption

Important: Make sure all travellers provide physical proof of insurance or better yet arrange "group" coverage with a guaranteed level of protection!

Health and Medical Risk



Checklist for Foreign Travel

Strongly Recommended Additional Travel Protection

The following can make all the difference in an emergency for your travellers and expats, and can provide peace of mind for their family and love ones at home and also keep your leaders out of court...

- ❖ Medical and Security Communication and Travel Advisories from an Assistance Provider
- ❖ Travel Tracker to help locate travellers and activate emergency assistance
- ❖ Assistance Smartphone App for travellers and trip leaders for communication in real time
- ❖ Security Evacuation, Kidnap Consulting indemnity or full Kidnap Ransom coverage (depending on region of travel)
- ❖ Medical Emergency Response Plan (MERP) for all destinations/events

Injury and Liability Risk



The Insurance and Legal Landscape

- ❖ Many liability insurance policies issued by Canadian insurers contain exclusions or limitations for bodily injury or property damage that occur outside of Canada and the United States
- ❖ There are now legal precedents for individual or class action suits by foreign citizens against mission sponsoring organizations in North American civil courts
- ❖ Importance of ensuring that your organization's insurance program includes General Liability and Directors & Officers Liability coverage with a full "Worldwide" coverage territory for lawsuits brought against your organization in Canada or the United States

Injury and Liability Risk



Transportation

- ❖ Automobile accidents are the #1 cause of death and injury for travelers abroad, whether in vehicles owned, rented or borrowed by the individual, business or organization
- ❖ The reason for the higher frequency and severity of auto accidents in developing countries include:
 - Older, poorly-maintained vehicles
 - Lack of vehicle safety standards and equipment
 - Poorly maintained and signed road systems
 - Inferior driver qualification standards
 - Lack of insurance standards
- ❖ All transportation and drivers, whether in automobiles, taxis, watercraft, aircraft or ferries should be carefully planned in advance as much as possible with reputable operators

Injury and Liability Risk



Abuse Claims

- ❖ Sexual and physical abuse is the biggest liability issue facing child and youth-serving charities in Canada
- ❖ It is also an issue for Christian charities who sponsor relief, development and missions activities that include any of the following circumstances:
 - Participants on trips who are minors
 - Youth placed with host families
 - Travel to countries or cultures with higher incidence of reported, unreported and/or unprosecuted sexual assaults
 - Evangelistic, educational, health care or relief services provided by Canadian or foreign staff and volunteers who work with children, youth and vulnerable adults outside of Canada
 - Operation of schools, orphanages or residential care facilities outside Canada

Remember, it is virtually impossible for Canadian charities who directly operate schools or orphanages outside of Canada to obtain abuse liability for these programs!

Injury and Liability Risk



Legal Risk Management

- ✓ Carefully screen missionary candidates, work teams and short-term mission volunteers for pre-existing medical conditions and any food or drug allergies, in order to avoid placing them in life-threatening situations and medical emergencies due to:
 - Strenuous work projects (construction, agriculture, etc.)
 - Extreme weather conditions (heat, humidity)
 - High altitudes and acclimatization (5,000 ft. above sea level)
 - Limited emergency medical care (hours or days away)

Injury and Liability Risk

Legal Risk Management...continued

All participants should complete and sign the following as part of their registration in advance of the mission trip or assignment.

- ✓ **Informed Consent** clearly advising them of the health, injury and security risks associated with foreign travel, the work and particular destination(s) of their assignment
 - e.g. "risk of death or injury from violence, civil unrest, abduction"
 - "risk of sickness or disease from influenza, malaria, cholera..."
 - "risk of death or injury related to unregulated construction sites and lack of safety standards and equipment usual to Canada"
- ✓ **Waiver of Legal Liability** to protect the organization, its directors and officers for any bodily injury or damage suffered by the participant due to the inherent travel risks, work and destination conditions beyond the control of the sponsoring organization
- ✓ **Parental Permission** for any minors participating on a trip. **However, remember waivers signed by or on behalf of minors are generally unenforceable!**

We generally recommend against short-term mission participation by minors without fully understanding the high duty of care (Refer to Youth Short Term Missions Section in 5-Point Checklist)

Bill C-45 and Foreign Activities

Legal responsibility for the care of workers abroad has now become even more important because of Bill C-45, also known as the Workplace Health and Safety or "Westray" Bill

This law amended the Canadian Criminal Code by adding certain provisions, including the possibility of criminal liability against an employer organization and its directors in cases of gross negligence causing work-related illness, injuries or fatalities

Consider section 217.1 of the Criminal Code, which was added as a result of Bill C-45:

"Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

Bill C-45 and Foreign Activities ...continued

Initially intended to discourage employers from placing employees in dangerous conditions in Canadian workplaces and job sites, the scope of the legislation as passed has been expanded in two important respects which have implications for Canadian charities engaged in foreign travel and activities:

- 1) Recent amendments to C-45 have extended the concept of the "workplace" to encompass areas beyond the four walls of the physical location of the employer. For example, a mining resources company operating with Canadian workers in a volatile, violent, or infectious disease-ridden region of Africa, Asia, or South America, without proper security, equipment, vaccinations, and medical support, can be subject to potential criminal prosecution.
- 2) Amendments to Bill C-45 also now define employer organizations more broadly to include "associations of persons," and "work" has been expanded to include "tasks," including those of volunteer nature being carried out across Canada and throughout the world, whether by a corporation, a non-profit, or a charity.

The Implications of Criminal Liability Under Bill C-45

Organizations can now be held criminally liable where a representative (i.e. director, officer, manager, supervisor) demonstrates a lack of care for the safety of others resulting in injury to a worker.

Not only are fines and penalties under C-45 uninsurable, criminal culpability on the part of a corporate entity or unincorporated association also calls into question whether coverage for civil lawsuits resulting from such injuries or illness are even insurable under the organization's liability insurance policies, which contain standard exclusions for criminal acts of the policyholder organization and its directors

Therefore it is more important than ever for Canadian charities and not-for profits engaged in travel and foreign activities - whether large or small - to become "**Bill C-45 compliant**" by meeting or exceeding their legal Duty of Care

Thank You!

We hope this presentation helps provide your organization and directors with insight, practical tips and solutions in meeting your Duty of Care for travellers, expatriates and foreign activities.

By: Kenneth A. Hall

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.

ROBERTSON HALL

www.robertsonhall.com

1-800-640-0933