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# **THE OTTAWA REGION CHARITY LAW SEMINAR**

**Ottawa – February 11, 2009**

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## **New Thoughts on Child Protection Policies: How to Make Them Work for Your Charity**

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**By Esther S.J. Oh, B.A., LL.B.**

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**New Thoughts on Child Protection Policies:  
How to Make Them Work for Your Charity**

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**INTRODUCTION**

- The objective of this presentation is to provide general guidelines and principles to be considered in establishing internal policies and procedures to protect children from potential abuse
- The comments provided throughout this presentation are not intended to serve as legal advice and specific questions that arise should be addressed with the assistance of legal counsel

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- Every organization hopes that it will never have to encounter any incidents of child abuse that occurred through one of its programs
- However, due to a number of tragic, high-profile incidents of child abuse that were committed at church and/or charitable institutions, as well as developing case law, child protection issues are now of a primary concern
- For these reasons, all churches and charities that carry out programs involving children should implement a child protection policy

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- It is important that churches and charities implement child protection procedures for a number of reasons:
  1. For the protection of children and youth
    - At an initial level, comprehensive screening procedures can help to screen those individuals who may not be well suited to work with children
      - e.g. by helping to identify individuals with criminal records involving past abuses or violent crimes

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- At a secondary level, child protection policies that are implemented within the operations of an organization can help to reduce the likelihood of abuse occurring
  - e.g. through the two-person rule, the requirement that two adult volunteers/employees must always be together in the presence of any children
- 2. To protect volunteers and employees of an organization
  - i.e. In the event that a child makes a false allegation of sexual abuse, due to the two-person rule another adult witness will always be present to verify what had happened

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3. To ensure compliance with legal reporting requirements that apply
  - The policy should be reviewed by legal counsel to ensure compliance with applicable laws
4. To protect the organization from potential legal liability arising from claims involving allegations of sexual abuse

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- Having a child protection policy cannot prevent a third party (i.e. a victim) from taking steps to commence a lawsuit as there is no way to guarantee that an organization would not be sued. In addition, it is not possible to implement a procedure that can provide a 100% guarantee that child abuse would not occur
- However, having a child protection policy can help to protect the church or charity from potential liability *by reducing the likelihood* that incidents involving abuse of children would occur, through implementation of checks and balances within the operations

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- Such a policy would also serve as evidence of due diligence steps taken by the church or charity to protect its children and would thereby assist in defending against any legal claims, should they arise
- Many insurance companies now require churches and charities must have an abuse prevention plan as a prerequisite to providing relevant insurance coverage
- It can be difficult to obtain insurance coverage for claims involving sexual abuse, but where it is possible to do so, churches and charities should strongly consider purchasing such additional coverage

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**OVERVIEW OF APPLICABLE LEGISLATION**

- Each province has a statute that establishes a provincial regime to assist children who are vulnerable to abuse. In Ontario, the governing statute is the *Child and Family Services Act* (Ontario) (“CFSA”)
- While the CFSA in Ontario primarily addresses issues involving children who have experienced abuse or may be vulnerable to abuse, the *Criminal Code* (Canada) outlines a number of offences where an adult is involved with sexual activities with children, including the offence of sexual exploitation of a child, as described in the following slides

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*Child and Family Services Act* (Ontario)

- Under Part III of the CFSA in Ontario, a “child” is a generally defined as a person under the age of 16 years, unless a person is between the ages of 16 to 18 and is subject to a protective order under the Act
- The CFSA contains an expansive description of what can constitute abuse of a child, which can include physical abuse, sexual abuse, neglect/failure to provide for the basic needs of a child and emotional maltreatment

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- The CFSA states that any person who has reasonable grounds to suspect that a child is or may be in need of protection from abuse has a duty to report the suspicion and the information on which it is based, to the applicable Children’s Aid Society
- This duty is an on-going one that may require further reports if a person has reasonable grounds to suspect further abuse
- In addition, any such reports must be made directly to the CAS and the person should not rely on another to make the report on his/her behalf

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- Any person who performs professional or official duties with respect to children (including health care professionals, teachers, religious officials, such as members of the clergy) who fails to report suspected child abuse can be found guilty of an offence under the Act
- This applies if the information on which the suspicions was based was obtained in the course of his or her professional or official duties

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**Criminal Code (Canada)**

- A number of amendments to the *Criminal Code* were assented to on February 20, 2008
- While there are several offences that apply where an adult is involved with sexual activities with children, of interest from the perspective of child protection in the church or charity context are the following:
  - The age of consent required for sexual activities with an adult was raised from 14 to 16 years of age
  - The Code provided for inclusion of a new criminal offence involving “sexual exploitation” of a child

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- Under the new provision, a person can be guilty of the offence of “sexual exploitation” where the perpetrator engaged in sexual activities with a person aged 16 years or more but under 18 and the perpetrator was in a relationship of trust or authority *vis-à-vis* the victim
- In other words, where a “relationship of trust or authority” exists between a young person (aged 16 to 17) and an adult with whom the child has a “relationship of trust”, there can be no legal consent to sexual activity between the two

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- Generally speaking, where volunteers or employees serve in a leadership position for youth programs held at a church, mosque, synagogue or other charity, those volunteers/employees would likely be considered to be in a relationship of trust *vis-à-vis* the youth attending the programs
- Volunteers/employees participating as leaders in youth programs generally cannot become involved in a sexual relationship with a child under 18 as it is a criminal offence to do so

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**CHECKLIST OF ISSUES FOR A CHILD PROTECTION POLICY**

**General Comments**

- It is important that a child protection policy must reflect adherence to applicable statutory definitions and legal reporting requirements
- As indicated earlier in this presentation, different provincial reporting requirements apply under the applicable legislation
- A church or charity that carries out children’s programs across Canada needs to keep in mind that each province has different reporting and compliance requirements

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- Issues to be added into a policy regarding child protection are an evolving area of law
- As such, many items within the checklist of issues for child protection policies reviewed in the following slides reflect recommended best practices in accordance with industry standards as of the date of this presentation

**Procedural Matters**

- Has the Policy received proper corporate approvals
  - i.e. Board and/or membership approval subject to requirements in the general operating by-law
- Has the policy been dated?

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**Preliminary Matters**

- Does the policy have a purpose statement confirming the following:
  - The church or charity’s position on the value of children, underscoring the dignity and worth of all children
  - The abuse of children and/or sexual exploitation will not be tolerated whatsoever
  - This statement can cross-reference back to the religious or other charitable objects of the church or charity
- A statement indicating that any findings and/or suspicions of child abuse and/or sexual exploitation will be addressed swiftly in accordance with the Policy

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- A statement indicating that the measures outlined in the Policy are also in place for the protection of the reputation of volunteers/employees involved with programs with children
- Does the Policy have a definition section for key terms used throughout the policy
  - Definition of Children (with age references included)
  - Explanations of what constitutes Child Abuse, Neglect, Sexual Exploitation
  - Definition of Parents
  - Other key terms defined in such a manner that is consistent with the appropriate legislation

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**Implementation, Monitoring and Review of the Policy**

- Does the Policy clearly indicate who, within the church or charity, will be responsible for implementing, monitoring and reviewing the Policy on an on-going basis?
- The Policy should be reviewed and updated on a regular basis, at least every 2-3 years to help ensure consistency with legal developments and changes in the church or charity’s operations

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- Does the Policy indicate that the Policy must be followed in all activities and programs of the church or charity where children are present?
  - i.e. Church programs, such as small group and/or house church meetings that occur outside of the church premises but are organized by the church

**Child Security Procedures**

- Does the Policy outline procedures to be followed for the drop-off and pick-up of young children?
  - e.g. nursery school children

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- While the following list does not necessarily involve protection of children from abuse or exploitation, it can be helpful to include the following into Policies:
  - Fire safety procedures
    - e.g. exit procedures in the event of a fire
  - Emergency preparedness procedures
    - e.g. safety procedures to follow where a security issue arises
  - Guidelines concerning snacks to be provided during break times
    - e.g. with consideration to food allergies that some children may experience

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- Health and safety guidelines
  - e.g. a policy that children who are ill will not be accepted into the church or charity's program for the protection of other children
- A policy prohibiting the administration of medication by volunteers and employees except in limited emergency situations

**Reporting Requirements Under the Policy**

- Does the Policy set out a clear procedure to be followed where a volunteer or employee has reasonable grounds to suspect abuse? In Ontario, the reporting procedures must be consistent with the *Child and Family Services Act*

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- Many churches err in this matter by implementing policies that state the incident must first be reported to a pastor or other church leader, before the child protection authorities are alerted
- The CFSA states that any person who has reasonable grounds to suspect that a child is or may be in need of protection from abuse has a duty to report the suspicion directly to the CAS and the person should not rely on another to make the report on his/her behalf

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– The CFSA expressly provides that persons who perform professional or official duties respecting children including a teacher or a religious official, will be guilty of an offence if s/he fails to report suspicions of Child Abuse and can be fined \$1,000 upon conviction

- Does the Policy provide a general summary of the information to be reported to the CAS when a person has reasonable grounds to suspect child abuse?

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- Does the Policy have a form to be filled out by persons making reports to the CAS, for the church or charity’s internal records?

– While this requirement is not necessarily prescribed by the CFSA, it would be helpful for a church or charity to maintain records regarding developments that have occurred

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- Are members/volunteers who report suspected abuse provided with assurances of confidentiality?

- Does the Policy outline a clear internal procedure to be followed in investigating allegations of abuse?

– Such internal procedures would not replace reporting requirements owed to the government child welfare authorities

– The internal church or charity’s investigative procedures would be followed after the necessary reports have been made with the authorities

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- Does the Policy contain procedures to provide follow-up with the complainant and/or authorities following investigation of an abuse?

- Does the Policy identify potential remedies and sanctions that may follow a report of suspected child abuse?

– e.g. the accused perpetrator may be suspended and/or removed from the church or charity’s premises until the investigation has been completed

– An employee charged with overseeing ministry with children who is convicted of abuse may suspended and/or terminated as an employee

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**Screening Procedures for Volunteers and Employees**

- Screening procedures can be helpful in identifying prospective volunteers and employees who may have past criminal records
- In this regard, a criminal background record check is a good first step as part of a more comprehensive screening procedure for volunteers and employees who wish to work with children

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- A criminal records check should not be relied upon as the sole basis for screening a volunteer/employee
- Criminal records checks alone are insufficient for screening potential volunteers and/or employees to work with children:
  - Information available through the Canadian Police Information Centre (“CPIC”) is often up to 12 months behind due to the backlog in the processing of criminal convictions
  - Accordingly, any information obtained through a criminal records background check, would not necessarily reflect the most current information as of the date of the search, as the information retrieved may reflect data that was incurred up to 12 months prior

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- Information available through CPIC is not always comprehensive, as it may not include recognizances, formerly known as “peace bonds”, where an individual may not have been convicted or found guilty of a crime but had the court issue a recognizance against him or her requiring that (s)he “keep the peace” and conduct himself accordingly
- Criminal records checks are not always 100% accurate and it is not uncommon for such records to contain clerical errors and/or omissions

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- Not all perpetrators of child abuse have a past criminal record and a number of incidents surrounding child abuse have involved first-time abusers
- Accordingly, criminal record checks should be combined with other screening methods used by a church or charity in selecting candidates to work with children

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- Does the policy have a comprehensive and standardized application process?
  - Usage of standard forms that are completed by all applicants who wish to work with children
  - Criminal record background checks
  - Minimum of three (3) character references
  - An interview process
  - It is important that the entire application process be followed in screening all applications for volunteers and employees to assess their suitability to work with children, to ensure that all applicants are treated in an objective manner. Otherwise the church or charity could become vulnerable to allegations of discrimination or partiality

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**Training and Guidelines for Programs with Children**

- Does the Policy provide for orientation and on-going training for volunteers and employees to help them recognize, report and follow up with issues experiencing, abuse, neglect and/or exploitation?
- Does the Policy provide clear practical examples of acceptable and unacceptable conduct that is age appropriate for children?
  - For example, while picking up a young toddler who is crying may be appropriate to comfort a young child in nursery school, it would not necessarily be appropriate to physically pick up a child of junior high school age

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- Does the Policy provide for the two-person rule?
  - i.e. That a minimum of two adult volunteers/employees must be present together at all times in all activities involving children
- Does the Policy require church approval and parental approval for overnight stays and other outings?
  - Where a church or charity has a special event
    - i.e. for field trips, mission trips or other special events, churches and charities are recommended to have the parents/legal guardians for children sign both a permission form together with a release and indemnity. Additional precautions and approvals may be required for other special events

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- Does the Policy reflect the requirement for a six month rule?
  - i.e. That a volunteer/employee must have attended the church or charity for a minimum of 6 months prior to being allowed to work with children
- Does the Policy require a signed acknowledgement from volunteers/employees confirming that the volunteer/employee has received and reviewed a copy of the policy and has agreed to comply with it
  - This and all other signed forms should be kept in a secure place within the church or charity's records for safe-keeping

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- Does the Policy have attached as schedules, information forms to be filled out by volunteers and employees where a complaint of child abuse has been made?
- Does the policy stipulate that upon learning of an allegation of abuse, the church must contact its insurers?

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- As child protection entails an evolving area of law, there are a number of other areas of risk that will need to be properly identified and addressed including the following:
  - Allowable usage of internet within the church or charity’s programs
    - e.g. Facebook, MSN, chat-rooms and other telecommunications, such as text messages sent via cell phones
  - Issues involving cyber bullying and how to address such risks

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