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**SAINT-PAUL UNIVERSITY, FACULTY OF CANON LAW  
LEGAL EDUCATION FOR LEADERSHIP OF  
RELIGIOUS INSTITUTES**

**August 21, 2010**

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**Facility Use Policies and Agreements:  
What To Consider To Protect  
Your Religious Institute**

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**By Terrance S. Carter, B.A., LL.B., Trade-mark Agent  
and Jennifer M. Leddy, B.A., LL.B.**

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Facility Use Policies and Agreements: What To Consider To Protect Your Religious Institute

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OVERVIEW OF TOPICS

- Introduction
- Why should you be concerned about third party usage of your facility?
- Elements of a Facilities Use Policy
- What is a Facilities Use Agreement?
- What should go into a Facilities Use Agreement?
- Related matters

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A. INTRODUCTION

- Religious institutes often receive requests to use their facilities from a wide variety of groups, including other charitable and non-profit organizations, businesses and individuals
  - Examples include sports clubs, self-help groups (substance abuse), day care centres, theatre groups, music schools, concert promoters, wedding parties, etc
  - This may often make a great deal of financial sense where the property is underutilized

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- Hosting events that will attract individuals to their premises may also help raise awareness of the religious institute's presence within the community
- However, permitting third parties to use the facilities of a religious institute may expose the organization to substantial risk of liability
- A facility use policy and agreement should be one component of a proactive risk management strategy for a religious institute

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- B. WHY SHOULD YOU BE CONCERNED ABOUT THIRD PARTY USAGE OF YOUR FACILITY?**
- General increased risk of litigation
    - For example, a person slipping or falling while attending an event at your facility could result in liability exposure from bodily injuries
    - Incidents of sexual or physical abuse where vulnerable persons are in the facility without adequate supervision could also lead to claims against facility owners
    - If alcohol is served at an event held at a facility resulting in serious injury, facility owners could be sued and found liable

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- Potential Liability under Human Rights Legislation
  - See for example the British Columbia Human Rights Tribunal decision of *Smith and Chymyshyn v. Knights of Columbus and others*, 2005 BCHRT 544
    - A same sex couple in B.C brought a human rights complaint against the Knights of Columbus, when the Knights refused to honour a signed contract for the couple's wedding reception in a hall operated by the Knights and owned by the Archdiocese of Vancouver

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- The panel found that the Knights could not be compelled to act against their religious beliefs by renting the hall to the couple, nor were they obligated to find the couple an alternative hall
- The B.C. Human Rights legislation, however, required the Knights to accommodate the couple to the point of undue hardship
- The panel concluded that after the Knights found out it was a same-sex wedding reception they did not make sufficient effort to “search for a pragmatic and workable solution”

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- The Knights were ordered to pay \$1,444.59 to the complainants for expenses incurred by them and for injury to their dignity
- In the Ontario *Human Rights Code*, s. 18 enables religious and philanthropic organizations to restrict the use of their facilities to their membership
- The Knights of Columbus were unable to rely on the concordant exemption in B.C legislation because they rented their facility to individuals outside of their membership, i.e. to the general public

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- In Ontario, s. 18.1 provides a specific exemption for churches or religious groups opposed to same sex marriage
- However, the exemption is limited to “sacred places” defined as including “a place of worship and any ancillary or accessory facilities”
- Had there been a better screening and approval process in place, as well as a facility use policy that clearly stated that the Knights’ facilities could only be used for purposes consistent with their beliefs and mission, the complaint and ensuing litigation may have been avoided altogether

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**C. ELEMENTS OF A FACILITY USE POLICY?**

**1. Overview**

- Problems for religious organizations can arise when deciding who to rent to and for what activities
- No policy can be a “one-size-fits-all” solution for churches or charities
- Facility use policy statements must be prepared in a manner that is consistent with applicable human rights legislation (check your provincial legislation)
- A copy of the policy should be made available to those who wish to make use of the facilities

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**2. Charitable Purposes**

- Charitable purposes should be set out in policy
- Could also set out history, mission, spirituality of religious institute
- State that facilities are intended to further charitable purposes of religious institute
- Provide that facilities are to be used in a manner consistent with charitable purposes

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**3. Restrictions On Use**

- Prohibit any unsafe or illegal activity
- Prohibit activities inconsistent with charitable purpose of religious institute
- Advertizing should indicate there are restrictions

**4. Prioritization Of Use**

- Activities of the religious institute
- Activities of non-profits and charitable organizations consistent with charitable purpose

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- Activities of for profit organizations
- 5. Application of Policy
- Religious institutes should ensure that their facility use policy is enforced in a consistent manner, otherwise the following may occur:
  - The organization may waive its ability to enforce
  - The organization may be vulnerable to allegations of discrimination for inconsistency in enforcement

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**D. WHAT IS A FACILITY USE AGREEMENT?**

- A facility use agreement is a contract that can provide for legal liability and insurance for activities or events to third party individuals, organizations or businesses using a religious institute’s facilities
- The agreement can serve as evidence of due diligence by the board to fulfill their fiduciary duty to protect and ensure efficient usage of a church’s or charity’s property and resources

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- As a result of decisions by the Supreme Court of Canada, like *Dube v. Labar*, as well as the Ontario Superior Court, in *Gallant v. Fanshawe College*, doctrine of “voluntary assumption of risk” as a defence against negligence claims has been greatly eroded
- Best practice for organizations to effectively defend themselves against legal liability in future claims is through the contractual exclusion of negligence through measures such as a facility use agreement

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- While liability insurance is an integral part of a risk management strategy, religious institutes should not rely solely on insurance for the following reasons:
  - Liability insurance is subject to financial limits, which, in cases of serious injury, may not be sufficient to protect the organization from liability to pay the excess over the limit
  - Insurance claims will cause premiums to rise
  - All liability insurance policies are subject to coverage exclusions
  - Involvement in a lawsuit is a stressful and time consuming distraction for directors, staff and members of the organization

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- E. WHAT SHOULD GO INTO A FACILITY USE AGREEMENT?**
- Waiver of legal liability
    - A facility use agreement should require a waiver or release against your religious institute by the user for any legal liability arising out of personal injury caused by the user’s negligence
      - A copy of the agreement containing the waiver should be provided in advance so that there is no “last minute” pressure
      - Should be worded by a lawyer to address allegations of both negligence and breach of contract

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- Design, format and content of waiver should be in plain language
- The user should be clearly identified on the waiver
- The waivers should be at most two pages to avoid challenges of incomprehensibility
- The person signing the agreement must be competent under the law
- A completed agreement should be kept on file
- A disclaimer
  - Different from a waiver in that a disclaimer is a unilateral declaration

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- A disclaimer is an express disavowal, repudiation or limitation by the party permitting use of the facility
- This is to serve as a warning of the risks associated with a particular event or type of activity
- For example, a disclaimer on posted signs or on a ticket stub that the charity is not responsible for any lost or stolen items in a cloak room, or that the religious institute does not endorse the activities of the rental group

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- An indemnity undertaking
  - An undertaking by the user of the facility to indemnify and save harmless the charity from any litigation expenses, legal fees and liability damage awards
  - Requires the user to reimburse the religious institute for any legal damages or defence costs arising out of the facility use, regardless of who is legally responsible for resulting injury or damage

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- A provision that the party renting the facility will provide to the owner a Certificate of Liability Insurance confirming that their event is covered and that the church or charity has been named on the policy as an additional insured
  - The religious institute should also provide written notice to their own insurer that its property is being used by a third party and what that activity will be

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- Religious institutes should be familiar with the terminology of insurance policies to ensure that the coverage obtained by the third party is adequate
  - For example, while Commercial General Liability (CGL) Insurance will typically cover personal injury and property damage, such coverage does not generally cover liquor liability
  - Also, CGL usually excludes liability arising from sexual abuse, so need special endorsement for sexual abuse

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- In that regard, it is important to be aware of the distinction between occurrence based and claims based coverage in the event of an abuse claim
- If the claim was made prior to the policy, or if it occurs outside the policy period, there may not be coverage
- Ideally, a “full prior acts” policy should be obtained to cover claims arising from all prior acts, regardless of when they occurred

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- If the nature of the activity to be carried out in the facility may require coverage, as well, coverage for the facility itself (the building and its contents), charities should be aware of the type of coverage the third parties insurance will cover
  - Actual Cash Value: poor coverage as it will only pay for the depreciated value of items lost
  - Replacement Cost: does not take depreciation into account
  - Guaranteed Replacement Cost: can replace facility even if it costs more than what it is insured for

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- If your staff or volunteers are going to be at the event, they should also be named on the insurance policy so that they are covered as well
  - For more information, see Imagine Canada’s Insurance and Liability Resource Center for Nonprofits at [www.nonprofitzzz.ca](http://www.nonprofitzzz.ca)
  - For Church and Charity specific insurance advice, resource materials at <http://www.carters.ca/pub/seminar/chrchl原因/2008/kah1106.pdf> or Robertson Hall Insurance at [www.robertsonhall.com](http://www.robertsonhall.com)

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- Other conditions a religious institute may consider addressing in the agreement could include:
  - Who is the official representative for rental purposes
  - Whether or not assistance with set-up is required
  - The maximum length of time in hours the facility can be rented
  - A preset time for when rentals end, i.e, 12 a.m.

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- The maximum number of individuals permitted in the facilities
- Requirement to pay janitorial fees
- The fee structure, based on time, religious institute staff time required, amount of space rented
- Down payments/deposits
- The religious institute's acceptance of the rental application

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**F. RELATED MATTERS**

- Does the religious institute charge fair market rental fees to users of the facilities that are not charities?
  - The amount of rental fees, if any, on the basis of community outreach is at the discretion of the charity
  - Rental fees on the basis of revenue opportunities should be at fair market value

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- Does the third party use constitute the carrying on of an “unrelated business” prohibited by the *Income Tax Act*?
  - Carrying on an unrelated business can result in loss of charitable registration
  - For details see CRA Policy on Related Business at <http://www.cra-arc.gc.ca/ts/chrts/plev/cps/cps-019-eng.html>
- Where children or other vulnerable people (e.g those who are sick, elderly, refugees) will be using the facility, a policy to protect them should also be considered

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