



## **CHURCH LIABILITY AND INSURANCE INFORMATION**

Compiled by the Maritime PAOC  
from Resources of Robertson Hall Insurance

## **DOCUMENTS INCLUDED:**

- ❖ Abuse Prevention Made Easy(er)
- ❖ Facing The Risk – Precious Cargo: Managing Transportation Risk For Churches And Charities
- ❖ 5-Point Checklist of Best Practices for Short-term Mission Trips
- ❖ Social Media for Christian Ministry: Getting Online and Keeping Out of Court
- ❖ Facing The Risk of Counselling Liability
- ❖ How to Avoid Liability Risks When Renting to Outside User Groups
- ❖ Facing the Risk - Directors and Officers Liability
- ❖ Civil Liability Damages and Insurance Protection
- ❖ Co-Insurance
- ❖ Are You Really Covered: Tips From Over 10,000 Insurance Claims

Please note:

- These resources are provided for general information and educational purposes only, not as professional advice. Please consult a lawyer for specific advice on particular matters that may involve potential claims or legal liability against the church and its leaders.
- The information in these resources may change from time to time, subject to changes in legal statute, common law precedent, and industry and vocational best practices. Please consult Robertson Hall or your lawyer for updates.

# Abuse Prevention Made Easy(er)

## EFFECTIVE PREVENTION FOR CHURCHES AND CHARITIES

### What's Inside...



- 7-Point Requirements For Abuse Prevention and Insurance Eligibility, including Top 10 FAQ's and helpful hints for Criminal Record and Vulnerable Sector screening check and re-check options
- Abuse Case Studies based on Canadian church and charity claims and lawsuits (UPDATED)
- Internal Audit tips to make sure your prevention plan is working and help your leaders stay out of court
- Resource Directory including sample prevention plans, training for workers, third party screening, books, publications and web links
- Use this newsletter as your helpful guide in completing the Abuse Prevention Declaration to obtain insurance coverage!

*And much, much more...*



# “Love...always protects.”

1 CORINTHIANS 13:4-7

“If you truly believe in the value of life, you care about all the weakest and most vulnerable members of society.”

- Joni Eareckson Tada

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“Churches are natural targets for sexual predators. They have large numbers of children, a shortage of willing workers, and a culture of trust that no Christian could be suspect of such exploitation... What is really needed is a healthy suspicion of human frailty, our own as well as others.”

- Bob Harvey, *Faith Today*

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“Churches need to understand that there are people who prey on children and they do not look different than anyone else... the sexual, physical and emotional abuse of children and youth in the church is a reality with which we must deal - it can happen in any church. No organization is immune...the church has a responsibility to protect its children and youth and to offer an environment that is consistent with the Word it is teaching.”

- Rev. M. McCormick / Dr. L. Mitchell,  
Convention of the Atlantic Baptist Churches

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“The majority of experts have concluded from the beginning that child molesters cannot be cured. At best they can be managed but they should never again be in a position of responsibility for children.”

- From an article entitled,

“How congregations can keep young members safe from abuse”,  
*The Philadelphia Inquirer*

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“It (abuse) will never happen here. You may be right, but on the the other hand it may have already happened and you just don’t know it yet.”

- Richard Arbeau,  
Insurance Broker, Retired Pastor

“Children have neither power nor property. Voices other than their own must speak for them. If those voices are silent, then children who are victims of abuse may lean their heads against window panes and taste the bitter emptiness of violated childhoods.”

- Justice Francis T. Murphy,  
Appellate Supreme Court Justice,  
New York

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“I urge all Christian leaders to be proactive and ensure that all things are done in agreement with Paul’s advice to the Corinthians “For we are taking pains to do what is right, not only in the eyes of the Lord but also in the eyes of man.” Christian ministries must be a model for the world in how we handle the potential for abuse.”

- John Pellowe, CEO  
Canadian Council of Christian Charities

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“It’s very disheartening...right now I don’t go to church and it makes me wonder if I even want to bring up my child in a church.”

- A Concerned Mother, Quoted from  
*Reducing the Risk II: Making Your Church Safe From Child Sexual Abuse*

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“We believe that childhood innocence is a gift given by God. Children are naturally trusting. Children readily place their faith in adults who care for them. It is our responsibility as a church to safeguard that trust. Childhood innocence is a gift that we must plan to protect.”

- Authors of *Plan To Protect*,  
Winning Kids Canada

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“Trust in God...screen all others!”

- Safe Church Organization

## ABUSE CASE STUDY

**CASE STUDY 1** – A church offered a summer day camp program for kids from their surrounding community that included off-premises walks and trips to a nearby park. During a trip to the park, a pre-school aged child was on a swing set at the playground and was sexually assaulted and molested by a stranger who has never been apprehended or identified. The church is facing a lawsuit on behalf of the child and her parents, alleging inadequate supervision by the teen-aged camp counsellors supervising the activity.

**UNDERLYING ISSUE:** Lack of sufficient and mature supervision.

**CASE STUDY 2** – Following a regular youth gathering, and as young people were talking and playing in smaller groups, some horseplay took place between several participants and an adult male leader. The interaction took place in plain sight in the front lobby and was alleged to have involved the leader chasing and grabbing one of the teenaged girls. After approaching the church elders about the incident and being dissatisfied with their response following an internal investigation, the girl’s parents reported the matter to the local police and as a result, two counts of sexual interference with a minor were filed against the youth leader. After months of negative media publicity against the youth leader and the church, the criminal proceeding resulted in the court acquitting the leader on all charges.

**UNDERLYING ISSUE:** Insufficient guidelines to leaders for appropriate and inappropriate physical interaction with minors.

**CASE STUDY 3** – A church implemented an abuse prevention plan, including consents to collect criminal record checks for all children’s and youth ministry workers. Unknown to church leaders, the person in charge failed to follow through with actually doing the checks. Three years later a youth leader was charged and later plead no contest to sexually molesting three teenagers in the church youth group. The abuse took place on the church premises and at the leader’s residence. In the course of the police investigation it came to light that the youth leader had a prior sexual offence conviction from a decade earlier. The criminal record check, had it been completed, would have disqualified him from serving in a position of trust with vulnerable persons and would have prevented the abuse, the harm to the church’s reputation and an uninsured lawsuit against church board members. One of the victims was the child of the person in charge of police checks.

**UNDERLYING ISSUE:** Lack of internal communication, compliance and auditing by church leaders to ensure adequate abuse prevention and screening.

**CASE STUDY 4** – A community church was associated with an evangelistic ministry and leader who operated a youth shelter and group home as a quasi church-sponsored ministry. The church also supported the ministry through substantial financial contributions, volunteer staffing and referring youth from broken homes to apply for residency. Over 25 years after the fact and in addition to apparently questionable financial and charitable accounting practices by the ministry leaders, residents from the group home sued the church and its leaders, alleging vicarious liability for abuse suffered at the hands of the leader and staff, seeking millions of dollars in compensatory and punitive damages.

**UNDERLYING ISSUE:** Need for caution by church and charity leaders in sponsoring or co-sponsoring programs and ministries over which they have no real authority or control.

## The Impact of Child Sexual Abuse



**CASE STUDY 5** – A Christian campground leader was alleged to have committed sexual abuse against a pre-teen boy. The victim (now an adult) reported the incidents to police decades after the alleged abuse took place and claimed that the sexual assaults happened first at the camp premises, and subsequently at other locations. During the police investigation and before any formal criminal charges were laid, the alleged perpetrator died of natural causes. The alleged victim then initiated a civil liability suit against the camp and its directors for their negligence in properly screening and managing its volunteers. However, the camp had kept meticulous records, and in the opinion of the court, credible attendance and documentation existed for campers and leaders over the years which clearly indicated that neither the victim nor the perpetrator were ever employed, appointed or registered during the time frame of the allegations. As a result, the case was dismissed. **UNDERLYING ISSUE:** Importance of keeping screening and other documentation on file indefinitely for children's and youth programs and ministries.

**CASE STUDY 6** – A youth director working with the young people's group at his own church was also assigned as part of his job duties to a special outreach to work with minors at another faith-based youth organization drop-in centre in the same community. During the course of working with minors at the church and at the other organization, he created trust relationships with minor-aged girls and engaged in one-on-one mentoring sessions with them, including away from the premises without the knowledge of either organization, and without any measures of accountability in place. This one-on-one interaction was against the abuse prevention policies and procedures of both organizations. However the respective boards, ministers and executive director failed to effectively oversee this individual's outreach work. He has been charged with seven counts of sexual assault and seven counts of sexual exploitation. The insurance company for the church is deliberating whether any lawsuit arising from this matter is insurable, based on the abuse prevention plan policies, procedures and oversight measures declared for coverage approval not being followed and being the direct cause of the alleged assaults and exploitation.

**UNDERLYING ISSUE:** Breach of "never alone" rule in working with minors, failure to properly oversee staff (or volunteer workers), and lack of accountability in programs run with another organization.

**CASE STUDY 7** – A paid adult church youth leader was accused of inappropriately texting graphics sexual content to female teenagers under the age of 16. He was charged and convicted with obscene publication and invitation to sexual touching. The church name appeared prominently in local and regional news reports of the incident, and the victim sued the church.

**UNDERLYING ISSUE:** Lack of appropriate electronic communication guidelines for social networking and lack of proper supervision of staff and volunteers.

**CASE STUDY 8** – An adult mentor, alone with a minor off-premises, in a church-sponsored program is accused of inappropriate advances and touching. The mentor claimed charges were false but in absence of witnesses, was convicted of sexual exploitation in a high publicized case. The church and board members were sued vicariously for the actions of the mentor leader. Members of the church left in large numbers, causing the church to no longer be in existence.

**UNDERLYING ISSUE:** Breach of "never-alone" rule in working with minors.

# Resource Directory

## SAMPLE PREVENTION PLANS

Plan To Protect®

- **A Protection Plan for Children and Youth - Church Version**
- **A Protection Plan for Children and Youth - Schools, Daycares, Camps, Leagues and Associations Version**

A recommended abuse prevention plan to protect the children, youth and leaders at your organization. Both versions available through Plan to Protect® (formerly Winning Kids Inc.) (French language version available) <https://www.plantoprotect.com> 1 (877) 455-3555

### Preventing Child Abuse:

**Creating a Safe Place** by Bev Swagman Now in its fourth edition, Preventing Child Abuse will guide churches and non-profit organizations through the process of designing and implementing the policies and procedures they need to keep their children safe. Available through Faith Alive Resources <https://www.faithalivresources.org> 1 (800) 333-8300

You should also check with your church denominational head office if they offer an up-to-date recommended abuse prevention plan that meets our 7-Point Checklist (refer to pages FOUR and FIVE).

## ABUSE PREVENTION TRAINING

**Plan to Protect®** provides initial and refresher training, administrator/leader certification, on-site and online educational webinars and abuse prevention plan auditing. <https://www.plantoprotect.com> 1 (877) 455-3555

### Reducing The Risk II: Making Your Church Safe from Child Sexual Abuse

Includes a reference book, training manual, DVD series, 1 year of free online support. <https://www.amazon.ca/Reducing-Risk-II-Making-Church/dp/1880562561>

### The Church Law & TaxStore

Along with offering *Reducing The Risk II*, it includes useful publications on Youth Ministry, The #MeToo Movement, Sexual Harassment in The Christian Workplace, Sex Offenders in the Church, Using Social Media Safely, etc. <https://store.churchlawandtax.com/keep-safe/>

## CRIMINAL RECORD CHECKS

Criminal record checks including Canadian Police Information Centre (CPIC) checks, Vulnerable Sector Scans (VSV) queries are available through your local municipal, provincial or federal (RCMP) police services and through authorized third party providers.

## THIRD PARTY SCREENING PROVIDERS

**Plan to Protect®** Screening Canada offers discounted rates through group purchasing power to churches and Christian charities

**DISCLAIMER:** This resource directory is not intended as a complete listing of the abuse prevention plans available for Christian ministries. Many other valuable resource materials and sample prevention plans are available through various church denominations, professional associations, umbrella organizations, governmental agencies, law offices and consultants in Canada and the United States. Although Robertson Hall Insurance Inc. is making this directory of worthwhile resources available to its client organizations, we do not recommend any one particular plan. If you have not already done so, we strongly urge your organization and its leaders to research, develop, implement and maintain a formal abuse prevention plan that is appropriate for your particular children's and youth ministries and activities.

for criminal record checks, driver license verification and electronic criminal record checks. Designed for churches and charities, and volunteer staffed organizations. <https://www.plantoprotect.com> 1 (877) 455-3555

**Sterling Talent Solutions** is Canada's leading third party provider of criminal record checks and screening services for employers and non-profit organizations, including an online comprehensive solution for employee and volunteer screening, as well as EPICs. <https://www.mybackcheck.com>

## BOOKS AND PUBLICATIONS

### Better Safe Than Sued: Keeping Your Students and Ministry Alive

by Jack Crabtree, Zondervan Press A highly recommended resource for youth abuse prevention and risk management.

### Do's and Don'ts When There Is Disclosure

BOOST Child Abuse Prevention & Intervention 890 Yonge Street, 11th Floor Toronto, ON M4W 3P4 <https://www.boostforkids.org> 1 (855) 424-1100

### My Plan To Protect Pocket Guide of Best Practices:

- **For Children's Ministry**
- **For Youth Ministry**

Both available through Plan to Protect® and Word Alive Press <https://www.plantoprotect.com> 1 (877) 455-3555

## GOVERNMENT RESOURCES

<https://www.torontocas.ca/reporting-abuse>

<http://www.children.gov.on.ca/htdocs/english/professionals/childwelfare/protection-standards/index.aspx>

[https://volunteer.ca/vdemo/researchandresources\\_docs/2012%20Edition%20of%20the%20Screening%20Handbook.pdf](https://volunteer.ca/vdemo/researchandresources_docs/2012%20Edition%20of%20the%20Screening%20Handbook.pdf)

## WORTHWHILE WEB LINKS

<https://www.netgrace.org>

<https://www.robertsonhall.com>

<https://www.plantoprotect.com>

<https://church.robertsonhall.com/protection-plus-membership/>

The above link is for Protection Plus Members who are client organizations of Robertson Hall. Also check our blog for current risk management articles of interest to church and charity leaders...

<https://church.robertsonhall.com/news-and-events/>

# ✓ 7-Point Requirements for Abuse Prevention

The following seven (7) policies and procedures acknowledged by experts as essential elements in establishing and maintaining an effective abuse prevention plan *are required by your insurance company to qualify for abuse liability insurance coverage. THIS CHECKLIST IS A HELPFUL TOOL FOR COMPLETING YOUR ABUSE PREVENTION DECLARATION. REFER TO PAGE FIVE FOR THE APPROPRIATE VERSION OF THE DECLARATION FORM FOR YOUR ORGANIZATION, AND FURTHER COVERAGE DETAILS.*

## 1 STATEMENT OF POLICY

is a formally approved, implemented document that is periodically reviewed under the direction of your board members. It should confirm your organization's commitment to providing a safe environment for minors and vulnerable adults and declare zero tolerance for abuse, harassment or neglect committed by any children's or youth ministry worker, including employees, members and volunteers. This policy should be expressed in terms of your organization's statement of faith, scriptural standards and the duty of care owed to vulnerable persons in our society. The declared purpose of the policy should be clearly expressed; that is, preventing harm to the children, youth and vulnerable adults in your programs and protecting your staff and volunteers from false or wrongful allegations.

2 **DEFINITION** of abuse and related issues must be clear and concise so that all of your worker will understand, and be able to identify unacceptable behaviour, including:

- ☐ PHYSICAL ABUSE
- ☐ SEXUAL ABUSE
- ☐ EMOTIONAL ABUSE
- ☐ CHILD NEGLECT
- ☐ HARASSMENT
- ☐ IMPROPER TOUCHING/DISCIPLINE

3 **SCREENING** all children's and youth ministry workers to the level that is appropriate with their interaction with minors and vulnerable adults in your organization's care. Screening should also apply to personnel who have management authority and power over other staff with respect to career advancement and performance review in order to discourage harassment. The following staff and volunteers must be subject to mandatory screening:

- All staff including paid and unpaid ministers and lay pastors
- All volunteers working with children, youth and vulnerable adults/seniors
- All board members, elders, deacons, trustees, directors and officers
- Designated monitors and care staff (refer to the **"Who Should We Screen?"** chart on Page Nine)

Effective screening for these individuals must include the following procedures:

- ☐ Targeted recruitment of personnel
- ☐ Employee and volunteer applications including ministry agreements and release for background references and criminal record checks
- ☐ Personal Interview
- ☐ Background reference checks
- ☐ Initial Criminal Record Checks for all new workers, prior to eligibility, including:

**VSV – Vulnerable Sector Verification, also known as Vulnerable Sector Screening, Scan or Check) includes a search of 3 sources:**

- Canadian Police Information Centre (CPIC)
  - National Pardoned Sex Offenders Database
  - Local Police and Child Protective Indices
- Notes:**

- i) Initial criminal checks must be the most comprehensive available, usually a VSV but in some cases a CPIC or equivalent check (please refer to the CRIMINAL RECORD CHECKS OPTIONS Chart on Page Eight for full details)
- ii) Check must be in original copy and Viewed within 60 days of issuance.

- ☐ Criminal Record Re-Checks for existing workers
  - Camping ministries and short-term missions organizations - Annually - See Options
  - Schools, daycares and nurseries - Every three (3) years or less
  - Churches and all other organizations - Every five (5) years or less

**Note:** Re-checks may be done by means of a CPIC or equivalent check (please refer to the CRIMINAL RECORD CHECKS OPTIONS Chart on Page Eight for full details)

- ☐ Minimum waiting period of 6 months or more for volunteers new to your organization. They should be regularly attending church services or volunteering with your organization in other capacities prior to eligibility to work with minors and vulnerable adults (refer to FAQ/Question #8)
- ☐ Having all workers sign a ministry covenant agreement confirming they have read, understood and are willing to comply with policies and procedures

## 4 OPERATIONAL PROCEDURES

should be outlined in a written manual summarizing your organization's specific guidelines for preventing abuse and harassment, including:

- ☐ "Team" approach to children's/youth ministries
- ☐ Volunteers under the age 18 may assist only under qualified adult supervision
- ☐ Off-premises contact during sponsored programs should be subject to signed parental permission and a "two-adult" rule at all times (refer to **Good/Better/Best** Guidelines on Page Nine)
- ☐ Prohibiting corporal punishment
- ☐ Appropriate Youth Communication and Social Media use (refer to Page Eleven)
- ☐ Addressing health, safety and sanitation issues for infants and toddlers in nursery programs, including protocol for illnesses, infections and emergencies, cleanliness of change tables, washrooms and floor surfaces and safety of toys, cribs, etc.
- ☐ Avoiding activities that could easily lead to allegations of abuse or harassment, such as individual photography of children, unsupervised internet access, vehicle transportation by workers alone with unrelated youth. Sleepovers, camping or other overnight events should only be allowed when all supervisors and volunteers are fully screened.
- ☐ Keeping documentation on file indefinitely for all workers (refer to FAQ/Question #9)
- ☐ Obtaining signed parental consent and permission prior to event for off-premises or overnight events
- ☐ Ensuring sufficient qualified supervision of children outside and in public places (e.g. parks, playgrounds, libraries, amusement parks, etc.) at all times
- ☐ Incident reporting forms must be completed for all cases of injury or suspected abuse
- ☐ Internal or external audit to ensure Abuse Prevention Plan compliance (refer to Page Twelve)

5 **PREMISES** modifications or alterations to your facilities which can assist in preventing and discouraging abuse incidents, including:

- ☐ Windows in classroom doors and/or open door policy for Sunday School and boys' and girls' clubs



- and symptoms of abuse and molestation
- ☐ Follow up with refresher courses or sessions that emphasize the Operation Procedures, Premises and Reporting requirements (refer to Items 4, 5 and 7 in the 7-Point Checklist). Refresher training can be done at any time such as during monthly staff, teacher or volunteer worker meetings. Many churches conduct an annual review of their prevention plan for workers at the beginning of their children's and youth program year in September or October.
  - ☐ Reviewing the ongoing suitability of existing workers including updated criminal record checks (refer to Section 3 Screening for frequency of re-checks)
  - ☐ Reviewing sample Case Studies (pgs. 2-3)

- ☐ Consulting a lawyer for advice
- ☐ Without admitting legal liability, express your organization's concern to the complainant and their families and assure them of your commitment in assisting the investigation
- ☐ Assuring confidentiality for the benefit of both the alleged victim and the alleged perpetrator
- ☐ Immediately suspending the alleged perpetrator from children's or youth ministry duties without presuming guilt, pending outcome of police investigation
- ☐ Avoiding public statements to individuals, the media or from the pulpit, without obtaining legal counsel
- ☐ Contacting your insurance agent or broker to report the incident in order to satisfy the statutory conditions of your liability policy and to avoid jeopardizing your legal defense and coverage response

**7 RESPONDING** to all allegations or complaints of abuse in an appropriate manner, including the appointment of individual(s) designated to respond to allegations in the following manner:

- ☐ Initial formal training, including in-house video and DVD presentations (or online training) and distribution of handbooks or pocket guides containing a summary of prevention policies and procedures for all workers for their reference
- ☐ Educating workers about their legal obligation to report suspected abuse and to recognize and identify the signs

- ☐ Completing incident reporting forms for suspected abuse or injury
- ☐ Satisfying statutory legal obligations by reporting all cases of suspected abuse to police authorities and/or child protective agencies

**Don't try to triage suspected abuse incidents. Just as you don't wait to call the fire department when a building is on fire, you also don't wait to report abuse. The responsibility to report suspected abuse is the law in Canada!**

If you're a client organization policyholder of Robertson Hall Insurance and haven't already done so, please complete an Abuse Prevention Declaration form in order to qualify for the most comprehensive Abuse Liability coverage for Christian Charities in Canada, including the following coverage features:

- \$5,000,000 General Liability for Abuse, Molestation and Harassment Claims
- Vicarious Liability Protection for Organization and Leaders
- Occurrence Form / No Deductible
- No Restriction on Stacking of Policy Limits
- Civil Defense Costs covered in excess of Policy Limits
- Covers all Civil Damages Insurable by Law, with no exclusions

- Criminal Defense Cost Reimbursement for Wrongful Accusation
- No Fault Therapy and Counselling Costs for Victims
- Legal Advice / Media Relations Expense for Suspected Abuse

If you don't have an Abuse Prevention Declaration form on file, please request one today from Robertson Hall. We have Declaration form versions available for:

- Churches and Charitable Organizations
- Education Organizations, including Day Cares, Schools, Colleges, etc.
- Camp and Retreat Organizations

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# FAQ

## THE TOP TEN LIST OF MOST FREQUENTLY ASKED QUESTIONS

### #10 HOW DO WE GET STARTED?

Unlike a decade ago, there are now many abuse prevention resources available to churches and para-church ministries. These include sample prevention plans that can be modified for your organization's particular programs and premises; training materials such as DVD's, reference guides and training manuals; sample screening applications and incident reporting forms; and even experienced qualified consultants who can assist in reviewing your organization's operations, implementing an effective prevention plan, and educating and training your children's ministry workers. Please check the Resource Directory on Page Three of this newsletter or with your denominational head office and other churches and organizations in your community, for practical and valuable tools to assist in establishing your own prevention plan.

### #9 HOW LONG SHOULD OUR ORGANIZATION STORE SENSITIVE DOCUMENTS?

Government privacy legislation (including PIPEDA) regulates the collection, use and storage of financial, health and other sensitive personal information including screening of workers (i.e. criminal record checks). This type of information along with documenting compliance with any government and public health agency orders with respect to pandemics or local infectious disease outbreaks must be kept indefinitely. The key purpose of retaining this information is to demonstrate due diligence in the event of a future claim and lawsuit against the organization and your directors, which might occur years or decades into the future. However to satisfy the provisions of privacy legislation and the reasonable and prudent expectation of common law, we recommend the following:

1. Disclose the reasons for collecting and storing this information on each application.
2. Protect sensitive material in a locked and secure location to ensure confidentiality and to avoid misplacing or allowing the wrongful abstraction of documents.

### #8 WHY DO WE HAVE TO WAIT? WE NEED WORKERS NOW

Child abuse is a crime of **trust** and **opportunity**. Pedophiles are looking for the softest target in their community in order to gain easy access to children, whether it be a public place, a school, a boys' or girls' club, a sports association or a church. Organizations that are chronically short volunteers, and who give the green light to new applicants without careful consideration only serve to place the children in their care at greater risk. In many cases, the most effective practical screening procedure to weed out unacceptable volunteer candidates is to impose a minimum waiting period of 6 to 12 months before eligibility to serve in a position of trust. Individuals who are relatively unknown to the organization, who do not have a track record and/or who may have only recently moved from another community, should never have immediate access to children. A minimum waiting period allows the organization and its leaders to observe these individuals in other volunteer roles, membership and regular attendance for

an extended period of time. Exceptions should only ever be made in circumstances where the volunteer candidate has transferred from another church of the same denomination in which they have been long-time members and children's ministry workers in good standing (with background references from at least three individuals, including one from their previous minister or children's ministry director).

New and returning counsellors, supervisors or volunteers in seasonal Christian ministries such as summer camping programs and short-term missions should only be approved if they are fully screened and can provide at least three background references, including at least one from their current home church minister, or the executive director at an organization where they previously served in children's ministry and to whom they have been well known for a period of at least one year.

### #7 WE DON'T WORK WITH KIDS, WHY BOTHER WITH A PLAN?

The answer to this question really depends on another fundamental question; is your organization comfortable without any insurance protection for liability suits arising out of incidents of actual or alleged abuse, molestation and harassment committed by staff, volunteers, other participants or complete strangers, whether on your premises or during sponsored off-premises events? Even organizations that do not offer any programs or care for children and youth may still be vulnerable to abuse and harassment allegations related to counselling and other forms of spiritual and physical care for minors or vulnerable adults. In order to qualify for insurance protection for abuse, molestation and harassment, it will be necessary for your leaders to implement abuse prevention procedures that are appropriate to the level of your ministries, programs and activities.

### #6 DO WE NEED A SIGN-IN / SIGN-OUT PROCEDURE?

If you have children in your programs who are pre-Grade 1 age (SK, JK or Daycare) it is important to have a signing in and out policy, just as with elementary schools and daycares. Parents bring their kids to these institutions directly, not just leaving them on the premises unattended. At the end of the day these children are not released into the general population of students and often have separate dismissal times. Younger children should only ever be released by a parent directly to the teacher or supervisor, and your organization should keep a record of this in a sign-in log initialed by the parent or guardian. A sign-in/sign-out procedure for this age group provides you with formal confirmation that children are released to the right person, especially in this day and age of child custody issues, assuring safety for the children and protection for your organization and its volunteers.

### #5 WHAT ABOUT VULNERABLE ADULTS IN OUR CARE?

While children and youth (minors) are the main focus of abuse prevention, there are other persons who may be vulnerable to physical or sexual abuse, harassment and neglect. They include adults with physical, mental or emotional disabilities, seniors with



assisted living or special needs, and other adults in your care receiving counselling and support services for mental health or other life crisis situations. If your organization offers supervised programs or special care for vulnerable adults, it is important that staff, counsellors and volunteers in positions of trust be fully screened and adequately supervised.



**THE CANADA EVIDENCE ACT**  
**Section 6.3 (1) The definitions in this subsection apply in this section.**  
**"Children"** means persons who are less than 18 years of age  
**"Vulnerable Persons"** means persons who, because of their age, a disability or other circumstances, whether temporary or permanent,  
 (a) are in a position of dependence on others; or  
 (b) are otherwise at a greater risk than the general population of being harmed by persons in a position of authority or trust relative to them.

**REMEMBER!**  
*For churches and charities involved in the sponsorship of refugees, including under the Private Sponsorship of Refugees (PSR) as a Sponsorship Agreement Holder (SAH) organization, or as a local Constituent Group (CG) or Co-Sponsor Organization, the Government of Canada explicitly considers refugees, including adults, to be vulnerable persons during the period of sponsorship and settlement. Therefore make sure to uphold your abuse prevention, policies, procedures and full screening of volunteers working with refugees, just as you would with any other program, ministry or activity you conduct on or off-premises involving children, youth or vulnerable adults.*

**#4 YOUTH MENTORING SERVES A REAL NEED IN OUR COMMUNITY... IS IT POSSIBLE TO RUN THIS TYPE OF PROGRAM SAFELY, EFFECTIVELY AND WITHOUT UNNECESSARILY EXPOSING OUR VOLUNTEER MENTORS TO FALSE ALLEGATIONS?**  
 Encouraging long-term, one-on-one relationships that provide positive adult role models can make all the difference in the world for a young person. However one-on-one mentoring programs should generally be avoided as they are one of the most challenging activities to manage and monitor from an abuse prevention standpoint. This type of program should only be contemplated if you have the resources and staffing to ensure comprehensive initial and ongoing screening of volunteers and the professional assessment of mentoring relationships through a system of parental consent, spot checks, review of detailed notes for each meeting, and regular follow-up interviews with each minor, parent, and mentor, such as those conducted by organizations like Big Brothers and Big Sisters. Refer to our Youth Mentoring Programs and Services Requirements for full details regarding the minimum requirements to be considered for one-on-one mentoring programs (PRE-APPROVAL REQUIRED).

**#3 WHAT IS AN APPROPRIATE WASHROOM PROTOCOL FOR CHILDREN IN OUR CARE?**  
 Although every organization, program and premises is unique and may require a procedure appropriate to the circumstance,

we can recommend the following general protocol:  
**Pre-Grade One Age Children** should only be taken to the washroom or infants have their diapers changed by a parent or guardian. If not possible, then the screened worker should do so in the presence of at least one other unrelated screened worker.  
**School Age Children** requiring assistance should be accompanied to the door of the washroom, which the worker should open to make sure no one is hanging around in the washroom and then wait outside the door in the hallway in case they are called for help or hear anything suspicious. Helpers under the age of 16 should not be authorized to take children to the washroom unaccompanied by a screened adult worker. Older children may go on washroom breaks using the buddy system unaccompanied by a supervisor if your hallways and washrooms are checked regularly (every 15 to 20 minutes) by a screened hall monitor who is trained regarding what to look for in terms of suspicious activity, including strangers (adults or teenagers) lingering in halls or washrooms.

**#2 HOW DO WE MANAGE OFF-PREMISES ACTIVITIES AND TRANSPORTATION TO AVOID WORKERS BEING ALONE WITH MINORS?**  
 It is often challenging to maintain the two-adult rule when supervising and interacting with children and youth during sponsored activities off-premises and while driving them to and from their home or other locations. Following are handy “Good / Better / Best” guidelines to avoid workers being alone with minors and thereby protecting your staff and volunteers against false allegations:

GOOD	BETTER	BEST
Off-premises Activities and Events		
At least 2 screened adults, with the total number of screened supervisors to minors in a ratio appropriate to the type of activity, number and age of participants. Unscreened helpers or other unscreened adults can assist with activities, but only if they have no interaction with minors.	All adults and youth supervisors must be fully screened and a minimum two-adult rule maintained at all times. Signed parental permission and informed consent must be obtained for each participant prior to participation in any higher risk off-premises activity or event (i.e. short-term missions, travel, sports, recreation, concerts)	All adults and youth supervisors must be fully screened and a minimum two-adult rule maintained at all times. Signed parental permission and informed consent must be obtained for each participant prior to participation in any off-premises activity or event.
Vehicle Transportation		
A minimum of 2 screened adult supervisors or 1 screened adult plus at least 2 other minors in the vehicle at all times. Note: Having only one screened adult transporting minors should be avoided as much as possible, as it opens the worker up to false allegations of abuse, molestation or harassment.	A minimum of 2 unrelated screened adult supervisors in the vehicle with minors at all times. Driving records checked (no at-fault accidents and not more than 2 minor traffic violations in the past three years) and minimum 21 years of age. Note: Minimum 25 years of age is recommended, however exceptions can be considered for safe, mature staff members or ministry leaders.	A minimum of 2 unrelated screened adult supervisors in the vehicle with minors at all times. Driving records checked (no at-fault accidents and not more than 2 minor traffic violations in the past three years) and minimum 25 years of age.

# and the #1 question is...

## WHAT DO WE NEED TO KNOW ABOUT CRIMINAL RECORD CHECKS?

**This is by far the number one question asked by churches and charities when it comes to abuse prevention and it can be a complex one...**

### Criminal Record Checks: A Primer

In a perfect world, we could trust everyone! But as we are painfully aware, it's not. We must seek to protect the most vulnerable in our society, communities, congregations, programs and ministries. Serving others is a big part of what your organization does and we're thankful that you do! We know that police checks including Vulnerable Sector Verification (VSV) have been an ongoing challenge for Christian charities who provide programs and services for vulnerable persons including - children, youth and vulnerable adults.

As the insurance provider to over 7,000 churches and Christian charities across Canada, we've worked hard to make navigating abuse prevention and criminal record checks easy(er), including the **CRIMINAL RECORD CHECK OPTIONS** (see below), and **CRIMINAL RECORD CHECKS 101** and **WHO NEEDS A VSV AND WHY?** (see next page). You'll find lots of practical explanations and tips to reduce the amount of time and effort spent by your organization in understanding and clarifying the process to effectively screen your workers.

## CRIMINAL RECORD CHECK OPTIONS

INITIAL SCREENING	RE-CHECKS
<b>Adults born January 1, 1986 or later</b> CPIC (Police Services) <b>or</b> EPIC (Sterling Talent Solutions) or ECRC (Plan to Protect®)	<b>Adults born January 1, 1986 or later</b> CPIC (Police Services) <b>or</b> EPIC (Sterling Talent Solutions) or ECRC (Plan to Protect®)
<b>Adults born before January 1, 1986</b> VSV (Police Services) <b>See "Who Needs A VSV?"</b>	<b>Adults born before January 1, 1986</b> (If initial VSV is on file) CPIC (Police Services) <b>or</b> EPIC (Sterling Talent Solutions) or ECRC (Plan to Protect®)

**Note:** Provincial Police Record Checks Reform Acts based on Privacy Law no longer allow the disclosure of Criminal Record Checks for Minor Applicants (i.e. under the age of 18).

As a great solution to the ongoing challenges of understanding and obtaining criminal record checks and re-checks, many organizations use third party screening services, including the following:

#### Plan to Protect®

1 (877) 455-3555

<https://www.plantoprotect.com>

#### Sterling Talent Solutions

1 (877) 308-4663

<https://www.Backcheck.net/RobertsonHall>

## Advantages of Third Party Screening

**INITIAL** Checks available through Electronic Criminal Record Check *for any adult applicant born January 1, 1986 or later*

**RE-CHECKS** available through Electronic Criminal Record Check for *any worker*, if re-checked every five (5) years, or less

There are two components to the Electronic Criminal Record Check:

1. A search of the convictions in the National Repository of Criminal Records
2. A search of locally-held police information across Canada, including pending charges and "persons of interest"

Some of the benefits include:

- ✓ Convenient on-line process with no travel to police station
- ✓ Paperless, secure and forgery proof
- ✓ Comprehensive, consistent national process
- ✓ Permanent electronic storage of results
- ✓ Checks can be shared with multiple organizations
- ✓ No finger printing required

## Criminal Record Checks: Who Should We Screen?

	Required	Recommended	Not Required
Ministers, Lay Pastors, Executive Directors, Administrative and Office Staff, Children's and Youth Workers, Teachers, Counsellors, Nursery Workers, VBS Workers, Designated Hall Monitors, Camp Counsellors and any other persons in a position of trust and supervision who interacts with vulnerable persons			
Cell Group/Home Church Leaders and Childcare Providers			
Under Age 18 – Minors <b>Note:</b> Criminal checks no longer allowable by law. However all other screening measures required. When available, must include in screening.			
Children's Ministry "Helpers" under Age 16 (refer to page ten)			
Board Members, Elders, Deacons and Trustees who may work with vulnerable persons			
Board Members, Elders, Deacons and Trustees who never work or interact with vulnerable persons			
Custodians and Maintenance Staff (when vulnerable persons on premises)			
Custodians and Maintenance Staff (when no vulnerable persons on premises)			
Ushers – Greeters, offerings only			
Ushers – Checking halls, rooms and doors, including designated Hall Monitors			
General Membership (with no volunteer duties working with vulnerable persons)			
Third Party Contractors (when no interaction with vulnerable persons on premises)			
Volunteers in programs and events not directed at, or working with, vulnerable persons			

**Note:** Vulnerable Persons means children, youth (i.e. under age 18) and vulnerable adults.

# CRIMINAL RECORD CHECKS 101

## INITIAL CRIMINAL RECORD CHECKS

**VSV - Vulnerable Sector Verification (also known as Vulnerable Sector Check or Screening) includes:**  
**Canadian Police Information Centre check (CPIC)**  
**Check of national pardoned sex offender database**  
**Search of local police information including pending charges**

**Note:** Initial checks for any adult applicant born January 1, 1986, or later, may be done by means of a CPIC or equivalent (refer to Criminal Record Check Options chart on page Eight for more details).

INITIAL

## CRIMINAL RECORD RE-CHECKS

Camping ministries and short-term missions organizations - Annually, or every **five (5) years** or less if an annual home church commendation is provided  
 Schools, daycares and nurseries - Every three (3) years or less  
 Churches and all other organizations - Every five (5) years or less  
**Note:** Re-checks may be done by means of a CPIC or equivalent (refer to Criminal Record Check Options chart on page Eight for more details).

RE-CHECK

## Definition of Vulnerable Sector

The Criminal Records Act outlines the circumstances in which an applicant is eligible for a VSV in a paid or volunteer **position** when that "position is one of authority or trust relative to children or vulnerable persons" and/or when that position "could lead the organization's clients to have trust in that individual". "Children" are defined as persons under the age of 18 and "Vulnerable Persons" are defined as any person who because of their age, disability or other circumstances, whether temporary or permanent, is in a position of dependency on others; or is otherwise at a greater risk than the general population of being harmed by a person of trust or authority.

## WHO NEEDS A VSV AND WHY?

Based on past abuse liability civil court decisions in Canada, it is clear that the legal duty of care owed by leaders (i.e. directors) of organizations entrusted with the care of minors and vulnerable adults, is to obtain the most comprehensive screening for employees or volunteers in positions of trust. Vulnerable Sector Verification (VSV) is different than a regular police check (CPIC) because it serves as a base-line check to ensure that new applicants are not among the over 15,000 pardoned sex offenders in Canada. Knowingly or unknowingly allowing such a person into a position of trust with vulnerable persons, if they re-offend, will render the organization's leaders grossly negligent and likely without any reasonable and prudent civil defense in a liability suit. A VSV may also serve to identify applicants with pending criminal charges and "persons of interest" who may be under investigation by police or children's protective services and unsuitable to work with vulnerable persons.

Not all new workers to your organization need a VSV!

## THERE IS NO NEED TO DO ANOTHER VSV "IF"

The volunteer or employee has been continuously working for your organization since an original VSV was done. Just a CPIC or EPIC re-check is required.

If there has been a gap in the volunteer or employee serving with your organization, but a VSV was completed since January 1, 2012 (or within the past five (5) years). Just a CPIC or EPIC check is required when they begin working with your organization again.

A new (or existing) worker can provide proof that either:

- A VSV has been completed within the past 5 years (or since January 1, 2012), or
- A VSV has been completed previously, with proof of continuous volunteer service,\*

Then just a CPIC or EPIC is required when they commence working with your organization.

## Other resources available on our website...

A sample Church Commendation Letter recommending volunteers to your parachurch or camp organization is also on our website  
[robertsonhall.com/pdf/Home\\_Commendation\\_Letter.pdf](http://robertsonhall.com/pdf/Home_Commendation_Letter.pdf)

A Sample Request From Agency letter to present to police services when a VSV is required  
[robertsonhall.com/pdf/Sample\\_Request\\_Letter.pdf](http://robertsonhall.com/pdf/Sample_Request_Letter.pdf)

Criminal Record Checks: Who Should We Screen?  
[robertsonhall.com/pdf/Who\\_Should\\_We\\_Screen.pdf](http://robertsonhall.com/pdf/Who_Should_We_Screen.pdf)

\* Proof should be in the form of an original VSV clearance or a Vulnerable Sector Verification letter [robertsonhall.com/pdf/VSV\\_Letter.pdf](http://robertsonhall.com/pdf/VSV_Letter.pdf)



**What type of criminal code convictions should make an applicant ineligible to serve in a position of authority or trust over a child, youth or vulnerable adult?**

There are over thirty (30) offences presently contained within the Criminal Code of Canada that are captured in the Pardoned Sex Offender database, plus older similar offences which were amended in name as of January 1, 1998. Although only a fraction of these offenders would be considered pedophiles, these offences are in the database because they are considered serious enough to cause concern for high risk of repeat offences or a threat to children, youth and vulnerable persons. For a complete list of Designated Sex Offences, refer to the following RCMP National Sex Offenders Registry link:

<https://www.rcmp-grc.gc.ca/en/sex-offender-management>

In addition, any convictions noted or determined, that involve murder, violence, forceable confinement or weapons offences should in almost all circumstances disqualify an applicant from serving in a position of authority or trust over a child, youth or vulnerable adult.

**A Word Or Two About Volunteer Workers Under 18**

With the growing interest in obtaining community volunteer hours for high-school aged students and also with the rise of leader in training (LIT) programs for camp counsellors, youth leaders and helpers at churches and community organizations, we are often asked about screening for workers under the age of 18. Unfortunately, we are aware of several cases involving physical and sexual abuse of children by teenaged and young adult leaders in sponsored programs and events, which reinforces the need to screen all workers.

**The Young Offenders Act, Privacy and Provincial Police Record Check Reform Acts**

Prior to 2018, criminal record checks could be done for minors serving in positions of trust in the vulnerable sector, with release of the checks subject to parental consent. However since then, Ontario and other provinces have begun to review and pass Provincial Police Record Checks Reform Acts based on federal privacy laws, which no longer allow for the disclosure of the criminal records of a minor (i.e. under 18). However this does not prevent all other screening measures from being done for those 16 years of age and under 18 years of age, who are in any way supervising or working with vulnerable persons.



**Screening Measures for Under 18 Workers**

Remember that effective screening is not just about criminal record checks! Therefore workers under the age of 18 should still go through a volunteer application process that includes a formal volunteer application and background reference checks (minimum of 2). These references must be from unrelated adults who can vouch for their character, reliability and suitability through experience and a proven track record. They can include adults in the church who have known them for years, their own teachers in schools, coaches, leaders in other organizations and parents from babysitting jobs. Best practice would be to include those who have known the person for the past 3–5 years. Screening should also include formal written applications, personal references (minimum 2) and personal interviews. Also these young applicants should be well known to your organization and leaders for a period of 6 months or more, including regularly attending your church or participating in your programs and ministries on a regular basis. As with any other adult workers, written documentation for the under 18 worker must be kept on file indefinitely, including the application and personal references.

Although Criminal Record Checks are no longer allowed for applicants under age 18:

1. Make sure that all other screening is still done, including volunteer applications, personal reference checks and personal interviews, and verifying that the minor applicant has been known to your organization and leaders for a minimum of at least 6 months.
2. Don't forget existing volunteers turning age 18 must immediately obtain a criminal record check (and be re-checked as required) as with any other person in your organization working with minors or vulnerable adults.

**What about workers under the age of 16?**

We do not generally recommend placing children under the age of 16 years of age in positions of trust with younger children. Positions of trust are leadership roles that may place the individual in situations where they are involved in making decisions about the health or welfare of those in their care, may require them to provide intimate care of babies, infants and younger children (e.g. diaper changing in a nursery, trips to the washroom, supervision in higher risk sports, recreational or off-premises activities) and although not desirable or recommended, may find themselves alone with those in their care, even if only for a short period of time. For all of these reasons, under 16 minors should not be placed in positions of trust with other minors or vulnerable adults.

**Positions of Trust versus “Helpers” (i.e. under age 16)**

The importance and desirability of involving teenagers in volunteerism is widely recognized in our society and in our school system. We also recognize Christian service work as an important expression of personal faith and maturity. Recommended abuse prevention standards do allow for younger helpers age 12 and older to assist within a nursery, classroom or other on-premises settings, but only while being supervised at all times by screened adult workers and never, ever while being alone with younger children or allowed to take them on washroom breaks, outdoors, offpremises or in public places without other screened adult workers supervising at all times. Examples of helper responsibilities would include such things as helping during craft times, assisting younger children in recreational events in a larger open room setting, reading to younger children in a classroom setting with leaders always present, etc. A volunteer application and reference checks are still recommended for any minors assisting as helpers with younger children.

**NOTE:** “Adult” helpers must be fully screened as a child cannot differentiate between adults who are in a position of trust and are fully screened, and those who are not.”

# The Ten Commandments of Youth Abuse Prevention

1. **The “Two Adult” Meeting Rule** – Make every effort possible to have at least two screened adult leaders present when interacting with one or more teens, whether on premises, grabbing a coffee together or during some other off-premises activity, event or mentoring program. As a general rule, these adults should not be related.
2. **The “Three Person” Transportation Rule** – Adults often need to drive youth to and from activities and every effort should be made to have a third person in the vehicle, preferably two unrelated adults with one or more minors as passengers. Avoid having one young person and one adult in the car alone. If you have any unplanned extra stops, attempt to notify parents if possible.
3. **Open Door Counselling** – During any counselling session between an adult ministry leader and youth, the best practice is to keep the door of the counselling room open for the entire session. Ideally, the session will be conducted at a time when others are nearby. Consider counselling in a group setting whenever possible, where witnesses to the conversation and interaction are present.
4. **Adequate Leader-to-Youth Ratios** – Subject to the “two adult” rule minimum, any sponsored youth event should always have a leader-to-youth ratio of no less than one leader to eight youth, particularly if it is outside, near public roads or off-premises. However the higher the risk, the greater the supervision required. For example a wilderness hiking may require a 1:4 ratio or lower, or if you have any special needs persons in your care.
5. **Sleepover Guidelines** – Should include approval of the event by an executive director or



Youth ministries, programs and events can be challenging in terms of upholding effective abuse, molestation and harassment prevention measures. Following is a list of ten important considerations to keep youth and youth workers safe:

- senior ministry leader, signed parental permission slips, a “two adult” rule, separate sleeping quarters for males and females, leaders must be awake for as long as youth to ensure monitoring of safe behaviour, no sharing the same bed between any adult and youth, and leaders must not change in front of youth.
6. **Safe Media, Internet and Social Media Guidelines** – Avoid taking youth to restricted, adult or age-inappropriate movies, sharing inappropriate or unsupervised internet access and texting between adult leaders and youth under 16 without parental permission. It is preferable to avoid texting youth under age 16 altogether.
7. **Appropriate Displays of Affection between Adults and Youth** – Include side hugs, shoulder-to-shoulder hugs, pats on the head, shoulder or back, handshakes, high-fives, arms around shoulders and touching hands, faces, shoulders and arms.
8. **Inappropriate Displays of Affection between Adults and Youth** – Even if in fun or as “horseplay” it is not acceptable for adults to engage with youth in full frontal hugs, kisses on the mouth, touching bottoms, chests or genital areas, showing affection in isolated areas of a building, touching knees or legs, male/female and/or one-on-one wrestling, piggyback rides, tickling, massage or any form of affection unwanted by the youth.
9. **Appropriate Verbal Interaction** – Include positive reinforcement, appropriate jokes, encouragement and praise.
10. **Inappropriate Verbal Interaction** – Avoid any form of name calling, adults having sexually oriented conversations with teens, involving youth in the personal problems of leaders, having secret elements of any relationship with youth, compliments related to physique or body development, cursing, off-colour or sexual jokes, shaming, belittling, derogatory remarks or harsh language that may frighten, threaten or humiliate.

– Excerpts from “Better Safe Than Sued” – Jack Crabtree/Zondervan Press

## Can Social Media Get Us Sued?

To better understand key areas of potential online liability risk for Christian charities and practical tips to establish an electronic communications and social media policy for your organization, check out *The Advantage* article entitled “Social Media for Christian Ministry: Getting Online and Keeping Out of Court” in the Member’s section of our *Church Protection Plus Church & Charity* home page at [www.robertsonhall.com](http://www.robertsonhall.com)



Just because a youth pastor or youth ministry leader has an enthusiastic idea for a new or unusual program or event doesn’t mean that your board of directors should always go along with approval and their blessing. Not every idea is one that furthers your core ministry objectives and some often come with a very high price in terms of the potential for injury, abuse and negative publicity in the community. This could highly impact your local reputation if it is not done properly, especially

without accountability and full knowledge of the risks to your personnel and those in your care.

For example, if a proposed activity and the way it is managed conflicts with sound abuse prevention procedures or safety standards, it should be a “red flag” causing your board members or ministry leaders to further investigate, review your abuse prevention plan and make reasonable inquiries with your insurance provider and any other professionals appropriate to the proposed activity, for their advice. As you “proceed with caution” and before you give the “green light” to new programs and events, consider the following questions with respect to maintaining sound abuse prevention and screening guidelines for your children’s and youth ministries:

- Level of access by your workers to vulnerable persons in their care, on or off-premises

- Degree of **trust** inherent in the volunteer or employment position
- Your potential liability for another organization’s **lack of care** in a joint ministry or co-sponsored event
- Amount of potential **isolation** of a worker being left alone with a minor
- Inherent **risk** associated with the particular activity or event

The answers to these questions should guide your leaders in determining whether new or unusual youth events and programs can be managed safely and within the parameters of your existing abuse prevention policies and procedures. Unfortunately in trying to “get ministry done” or in co-sponsoring events with other organizations wherein proper screening and procedures fall through the cracks, some churches and charities have placed the minors in their care in harmful situations and exposed themselves to unnecessary legal liability.



# Abuse Prevention Audit: A Board Responsibility



## WHY?

An abuse prevention policy is the single most important risk management tool utilized by children's and youth-serving organizations!

Implementing and maintaining an effective prevention plan are both crucial and equally important in protecting those in your care, avoiding unnecessary lawsuits, defending your organization and directors in a civil court case and maintaining your ongoing insurance coverage eligibility. Some myths about prevention and compliance...

- If we don't know about it, it's OK
- If we have a policy on it, we don't need to check
- That's not a board responsibility
- This is a ministry, the courts will treat us differently
- It won't ever happen here
- They would never sue us

An external third party audit conducted by a legal or other professional outside party is always highly recommended. However, internal auditing is also a good solution for monitoring and measuring compliance to your organization's prevention plan. The goal is to provide your leadership with a report card and an action plan. The advantage of this type of audit is being able to correct problems internally before they result in oversights that can lead to injury, abuse, litigation and uninsured claims.

## WHAT?

Following is a framework for monitoring and assessing the scope of your abuse prevention audit in relation to your specific operations as a church or charity:

- Do an inventory of all ministries, activities, programs and events which your organization is currently sponsoring or co-sponsoring
- Evaluate potential risks associated with new or proposed activities and programs prior to board or senior management approval
- Keep up-to-date regarding ongoing changes in legislation, regulation and statutory legal obligations through local police, your lawyer and your insurance provider
- Review past issues or concerns that your organization has faced, including previous audits

## WHO?

An audit should be conducted by having an independent internal auditor (individual or committee) appointed by your board (or congregation) to review and survey your various programs, ministries and departments and to report back to your board members to ensure compliance with your organization's own stated written abuse prevention plan and to verify that your actual operations are in compliance with your policies and procedures.

## WHEN?

Your board (or congregation) should ratify an internal abuse prevention audit protocol to be conducted on an ongoing annual or bi-annual basis which reflects the size, scope and nature of your organization's particular children's and youth ministries, programs and events.

*"Board members should be aware that they could be exposed to personal liability if they permit their organization to work with children or other vulnerable persons where the board has failed to implement an appropriate abuse prevention policy that has been customized to reflect the specifics of their organization. Failure to follow the protocol set out in the abuse prevention policy could also lead to liability, so it is important that an organization that has the foresight to implement a policy also makes sure that the policy is strictly followed."*

- Terrance Carter of Carters Professional Corporation, [www.charitylaw.ca](http://www.charitylaw.ca)

## HOW?

The following is a simple and easy to use outline for conducting an internal audit:

1. A director, officer, committee or other qualified individual should be appointed by the board (or congregation) and given power and authority as internal auditor to oversee all aspects of the audit procedure and to whom your children's and youth ministry department leaders will have the responsibility to assist and cooperate. Ideally this individual or committee should be knowledgeable about abuse prevention but should be

removed from the day-to-day operations of your youth and children's ministries in order to assure objectivity.

2. The internal auditor will be provided with specific guidelines to survey the various department ministries, programs and events, which will include, but not necessarily be limited to, review of your physical premises (e.g. windows in all classrooms), your operational procedures (e.g. "two adult" rule), your training of all new and existing workers (e.g. awareness of the prevention plan and duty to report abuse) and your screening procedures (e.g. minimum 6 months of attendance prior to eligibility, personal interview and references, criminal record checks, etc.) With respect to screening, a random number of new and existing workers should be confidentially surveyed by the auditor to ensure that they have been properly screened and trained.
3. The results of the survey will be summarized and reported to the board by the internal auditor, outlining the areas of full compliance, partial compliance and non-compliance, along with a recommended "to-do" list in order to achieve maximum compliance.
4. The board will review and ratify the internal auditor's report and propose an action plan to achieve maximum compliance within a reasonable time frame. This action plan may include temporarily shutting down non-complying programs and events while staff or individual department leaders remediate the problem areas. Remediation may include following up on outstanding or overdue screening documentation and initial or refresher training for workers. It may also include changes to operational procedures, building modifications and checking with the organization's legal counsel or insurance provider for clarification of any outstanding liability or coverage issues. Once the non-compliant areas have been satisfactorily addressed, staff or department leaders should formally report back to the board in order to confirm full compliance with your organization's abuse prevention plan.

**WE'RE  
HERE  
TO  
HELP!**

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## FACING THE RISK - PRECIOUS CARGO: MANAGING TRANSPORTATION RISK FOR CHURCHES AND CHARITIES

by Kenneth A. Hall

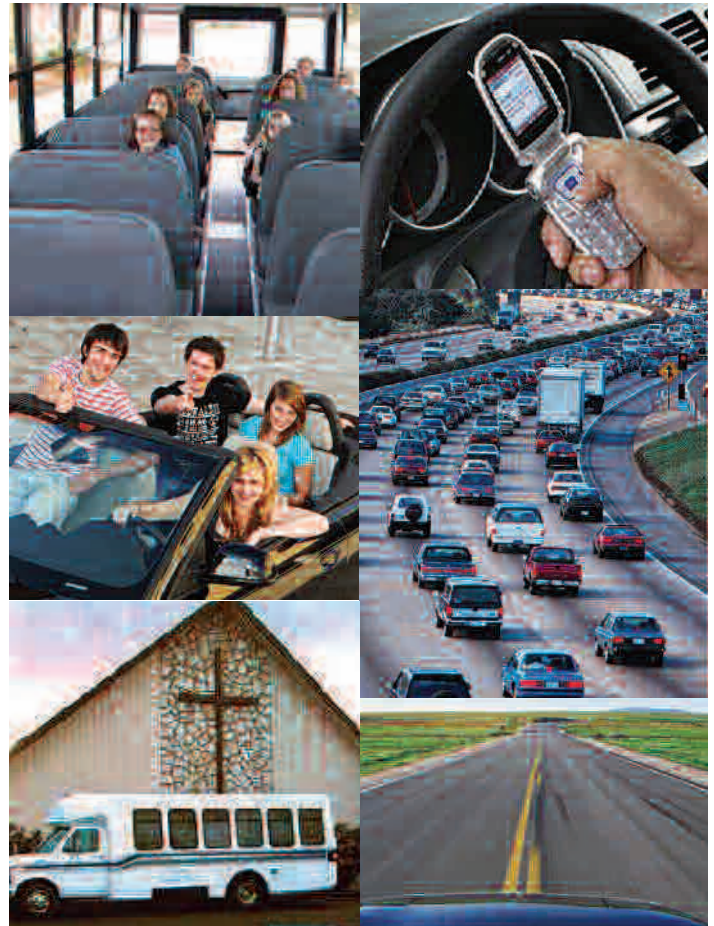
### Introduction

We live in a mobile society and Christian charities are also dependent on various forms of automotive transportation for their programs, ministries and events. From retreats and youth trips to a quick run to the bank, many of the everyday activities performed at charitable organizations include some form of automobile transportation. Some churches and charities have ownership of a van, bus or car, however these vehicles are often insufficient to meet all of their transportation needs. Oftentimes, the vehicles used are not owned by the organization but by its employees and volunteers. At other times, rental cars or vans are used to meet temporary demands, or for special events.

Whatever types of vehicles are required, approving them for the organization's use has significant safety and legal implications. Church and charity leaders should understand that they have an obligation to use reasonable care in the selection and approval of any vehicle used for a sponsored program, ministry or event, even vehicles not owned by the organization! In fact the highest risk of potential liability that any church or charity will likely ever face in monetary terms is a multi-million dollar lawsuit resulting from injuries or fatalities suffered in an accident involving a vehicle used on behalf of the organization. Often leaders do not fully appreciate the degree of responsibility they have for owned and personal vehicles on the road each week that are used on behalf of their organization. That is the reason why transportation is often called the "hidden risk" for charities and non-profits.

#### Recent examples of claims involving multi-passenger vehicles:

- A church bus picking up passengers on a Sunday morning makes a sharp right-hand turn at an intersection, going over the curb, injuring twelve passengers on board and two pedestrians
- A 15-passenger van loses control due to a combination of factors, including worn tires and worn brakes, resulting in a head-on collision and the death of eight teenagers returning from a basketball tournament
- An older model bus transporting a seniors group to a gospel concert suffers a fire due to an electrical fault, with all on board fortunately able to evacuate before a total fire engulfs the vehicle
- A bus returning from a Christian campground overturns, killing one child and injuring nine, after drifting onto the



- shoulder of the road and losing control due to driver fatigue
- A van travelling on a closed freeway suffers a tire blowout, loses control and overturns, resulting in 7 fatalities and 3 injuries

The purpose of this article is to provide a general overview of the liability risks posed by vehicle transportation, including; (a) Owned or Leased Vehicles, (b) Non-Owned Vehicles, and (c) Rented Vehicles. It will also include practical tips for developing an effective transportation policy for accident prevention and recommendations to ensure that your insurance protection is appropriate to your risk.

## Part One: Owned and Leased Vehicles

The use of multi-passenger vehicles by churches, charities, non-profits and other service organizations is widespread in Canada. However the ownership, maintenance and safe operation of these vehicles carries with it a high degree of responsibility and potential legal liability for the directors, officers and leaders of such organizations. There are many documented cases in both Canada and the United States of fatalities and injuries suffered by passengers during church outings that have been the result of inadequately maintained vehicles and inexperienced or unqualified drivers. Each province has minimum vehicle safety standards and driver licensing requirements for multiple passenger vehicles based on seating capacity and gross vehicle weight. In addition, private and government insurance underwriting rules will dictate premium rates and driver eligibility. However because of the high risk of fatalities and injuries, it is vitally important for your board members to develop a "Transportation Policy" to ensure the safety of your drivers and passengers in owned or leased vehicles, including the following guidelines:

Driver requirements:

- 1) Should be 25 years of age, or older
- 2) Provide a physical copy of their current valid driver's license each and every year. Note: A suspended driver's license violates the statutory conditions of an auto insurance policy and can result in denial or limitation of a claim. A suspension can be the result of the accumulation of demerit points, but it can also happen innocently because of failure to receive and renew a license due to change of address. Either way, it can have serious liability implications for the organization in the event of an uninsured accident.
- 3) Confirm they hold the appropriate class of license for the vehicle. Note: Improper licensing may also violate the statutory conditions of an auto insurance policy and can result in claims being denied or limited by your insurance company.
- 4) Have a minimum five (5) years of driving experience
- 5) Maintain an exemplary driving record, with no at-fault accidents in the past five (5) years and not more than two (2) minor traffic violations in the past three (3) years. Criminal convictions related to driving (i.e. Dangerous Driving, Motor Vehicle Manslaughter, Impaired Driving, etc) or any major traffic violations (i.e. Failure to Remain, Careless Driving, Racing, Excess Speeding 50 km/h or over the posted limit, etc) should disqualify the individual as an approved driver.
- 6) Be required to sign a **Safe Driving Statement** agreeing to drive with extreme care and safety first. This includes abiding by the rules of the road and the standards of the organization, including confirmation that all safety equipment (e.g. seatbelts, child booster seats, air bags) is in working order, that the vehicle is fully insured as required by provincial legislation (preferably \$2,000,000 minimum Third Party Liability coverage), that they will avoid all distractions while behind the wheel, including loud music, eating, using a cell phone, texting, etc., that they will be personally responsible for all traffic and parking violations and that they will notify the authorities immediately of any accident.
- 7) Have prior experience with vehicles of similar size, weight and handling. Note: Many multi-passenger bus and van accidents involving collisions and rollovers resulting in fatalities are due to driver inexperience and a lack of familiarity with braking characteristics, handling and wheel base length. A loaded vehicle takes a significantly

longer distance to stop than an empty one. Don't allow drivers to "practice" with your precious cargo!

- 8) Although multi-passenger vehicles owned by charities are usually registered as private buses and without the same road rights or responsibilities as school buses, it is worthwhile to refer to the driver orientation, training, trip planning, onboard passenger safety, drop off and pickup procedures and other safety tips contained in the resource guides for school buses available through your provincial ministry of transportation, for example;  
<http://www.mto.gov.on.ca/english/safety/school-bus-safety.shtml>

Vehicle safety and maintenance program:

- 1) Regular exterior and interior visual checks by driver (lights, windshields, wipers, mirrors, tires, seatbelts)
- 2) Check that the vehicle is equipped with a first aid kit, flashlight, snow brush, ice scraper, etc.
- 3) Scheduled vehicle maintenance on a semi-annual basis
- 4) Maintenance and safety records kept for each vehicle
- 5) Current Liability certificates (original kept in vehicle and copy in office insurance file)
- 6) Up to date safety certificates as required by provincial ministry of transportation
- 7) Avoid the use of older, unreliable vehicles with outdated safety design standards

Are 15-passenger vans safe?

The 15-passenger van has been the vehicle of choice for many churches, schools, camps, associations and sports teams since the 1980's. In recent years concern has grown about the safety of these vehicles. Between 1990 and 2001, 1441 of these vans were involved in fatal crashes, including 601 single vehicle wrecks and have resulted in 1,924 deaths, according to the U.S. National Highway Traffic Safety Administration. The tragic rollover crash of a high school basketball team riding in a 15-passenger van that resulted in 8 fatalities and 4 injuries in a collision with a semi-trailer truck near Bathurst, New Brunswick renewed concerns about the inherent safety of these vehicles. Transport Canada's study of loaded large passenger van rollover collisions in Canada failed to result in finding any large scale pattern of rollover accidents. However maxi-van manufacturers have strongly recommended that drivers "avoid sharp turns, excessive speeds and abrupt manoeuvres". Safety experts have also added that these vans should only be operated by trained, experienced drivers, should not be overloaded with luggage and should be carefully checked for tire tread wear, as a major cause of rollovers has been tire blowouts. As a result, some churches and youth organizations have chosen to ban the use of large vans for group transportation. Interestingly however, there has actually been a steady decline in accidents, injuries and fatalities suffered in 15-passenger vans since 2005, quite possibly because of the increased awareness by operators regarding the handling limitations of these vehicles.

Insurance coverage tips:

- 1) Multi-passenger vehicles (vans and buses) should be insured for a minimum of \$5,000,000 Third Party Liability coverage
- 2) Informed consent and parental permission forms should be completed and signed for any field trips involving transportation in owned, chartered or personal vehicles used to transport minors to off-premises events or activities
- 3) Buses and vans should not be loaned to other organizations or individuals as any resulting legal liability



from accidents and injuries will go against your organization as the registered owner and will affect your future claims record, insurability and premium. Exceptions should only be made if the vehicle will at all times be operated by your organization's approved driver(s)

- 4) Do not rent or lease your vehicle to other parties for monetary consideration, as it may be excluded under the statutory conditions of your insurance policy
- 5) Consideration should be given to purchasing Excess or Umbrella Liability protection, up to a combined limit of \$10,000,000 or \$15,000,000, due to the potential for multiple injuries, fatalities and multi-million dollar liability awards **Note:** Whether or not your church, camp, school or charity is required to register your passenger van or bus as private or public, it is instructive to keep in mind that many provinces have increased the minimum required limit of Third Party Liability coverage for public buses to \$5,000,000 for those with a seating capacity of 8 to 12 passengers and to \$8,000,000 for those with a capacity of 13 passengers or more, due to the potential for multiple injuries and high liability awards.

## Part Two: Non-Owned Vehicles

A multi-million dollar lawsuit in British Columbia launched in 2008 against a small church and its board members as the result of fatalities and injuries from an accident involving a personal minivan used to transport passengers to a youth event has raised the awareness of churches and charities to the huge risk posed by the use of non-owned vehicles. Each and every week thousands and thousands of trips are coordinated by churches and charities across Canada utilizing staff, member and volunteer-owned vehicles for transportation to and from church premises for services, Sunday school and mid-week programs, as well as for off-premises events and trips such as conferences, youth rallies, car rallies, gospel concerts and tours. There are now plenty of precedent cases in North American courts in which a business or organization has been held legally responsible for damage, injury or death arising from accidents from use of private vehicles for sponsored programs and events. While the vehicle owner's personal automobile liability insurance is always the primary source of coverage, the following circumstances can easily lead to the sponsoring organization being sued as a defendant party in a liability claim:

- a) The owner's vehicle insurance policy may only contain a limited amount of Third Party Liability coverage (i.e. most provinces require only a statutory minimum of \$200,000 per accident and some cost-conscious policyholders choose the minimum limit, \$500,000 or \$1,000,000.
- b) The driver of the vehicle may be knowingly or unknowingly be driving with a suspended license, which violates the statutory conditions of an automobile insurance policy and automatically reduces the amount of third party liability coverage to the statutory minimum limit (i.e. \$200,000).
- c) Even if the vehicle owner does carry \$2,000,000 or more Third Party Liability coverage, an accident with multiple, serious and permanent injuries can easily result in a multi-million dollar lawsuit. A recent record-setting liability claim in Ontario involving only one victim, a teenage girl who was severely and permanently injured as a passenger in the back seat of an automobile and requiring intensive medical care for the remainder of her life, was settled in September of 2009 in the amount of \$18,400,000!

These cases and others reinforce the importance for churches and charities who are routinely utilizing personally-owned vehicles to ensure the safety of employees, members, guests and program participants as passengers. This can be done by implementing minimum requirements for the use of these vehicles in the organization's transportation policy.

While each vehicle owner or driver may have their own level of safety consciousness, this does not excuse the organization from maintaining a minimum standard of care for any transportation that leaders or volunteers coordinate or supervise. Following are some helpful guidelines that should be included in any transportation policy for the use of personal vehicles:

- Vehicles should be well-maintained, preferably no older than ten (10) years and should not have any unrepaired accident damage, cracked windshields or missing safety equipment
- Drivers should be mature, experienced operators with a recommended minimum age of 25 years (but in no event less than 21 years of age) and five (5) years of actual driving experience. **Note:** According to the Insurance Bureau of Canada, male drivers between the ages of 16 and 25 years make up only 11% of the driving population, but are responsible for 37% of all claims payouts. Regardless of what a parent may consider acceptable, it may be unwise and ultimately judged negligent for an organization to coordinate, encourage or promote the use of teenaged drivers in church-sponsored events. Vehicles operated by teenagers who often value fun and convenience over safety can be a dangerous mix!
- Drivers should sign a **Safe Driving Statement** (refer to Part One).
- Many organizations now have an established pool of authorized drivers who have met minimum age and safety criteria, including having submitted a copy of their driving abstract (i.e. motor vehicle record) from the provincial ministry of transportation confirming that they do not have more than two (2) minor traffic violations in the past three (3) years and do not have any at-fault accidents in the past five (5) years. Any major traffic violations or criminal convictions related to operating a motor vehicle should disqualify an applicant from being a driver on your approved pool of volunteers. This type of screening is an effective way for church leaders to show that they have demonstrated due diligence to avoid placing passengers in a harmful situation and a higher than reasonable risk of death or injury.
- If your organization is sponsoring any car rally or scavenger events (e.g. "The Amazing Race") make sure that it is not a timed event, that drivers are reminded to obey all the rules of the road (including posted speed limits), and that drivers and participants must wear seatbelts and never exit or enter vehicle unless it comes to a full stop. Drivers of vehicles who are caravanning should be prohibited from socializing vehicle to vehicle, racing or competing.
- Ensure that your Church Insurance General Liability coverage includes a Non-Owned Automobile Liability Policy (also known as an SPF #6) to cover the church, its leaders and volunteers against legal liability arising out of the use of personal vehicles in a sponsored event, program or regular transportation. We recommend a minimum coverage limit of \$5,000,000.
- **Important Note:** Non-Owned Automobile Liability policies are subject to certain terms and conditions, including a territorial restriction that limits coverage to legal liability



for bodily injury arising out of accidents that occur within Canada or the United States. As an alternative to using private passenger vehicles for sponsored events, consider chartering a professional bus company who can provide a qualified professional driver and are required to carry a large minimum amount of Third Party Liability Insurance (usually \$8,000,000 for public vehicles in Canada). This transfers the risk to another qualified, experienced and well insured party, thereby allowing your leaders to focus on the participants and to fully enjoy the event.

### Part Three: Short-term Rental Vehicles

For board members, staff or volunteers who have the authority to rent vehicles for transportation within the scope of their duties for the organization, either within their community, or while away at conferences, meetings, fundraisers and other travel, there are several considerations to keep in mind in managing the risk of loss, damage and legal liability:

Loss or damage to rental vehicles is often the contractual responsibility of the renting party and at most car rental desks you will be required to assume legal responsibility for all collision or comprehensive damage to the vehicle during the period of the rental contract. While rental companies offer physical damage coverage as an option the cost is usually prohibitive, often as much as \$20 per day, which translates into an annualized premium of \$7,300! As an economical alternative, both individuals and organizations can obtain physical damage coverage on a vehicle they rent for travel or business use in Canada and the U.S.A. on their own Automobile Insurance policy through an optional endorsement called an SEF #27 – Legal Liability for Damage to Non-Owned Vehicles. However many organizations do not have a primary Automobile Insurance policy because they do not own any vehicles. In that case they can often rely on their General Liability insurance policy “if” they have an optional endorsement called an SEF #94 – Legal Liability for Damage To Hired Vehicles.

#### Following is an insurance checklist for rental vehicles:

- 1) Check with your organization’s insurance broker or agent to confirm whether your Automobile Insurance Policy contains an SEF #27 and whether it can apply to the type of vehicle you are renting. Often this endorsement restricts coverage to automobiles and mini-vans and will not cover commercial vehicles, larger passenger vans or buses.
- 2) If your organization does not have an Auto policy, but has an SEF #94 included in your General Liability Insurance policy and you want coverage to apply to a rented vehicle, the rental contract must include the name of your organization, either solely or in addition to the individual signing the contract.
- 3) An SEF #94 contains a territorial restriction limiting claims within Canada and the continental United States. Therefore claims for loss or damage in jurisdictions such as Mexico or other parts of the world are not covered.
- 4) An SEF #94 contains a maximum limit of coverage (usually no more than \$50,000) and is subject to a deductible (usually \$500 or \$1000 per claim).
- 5) Claims for loss or damage under an SEF #94 count against your General Liability policy and for this reason

many organizations choose to pay the additional premium for the optional physical damage coverage provided by the rental car agency, or that may be available through their credit card features.

- 6) Insurance companies generally offer SEF #94 coverage as a no-cost frill to their General Liability policy, however it is intended for occasional and incidental use. Frequent rentals may be subject to an additional premium charge based on the amount of rental days per year.

Legal Liability for third party bodily injuries or death arising out of an accident involving a rental vehicle has traditionally been the responsibility of the rental car agency (and its insurance company) as the registered owner of the vehicle. However since March 1, 2006 in Ontario under Bill 18, liability is now “joint and several”, meaning that the renting party can and probably will be held personally liable for injury or death. The bill places a cap on the liability of the rental car agency as owner and reorders the priority of insurance coverage amongst owners, lessees and operators for bodily injury and death claims. The priority of coverage for claims under Bill 18 now makes the renting party’s policy primary, the driver’s policy secondary and the owner’s (i.e. rental agency’s) policy excess.

For churches, charities and non-profit organizations that have a primary Auto Insurance policy for automobiles, vans or buses that are owned, or are under a long-term lease (i.e. over 30 days), coverage for legal liability resulting from third party bodily injuries resulting from the operation of a rented vehicle will be covered under their Third Party Liability, subject to the limit of insurance carried in their policy. For those who do not have primary Auto Insurance policies because they do not own or lease vehicles, the primary coverage for legal liability arising out of the use of rental vehicles in Canada and the U.S.A. would be found under their General Liability policy, but only if they have an SEF #6 – Non-Owned Automobile Liability included in their policy. In all other provinces, rental car liability is currently covered by the rental agency as owner of the vehicle.

If for some reason the rental agency’s coverage is inadequate or void in the event of a claim, your organization’s Non-Owned Auto Liability coverage would apply, subject to the coverage limit contained in your policy.

### Conclusion

An accident involving a busload or vanload of children, youth or adults can be devastating. Mending broken bodies, hearts and lives because of injuries or fatalities due to the negligence of leaders or volunteers is something no church or charity ever wants to experience. Yet through lack of information, carelessness or lax standards, many families suffer just such a catastrophe. Furthermore, multi-million dollar lawsuits and underinsurance can threaten both the assets of the organization and the personal assets of your board members.

The good news is that most accidents can be prevented by getting onboard with some basic rules and an effective formal transportation policy for drivers and vehicles. We hope these guidelines will assist your board members and staff in protecting your precious cargo and keeping your ministries and programs moving forward safely.

# 5-Point Checklist of Best Practices for Short-term Mission Trips

January 2017

If your church or charitable organization is sponsoring or supervising mission trips outside of Canada, there exists a high legal duty of care on the part of your leaders (including directors, officers, administrators and trip leaders) for the health and safety of workers while at, and travelling to and from, those destinations. This duty and the potential for legal liability has always existed under common law in cases where an employee or volunteer has suffered bodily injury or a fatality, has been the victim of a crime or kidnapping, or has acquired a serious illness or infectious disease, while acting within the scope of their duties abroad.

The kidnapping of a Christian charity worker in Sudan involved extended captivity for over 3 months, and fortunately her eventual release. However it also resulted in her lawsuit seeking significant civil damages against the organization and its directors based on their allegedly willfully ignoring warning signs that abductions were a threat to foreigners in that area and thereby placing her in a dangerous situation and as a result, suffering severe mental anguish during and since the kidnapping. The threat of kidnapping, including an epidemic of express kidnapping, has also become rampant in various parts of the world, including Central America, Eastern Europe and southern Africa.

Another serious risk to be considered by mission-sending organizations is the proliferation of terrorism and terrorist groups throughout the world, including in countries and regions previously considered low or moderate risk, such as recent attacks during the past year in Tunisia, Mali, Burkina Faso, Kenya, Nigeria, Egypt, Somalia,

Turkey, Ukraine, The Philippines, Indonesia, and others, underscoring the threat to aid and missionary workers as targets of radical groups during travel and work throughout the world on behalf of their church or charity.

The tragic death of four short-term church missionaries from Michigan when their van plunged over the side of a mountain in Haiti in 2013 was a reminder of the much higher risk of transportation injuries in developing countries due to poor road conditions, vehicles, driver licensing standards and vehicle age and safety condition, often including a complete lack of operable seatbelts, airbags and safety inspections. For a complete overview of the risks associated with missions, relief and development travel abroad and practical tips to keep your staff and volunteers safe, refer to our Protecting People Worldwide article.

The traditional common law Duty of Care for workers has now become even more paramount here in Canada with recent amendments to Bill C45, also known as the Westray Bill. Under the provisions of the amended bill, there is the potential for criminal liability against an employer, such as a mining resources company operating with Canadian managers and employees abroad. However provisions also potentially apply to charities or non-governmental organization who sponsor and send staff and volunteers abroad on missions, relief and development programs. This is because the wordings and definitions contained in amendments to this federal workplace safety legislation now define employer organizations more broadly to include "associations of persons", and the term "work" is now more broadly interpreted to include

"tasks", potentially including those of a volunteer nature being carried out across Canada and throughout the world, whether by a corporation, a non-profit or a charity. In essence, the provisions contained in these amendments have extended the concept of the "workplace" beyond the four walls of the place of work or physical location of the organization. In cases of gross negligence where employees or volunteers are placed in a dangerous or extreme situation while carrying out their work on behalf of the organization anywhere in the world, both the entity and its directors can be deemed criminally culpable under the law. The emergence of this potential for criminal liability is a wake-up call for many employers and organizations utilizing either paid or volunteer workers to advance corporate objects, programs, ministries and missions and has underscored the importance of their directors demonstrating both the proper civil liability Duty of Care and Bill C-45 compliance.

Following is a basic checklist of short-term mission trips risk management "best practices" to avoid unnecessarily high risk to the personal safety of your mission participants and exposing your organization and board members to lawsuits:

1



Mandatory out-of-country Travel Emergency Medical insurance for ALL leaders and participants on the trip. Written proof of insurance should be provided by each participant prior to departure to the organization's administrator or board members. Please note that many travel insurance plans contain restrictions for certain destinations and pre-existing medical conditions and that a lack of proper emergency medical coverage can result in financial hardship for the individual and the potential for legal liability against the organization for an injured or ill mission worker facing tens or hundreds of thousands of dollars in uninsured emergency medical bills.

2



All participants should check with their own family physician to confirm that they do not have any pre-existing medical conditions that might prevent or restrict them from being placed in strenuous situations associated with travel to the destination(s) and/or participation in the proposed activities and work, including verification that they have received the recommended inoculations and medication for any tropical or infectious diseases inherent in the proposed region of travel.

3



It is recommended participants be age of majority (i.e. not minors). This is 18 years of age in Quebec, Ontario, Manitoba, Saskatchewan and Alberta and 19 years of age in all other provinces and territories. Refer to Notes About Minors and Short-term Missions regarding the extremely high duty of care and the legal and practical considerations that should be taken into account if you are considering including minors on mission trips.





All participants must sign an informed consent that clearly discloses the specific medical, climate and personal safety risks associated with travel to the proposed destination(s) including the risks of various types of transportation being used during the trip and a waiver of liability releasing the sponsoring organization and its directors, officers, trustees, employees, volunteer leaders and any other legal representatives from any legal liability for personal injury or property damage arising from those risks that are beyond the control of the sponsoring organization and its leaders.



## Government of Canada

Your organization and its board members should check with the Government of Canada's Global Affairs Canada (GAC) Department for the current travel advice and advisories for the intended country and/or regional destination(s), right up to the date of departure. Groups or individuals should not be sent into countries or regions with a Level 4 warning (i.e. "AVOID ALL TRAVEL"). Groups and/or individuals should only be sent to countries or regions with a Level 3 warning (i.e. "AVOID NON- ESSENTIAL TRAVEL") if they are providing essential medical, health care or other services in a natural disaster or emergency crisis situation and/or are being provided with support, security and transportation by other experienced and reputable Non- Governmental Organizations (NGO) operating on the ground in that country or region. The GAC website is

<http://www.voyage.gc.ca/travelling/advisories>

## NOTES ABOUT MINORS AND SHORT-TERM MISSIONS:

The safest way of sponsoring mission trips with minors as participants from a legal and insurance standpoint is to require that children and youth under the age of majority remain at all times in the care of their parent or guardian during the trip. More and more organizations are starting to do this, where the focus is on a family-based outreach with children accompanying and in the care of their parents, especially adults who have real and practical skills to assist in mission, relief and development work.

The recent and tragic case of a Canadian teenager on a mission trip to the Dominican Republic who suffered a fall from balcony where the group was staying and is now quadriplegic, resulted in a \$17-million dollar lawsuit against the sponsoring church, mission-sending organization and trip leaders, due to a lack of supervision. Another example of a potential liability associated with youth travel came to light when groups of teens and students on sponsored trips from Canada and the U.S. were caught in the midst of looting, violence and adverse health and safety conditions in the aftermath of the 2010 earthquake in Haiti. Those groups had to be evacuated on a priority basis using valuable resources ahead of victims and furthermore, many of the parents held the sponsoring organizations legally responsible for the mental anguish suffered by their children. These and other examples have resulted in a re-thinking of children being placed in potentially dangerous destinations and situations by schools, non-profits and charities and have brought into sharp focus the high duty of care and legal realities associated with sponsoring travel with minors.

Following are important legal and practical considerations for your board members to keep in mind if you are sponsoring mission trips with youth:

- Many North Americans do not fully understand the realities, challenges and conditions in the developing world. As parents, they often have unrealistically high expectations of the duty of care of an organization and its leaders for the care of their children and are likely to sue those organizations and their board members for anything that may happen to their children on such trips, especially for serious or permanent injuries.
- However well-meaning and accepting a family may be regarding the risk of their child being

injured, killed or acquiring a life-threatening tropical or infectious disease while on a mission trip, and however much they may not have any intention beforehand to sue the organization, the reality of a child requiring extensive medical care or suffering permanent damage for the remainder of their life will often cause a change in heart and/or simply force parents toward a legal recourse in order to avoid financial hardship, burden or personal bankruptcy for the long-term care of their injured or disabled child.

- A waiver signed on behalf of a child by their parent or guardian is generally considered legally unenforceable! One party cannot sign away the legal right of another and even if a parent supports the organization and may hold a great deal of influence over their child as a minor, once that child reaches the age of majority, they will in any event be able to take legal action against the sponsoring organization in their own right.
- Sponsoring organizations and their leaders sometimes do not fully understand their legal duty of care for minors, especially in light of the implications of Bill C45. It is a huge responsibility for a group of volunteer trip leaders to provide sufficient supervision for risk-taking and adventure-seeking teenagers. Trip leaders may lack the resources, experience and expertise to deal with all of the situations they can potentially face in the developing world. A recent example of this was the case of a youth worker on a week-long mission trip who suffered a severe neck injury while participating in a recreational activity on the group's fun day off, resulting in a multi-million dollar lawsuit against the organization and its leaders for a lack of supervision.
- From a practical standpoint it is often difficult for sponsoring organizations to operate mission trips involving minors in compliance with the legal and insurance obligations under their own abuse prevention plan, such as full screening of trip leaders, a "two-adult" rule, avoiding billeting in unscreened host family residences abroad and all of the other policies and procedures the organization has committed to in order to qualify for full liability protection. This lack of compliance may invalidate their liability coverage for actual or alleged abuse claims occurring on mission trips within or outside of Canada, whether the alleged victim is a minor on the trip or a foreign national child participant in a program, ministry or event sponsored by the group.
- There is great value for young people travelling abroad in terms of their personal, spiritual and life skills development, whether it be with parents, through school or with other organizations, especially when it involves faith in action. Ultimately, however, your organization's leaders must weigh whether the benefits of advancing your programs, ministries and charitable objects to those you are trying to reach in the mission field by including minors are worth the risk, high level of care and qualified supervision required to keep minors safe on sponsored trips to higher risk locations or involving higher risk activities.

We hope this checklist helps to provide your leaders with practical tips and insurance solutions to help meet your Duty of Care and to keep your short-term mission participants safe, including trips involving children or youth.

## social media for christian ministry: getting online and keeping out of court

by Kenneth A. Hall

The explosion of social media in our society is not only changing how we communicate with each other in our personal lives, it is radically transforming the way Christian ministries spread the gospel and create relationships within their congregations and communities. However, as with print and broadcasting media in the last century, our instantaneous ability to communicate with others electronically in the 21st century has magnified the potential for the good, the bad and the ugly.

It miraculously allows families to chat or Skype with each other from across the globe, is instrumental in organizing social revolutions that can cause tyrants to fall and is capable of being used as a tool to warn of impending natural disasters that can prevent large-scale death, injury and property damage. The ugly side of this technology can also provide a

**Balancing our moral, professional and legal responsibilities to assure the privacy and confidentiality of donors, clients, members, participants and vulnerable persons... can present a big challenge for leaders in churches and other Christian agencies.**

convenient means for pedophiles to prey on minors online, give criminals an opportunity to commit financial fraud on a scale previously not possible and allow individuals to spread hatred, misinformation and gossip that can unfairly and permanently damage the reputation of others.

It can also cause individuals, businesses and organizations to end up in court at the wrong end of a lawsuit when social media and electronic communication are misused. A journalism professor at Harvard University recently concluded in a lecture that in this new age of social media, "neither privacy nor publicity is dead, but technology will continue to make a mess of both!" Balancing our moral, professional

and legal responsibilities to assure the privacy and confidentiality of donors, clients, members, participants and vulnerable persons in faith-based organizations, including safeguarding the children and youth in our care; with the tremendous potential in promoting our message and ministries online through electronic text and image; can present a big challenge for leaders in churches and other Christian agencies.

Whether it's an inappropriate text sent by an adult volunteer to a young teenager, a prayer request made by someone struggling with an illness or family situation given in confidence to a pastor or elder who in turn discloses the details online, or a youth pastor whose blog contains unsubstantiated musings or ramblings about people and events as a means to increase traffic and readership; it is cause for those in leadership to cringe.

We need to think carefully about how we communicate electronically, from blogging to email, Twitter, Google +, YouTube, Facebook, Pinterest or the next new thing. Our understanding of the potential legal implications arising from the widespread use of social media is still in its infancy, technology is constantly changing and we are all on a steep learning curve, including those of us in the insurance industry.



Following are key areas of potential online liability risk for Christian charities that have been identified as a priority to address through practical prevention guidelines by instituting an electronic communications policy, with special attention to social media, to assist board members, staff and volunteers involved in electronic communication. Here are some ideas for consideration.



## Communicate Appropriately with Minors

Your policy should outline acceptable forms of electronic media and content between your organization's workers and the children and youth in your programs.

- Discourage communicating directly with minors by means of social networking media such as mobile text messages, Facebook posts, tweets, etc.
- If an allowance is made for employees under your authority to use text messaging with minors, it should only be with the formal written consent of parents/guardians and content should be limited to information and announcements to promote upcoming events.
- Questions in the text message should be kept simple, requiring only a "yes" or "no" answer (e.g. about attending an event or requiring transportation).
- Pastoral care or counselling should never be done through text messaging.
- Volunteers should be strictly prohibited from communicating directly with unrelated children or students via text messaging under any circumstances.

These guidelines should be addressed in your policy and clearly communicated to employees and volunteers so that they don't get themselves and your organization into trouble texting minors, especially in circumstances where such informal communication may be misconstrued, misinterpreted and/or considered age inappropriate. As an alternative, some churches maintain a policy that they will only communicate electronically with children under 16 years of age via their parent's email address, leaving parents responsible to review messages and convey the information to their kids verbally or electronically.



**STOP, THINK... THEN**

**SEND**

## Monitor Website Content

It is always best to restrict your website to using photographic images in which the individual faces of members, guests and participants are unrecognizable. For example, use far-away shots for group activities. If a close-up shot is needed, use a stock image of a generic program participant. Any photography of individuals used on your website should require their specific written consent on file. For example, consent can be integrated into your organization's signed registration forms, parental permission forms and membership agreements.

The ease of capturing images, text, music or video clips from the Internet doesn't mean such content is necessarily in the public domain or appropriate to use on a website. For example, one church that used a poem as a theme for a fall sermon series – without permission from the author – is now facing a lawsuit for misappropriation of copyrighted material. Leaders should review any articles from other websites your organization intends to reproduce or link to. One slip and you can be responsible for material that is illegal, defamatory, immoral or injurious to your organization's reputation.



## EMAIL, BLOG AND

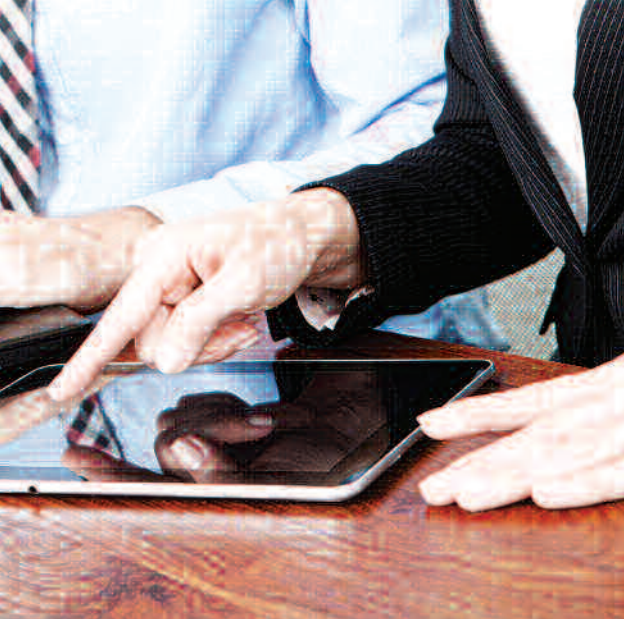
The risk of lawsuits from third parties claiming libel, slander, defamation and invasion of privacy (known as "personal injury" in the legal world) is magnified when using email, online chat and other electronic communication. It has created unprecedented access between various individuals, subcultures and communities, providing a platform for more voices to engage in public debate, discourse and sharing of ideas, beliefs and theology. Information can be transmitted by electronic mail, in chat rooms or by posting messages on bulletin boards, or by keeping web diaries or blogs.

If your church, school, camping ministry or agency hosts a message board chat or Facebook group to share online discussions, photos, videos and other content within your group, such content should be "moderated" rather than "open". The standards of the host should be clearly communicated to users, such as discouraging off-topic discussion and prohibiting bad language, obscene texting, bullying and discrimination. Content should be monitored and if necessary, removed, by a responsible moderator on behalf of the organization.

A recent article by the Canadian Council of Christian Charities on the results of a social media survey of its member organizations stressed the importance of taking the time to create a social media policy to prevent damage to an organization's reputation and relationships because "sometimes social media can be abused as a platform for hurtful remarks and negative feedback".

Both employers and employees can be subject to discriminatory harassment, human rights and civil liability proceedings if management or workers post offensive comments about the performance, behaviour or faith beliefs of fellow employees. Organizations that encourage the use

CONTINUED



## TWEET RESPONSIBLY

of social media by its employees to advance ministry should design a policy to reflect the organization's standards, expectations and statement of faith for use of social media tools, both at work and outside the office. Improper use (that contravenes stated employer policy and harms the organization or others) can be grounds for discipline and termination.

The famous adage about "not saying anything online that you wouldn't want plastered on a billboard with your face and name on it", also applies to Christian ministry as it adapts to the opportunities and pitfalls of spreading the gospel and building relationships through online communication and social media. From a legal liability perspective you should remind leaders and workers not to push the "send" button without thinking and not to communicate content through emails or blogs that they might regret and that might be read back to you as a defendant in a court of law.

I recently read a pastor's blog where he was chatting about his kids, their friends, where they attended school and which Starbucks they stopped by on their way home from school. Such communication may be a well-intentioned effort by ministry staff to be more approachable and to create a personal connection with readers. However, they are not always the kind of specific personal details that you would want to disclose from a privacy, personal security and safety perspective, whether with your own children, with someone else's children or with youth in your programs! Explicitly discourage staff and volunteers from blogging in a style that may be too revealing, casual, controversial, inflammatory or that verges on gossip, libel or slander.



## Manage Streaming Media

Audio streaming, video streaming and podcasting worship services, sermons, education and other activities are increasingly popular ways to reach a wider audience. However these often don't have the safeguards of traditional media, such as being subject to tape delays, editing or network censoring to eliminate content that may be unintentionally offensive or intrusive. The reality is that unfiltered and unedited live streaming of sermons, teaching and other content has the potential to cause libel, slander, defamation and invasion of privacy.

When using unregulated web-based forms of media, leaders and organizers need to be extra cautious in managing live content. Care should be taken that speakers or guests are not likely to be making inflammatory statements that may cause undue harm to individuals or identifiable groups in society. Avoid close-up images of individual congregation members and guests who have not given consent to the public use of their images at times that may be very personal, emotional and introspective as they participate in a church service, worship, concert or other live event.



## Secure Wireless Networks

Wireless internet connections are increasingly popular for the convenience of smart phone, laptop and game console users in places of business and other public spaces, including church premises. But many of these wireless networks are unsecured and therefore vulnerable to hackers, illegal use and access by minors to potentially inappropriate websites. Open internet access should not be made available to children or youth who are unsupervised. When wireless routers are installed in any premises, including plug-and-play out of the box equipment, it is important to run the setup disc to make customizations and a proper security setup. The network should be available only by password and a password (including numbers and letters) should be changed on a regular basis.

There have now been cases where unregulated free WiFi has resulted in inappropriate web surfing by minors and by illegal activities online, where the host provider has been held liable for unlawful activity and been named as a defendant in a lawsuit.

**Passwords, terms of service agreements and supervision of minors are important steps in managing the risk of being an internet host, whether the service is paid or complimentary.**





# Check Insurance Coverage

For those Christian organizations whose primary purpose is to advertise, broadcast, publish or telecast, to design or determine web-site content, to provide internet search services, to access content or to act as a service provider, it is important to remember that most Commercial General Liability (CGL) insurance policy wordings expressly exclude coverage for legal liability arising out of such professional operations and activities. The solution is to supplement your General Liability and Directors & Officers Liability protection by speaking with your insurance provider about obtaining a separate Media Liability policy.

For the vast majority of churches and Christian agencies, media operations are only secondary to their primary ministries, operations and activities. However, it is still important to check with your insurance provider to ensure that your coverage will address liability risk arising from both traditional media activities, such as broadcasting, telecasting and publishing, and from online activities, including website content, blogs, discussion forums and internet streaming. The current standard Insurance Bureau of Canada (IBC) Commercial General Liability policy wording used by most insurance companies specifically excludes coverage for personal injury arising out of chat rooms or bulletin boards that a business or organization hosts, owns or over which it exercises control. To ensure proper coverage, a special internet streaming and web content endorsement should be added to the policy.



**Church Protection Plus, available through Robertson Hall Insurance, offers customized liability solutions for Christian Ministries and their directors that modifies the standard exclusionary wording and provides full coverage for website content, including the distribution, broadcast or streaming of printed, audio, video or electronic material prepared and produced by our client organizations.**

## Risk Management and Christian Ministry Do Go Together!

Not only are they compatible, they are essential to both the testimony and the long-term effectiveness of any church or para-church organization. Managing social media risk responsibly is about building a more effective ministry, one that can enable leaders, ministers and volunteers to take advantage of the opportunities afforded by electronic communication. Managing risk is not about saying “no” to the ministry opportunities offered by social media; it’s about how to say “yes”, responsibly and wisely.



**NOTE:** For more information on Social Networking and Abuse Prevention for Christian Charities, please refer to the Robertson Hall Insurance Inc. publication entitled Abuse Prevention Newsletter (2017 ed.) including the articles “The Ten Commandments of Youth Abuse Prevention” and “Can Social Networking Get Us Sued?”. [www.robertsonhall.com](http://www.robertsonhall.com)

Winning Kids Inc. and the Plan To Protect abuse prevention plan is also a helpful resource for developing a safe social media policy for any Christian ministry. [www.winningkidsinc.ca](http://www.winningkidsinc.ca)



# FACING THE RISK OF COUNSELLING LIABILITY

## BY KENNETH A. HALL

### INSURANCE ISSUES FOR CHURCHES AND CHRISTIAN CHARITABLE ORGANIZATIONS

#### BACKGROUND:

The current malpractice crisis in North America is fuelled by the assumption that "someone else" must be responsible for all of the problems in one's life. If patients don't get well, they sue their doctor. If church members or adherents experience continuing problems in their emotional health and interpersonal relationships, they sue their minister. Some cases are based on financial motives while others are based on revenge or dislike toward the church or its leaders. In any event, counselling services present a significant potential legal liability exposure to churches and other Christian charities.

Counselling liability issues include such interrelated grounds for negligence as professional malpractice, abuse of authority, physical and sexual abuse, emotional abuse, harassment, exceeding qualifications, failing to refer cases requiring specialized psychological or medical care to qualified professionals, as well as issues of confidentiality and the legal responsibility to report criminal acts.

The types of counselling offered by churches and Christian charitable organizations can be divided into two broad categories. The first category is "professional" counselling which can generally be defined as instruction, advice or guidance provided by individuals by virtue of their specialized training, education or membership in an accredited professional association. Professional liability is based on the legal principles which require that professionals, relative to others, be subject to a higher duty of care consistent with their specialized skill or knowledge. Examples of professional religious counsellors include ordained ministers, therapists, psychologists, guidance counsellors, etc., whether or not fees are charged.

The second category is "non-professional" counselling which can roughly be defined as general instruction, advice or guidance of a religious nature provided by individuals who have certain recognized responsibilities, but who have no specialized training or qualifications. The only legal liability posed by this counselling is based on general legal principles that infer the existence of a standard duty of care required of any person in a position of responsibility, to act as any reasonable and prudent person would act in order to avoid harm or injury to another. Examples of non-professional religious counselling include elders, lay persons, youth leaders, teachers, volunteer counsellors, peer counsellors, cell group leaders and certain employees, etc.

#### ISSUES:

Most General Liability policies contain an exclusion for "professional" services. This standard exclusion has the effect of withdrawing any coverage for counselling services deemed to be professional in nature. With respect to non-professional counselling activities there may exist a degree of coverage in a General Liability wording, as long as there are no other applicable exclusions (however it is preferable to maintain a policy that spells out the degree of coverage for such activities).

In order to address the potential gap in coverage created by this exclusion, it is important for churches and Christian charities to

obtain appropriate coverage for the type, or types, of counselling conducted by employees and volunteers. Coverage for professional counselling can be integrated into a primary General Liability policy by modifying the wording to specifically include the counselling activities. The advantage of this option is that the premium is relatively cost efficient and the coverage is maintained on an "occurrence" form consistent with the rest of the organization's General Liability protection.

Another option is to obtain a separate Professional Liability Policy to specifically cover "professional" counselling services. The advantage of this option is that the policy wording provides broad coverage for "damages because of any claim arising out of any negligent act, error or omission". However this type of policy is costly and may not specifically address the issue of non-professional counselling activities. Also this type of policy is often written with a "claims-made" trigger. If the organization changes their insurance coverage to an "occurrence" form in the future and a claim subsequently arises which occurred during the time on risk under a claims-made policy, there may not be any coverage under either policy.

#### INSURANCE TIPS:

(1) Organizations which provide any type of professional or non-professional counselling as part of their ministries or activities should arrange appropriate coverage under their General Liability policy or under a separate Professional Liability policy.

(2) If coverage is arranged under a General Liability policy, make sure that the policy wording is broad enough to include the type, or types, of counselling conducted by the organization's employees and volunteers, and that the definition of bodily injury contained in the policy includes "mental anguish".

(3) If coverage is arranged under a separate Professional Liability policy, try to obtain a policy with an "occurrence" rather than a "claims-made" basis, in order to prevent potential future gaps in your coverage. Also, make sure that "non-professional" counselling activities are specifically covered, either under your General Liability policy or under your Professional Liability policy.

(4) Regardless of which type of policy form is chosen, try to avoid policies which contain exclusions or limitations which may restrict your coverage in the event of a counselling claim, such as:

(i) Exclusions for "vicarious" liability against the organization arising out of criminal or intentional acts (such as physical or sexual abuse and harassment).

(ii) Policy wordings that limit the scope of "whose" counselling is covered (e.g. only by ordained ministers or only by specified individuals), especially if your counselling responsibilities are shared by other employees or volunteers.

(iii) Policy wordings that limit the scope or definition of the type of counselling activities covered (e.g. policies covering only certain types of "professional" or "religious" counselling)

**For more information, or a no obligation review of your insurance program please contact our office.**

ROBERTSON  HALL  
INSURANCE

## HOW TO AVOID LIABILITY RISKS WHEN RENTING FACILITIES TO OUTSIDE USER GROUPS

by Kenneth A. Hall

Churches and charitable organizations receive numerous requests for use of their building facilities and premises by a wide variety of outside groups, including other congregations, charities, community and sports associations, service clubs, boys and girls clubs, self-help groups, day cares, play groups, home educators, music schools and teachers, concert promoters and wedding parties. These outside groups often want to use the classroom space, the kitchen, the fellowship hall, or the gymnasium for

- meetings
- birthdays
- anniversaries
- receptions
- sports
- recreational activities

Sometimes members and adherents want to use the facilities for their own personal activities, celebrations, or events. Your organization's decision to allow access to your facilities by outside parties, or for personal use, can be for a variety of reasons. Often it is simply recognition of the fact that your premises are unused for much of the week, with the exception of Sunday services and mid-week family nights. Rentals to outside user groups can also make a great deal of sense from a financial point of view as a source of additional revenue. The mandate of Christian charities



to reach out to their surrounding community can be well served by supporting other compatible ministries through free use, or below fair market value rental cost, of their facilities. Many charities also seek to raise their community profile and promote their ministries by encouraging activities and events that bring individuals onto their premises that might not otherwise darken the door of a church on Sundays!

However, the choice to allow the use of your charitable property by outside parties can come at a very high price! Following are some real-life claims examples of what can go

wrong when outside user groups or individuals lack the financial resources or proper insurance protection to address the potential property damage or bodily injuries resulting from their negligence or the lack of proper supervision and care by their employees, volunteers, and participants for their activities and events on your premises:

- A member of an alcohol recovery group meeting in a church basement arrived at a weekly support meeting in an inebriated state, fell down a flight of stairs, suffered a serious hip injury, and sued the host church and its trustees. The church did

CONTINUED ►

not sponsor or supervise the activity, but was named as defendant in the resulting lawsuit because the recovery group had no assets and was uninsured.

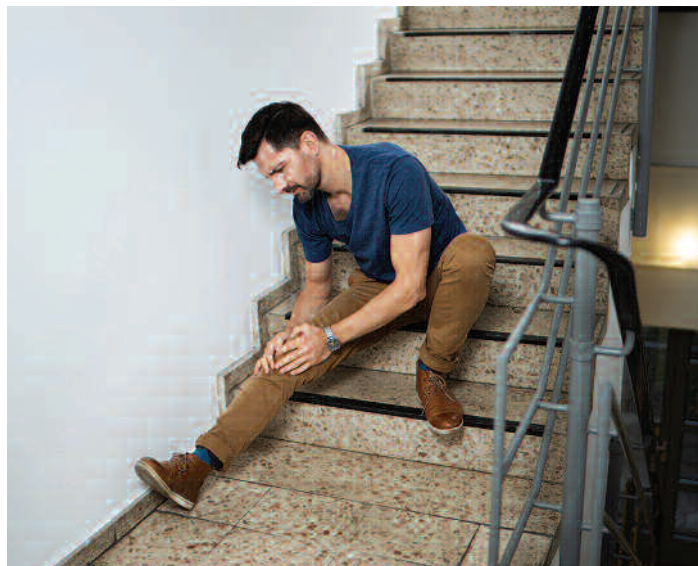
- Supervisors of a non-profit community association renting a church gymnasium for an inner-city youth event failed to check the premises carefully following the event. After the building was locked, several unidentified youth came out of hiding, stole valuable sound equipment, and caused over \$80,000 of malicious vandalism damage. The host church was stuck with a major insurance claim because of a lack of care and supervision by the uninsured association.
- A newly-formed congregation renting the premises of another church erected a temporary banner to promote an upcoming event. Without the knowledge of the host church, the sign was tethered by cables overhanging and pegged into the seam between the municipal sidewalk and curb at the front of the property. Later the same morning, a cyclist hit the cable and was thrown headfirst over the handlebars, striking her head on the concrete and suffering serious and permanent injuries. The lawyer representing the injured party discovered that the tenant congregation had no assets and no liability protection and therefore directed the resulting lawsuit against the host church as the “deep pocket” source of recovery for civil damages.



- A mother dropping off her child early one morning at a private day care operated on a church premises slipped and fell on an icy sidewalk. The church did not have insurance requirements in place or any formal agreement with the day care over who was responsible for salting and snow removal during the day care hours of operations. As a result, the church and its board members were sued.

- A child bystander was struck in the eye and seriously injured by a stick being swung by another child during a game of piñata at a private birthday party being held in a church gymnasium. The church and board members were sued as defendant parties in the resulting lawsuit.

Hiring **uninsured** contractors, roofers, other sub-trades, and maintenance services (landscaping, snow removal, janitorial, etc.) to do work on your premises can also create significant unwanted liability risks for your organization arising out of their negligence:



- A roofing contractor's employees replacing a church torch-on roof failed to keep a long enough fire watch to check for hot spots with an infrared gun and ensure there were no flare ups. After leaving the job site too early, a fire ensued, resulting in a \$2,700,000 total building loss. It left the church with a substantial claim on their insurance record because of the roofer's negligence and no opportunity to subrogate and recover damages from the roofing company, as it had few assets and no liability insurance to cover property damage.

All of these examples share a common theme: an outside party (or a member needing space for a personal event) uses the facilities without contractual legal responsibility and/or liability insurance to cover their own negligence, leaving the host organization and its leaders “holding the bag” for damages or injury. So how do Christian charities responsibly promote the use of their facilities without unnecessarily risking their own legal liability, assets, and future insurability?

The answer lies in properly differentiating the activities taking place on your property and transferring legal and insurance responsibility where necessary:

1. **DIFFERENTIATE** between activities, ministries, and events taking place on your premises that are “within” the umbrella of your own operations and those that are operated, sponsored, and/or supervised by outside individuals, groups, and businesses, or are personal use.



Sometimes the line between sponsored activities and outside or personal activities is fuzzy, but here's a good rule of thumb to make the distinction:

Is the event, activity, or occupancy:

- a. Within your organization's charitable and religious objects and purposes?
- b. Advancing your organization's ministries and work - not personal use?
- c. Supervised and operated by your organization's own staff and volunteer leaders?
- d. Formally sponsored and approved by your organization's leadership?

Activities meeting **ALL** of these criteria are clearly within the scope of your organization's sponsored operations. However, if it is a new activity, it's always advisable to check with your insurance agent or broker to confirm proper coverage and obtain valuable risk management resources to keep your staff, members, and guests safe.

**2. TRANSFER** legal and insurance responsibility for any outside or personal activities, ministries, and events that do not meet the above criteria. This transfer of risk fulfills the stewardship and charitable trust responsibilities of your leaders for the preservation and efficient use of your property and resources for your organization's charitable objects.

Here are some useful insurance tips to allow access for the safe use of your building and property for non-sponsored, outside or personal activities and events:

- a. Develop formal property use guidelines for the rental or use of your facilities by outside parties, or for personal use. Prohibit activities that present an unreasonable risk of harm of bodily injury or property damage, or that are in contravention of your organization's objects, statement of faith, and lifestyle expectations. This will strengthen your position to refuse undesirable property use requests and avoid making decisions that are arbitrary, inconsistent, or discriminatory.
- b. For any proposed use of your facilities by outside parties or for personal activities, there should be a mandatory rental or occupancy agreement in place which spells out the following requirements:
  - (i) A waiver of legal liability against your organization by the group or individual using your facilities, along with their undertaking to indemnify your organization for any legal liability arising out of bodily injury or property damage caused by their negligence.



- (ii) An agreement by any outside party or private individual renting, using, or working on your premises (including third party contractors doing construction, repairs, or maintenance) to furnish your organization with a Certificate of Liability Insurance in advance of their activity confirming coverage for their operations on your premises and naming your organization as Additional Insured for any legal liability arising out of their negligence. For most activities and events, we recommend a minimum General Liability and Tenants Legal Liability coverage limit of \$2,000,000. Higher limits may be appropriate in certain circumstances. "Participants" coverage should also be required if the activity involves sports or recreational activities, including gym rentals and use of outside playgrounds or playing fields.

#### THE SOLUTION:

For use of your premises by other churches or registered Christian charities that are uninsured, have them contact an insurance agent, broker, or Robertson Hall Insurance directly to obtain their own liability insurance policy.

For other groups or individuals, we recommend they inquire into the coverage available through specialty insurance providers such as PAL Insurance, DUUO Insurance, and Front Row Insurance, or check with their personal insurance broker or agent for options they may have available such as Premier Canada's group event liability program, or through their own Homeowner's, Condo, or Tenant's Package policy.

**CONCLUSION** It is important for leaders of Christian charities to fully understand the potential risks associated with the use of their charitable property by outside parties, or for personal use, and to implement formal property use guidelines, agreements, and liability insurance requirements. Responsible stewardship means striking the right balance between promoting access to your facilities for the benefit of your community and avoiding the risk of unnecessarily placing your assets, resources, and future insurability on the line because of the negligence of others. ■

# FACING THE RISK

## ISSUE #2 – DIRECTORS AND OFFICERS LIABILITY

BY KENNETH A. HALL

### INSURANCE ISSUES FOR CHURCHES AND CHRISTIAN CHARITABLE ORGANIZATIONS

#### BACKGROUND:

The recent proliferation of civil actions and legal precedents against churches and Christian charities is an indication that our society and courts are treating charitable organizations with the same standards of legal liability as for-profit organizations. Claims can be instigated by employees, members, volunteers, donors, regulatory bodies, contractors, creditors or other third parties.

These liability actions not only endanger an organization's financial position, they can also threaten the personal assets of its directors and officers. Courts have held that the liability resulting from negligence by the directors and officers in performing their duties is a personal liability. Board members face this potential liability whether their organization is large or small, profit or non-profit and incorporated or unincorporated.

It is therefore extremely important for the board members of a charitable organization to have a clear understanding of the potential liability exposures which they face by virtue of their position and to be aware of the sources of protection available to them through various types of liability insurance policies.

#### ISSUES:

Most churches and charities are aware that traditional General Liability insurance contracts afford a degree of protection for their organization against legal liabilities arising out of bodily injury, damage to third party property, and personal injury (i.e. libel, slander and defamation of character). They may even be aware that coverage can be extended to include the directors, officers, trustees, employees, members and volunteers of the organization as additional insured's. However, many board members are still unaware that there are a growing number of claims against charitable organizations that are not covered by a General Liability policy, including:

- |                        |                              |
|------------------------|------------------------------|
| * Wrongful Dismissal   | * Financial                  |
| * Mismanagement        | * Discriminatory             |
| * Practices            | * Misuse of Designated Funds |
| * Disciplinary Actions | * Breach of Fiduciary Duties |

Third party claims arising out of these circumstances are not usually covered under a General Liability contract. Legal actions arising out of financial loss due to wrongful or negligent acts committed by the organization or its directors and officers which are not attributable to bodily injury, property damage or personal injury can only be covered under a Directors and Officers Liability policy!

By arranging a Directors and Officers Liability Policy, your organization can gain the following advantages:

- \* Personal protection for your directors and officers
- \* Protection for the organization should your by-laws require indemnification of the directors in the event of legal liability
- \* Coverage for legal and defence costs associated with a liability claim.
- \* Access to legal advice and services from experienced professionals in the event of a claim

In addition to arranging the appropriate insurance coverage, directors and officers need to be aware of their fiduciary duties, to act within the scope of their authority in accordance with the organization's charter, constitution and /or by-laws, and to understand applicable statutory legislation to which they may be subject. If Christian ministries are to remain effective and viable in the long-term, potential legal liability must be addressed through a combination of pro-active risk management and effective insurance protection.

#### INSURANCE TIPS:

(1) Arrange Directors and Officers Liability coverage to provide protection for the personal liability of board members arising out of their negligent acts, including a provision for reimbursement of the organization if required to indemnify its directors.

(2) If you already have Directors and Officers Liability coverage or are in the process of obtaining a policy, make sure that it includes the following features:

- (i) Unlimited retroactive coverage for unknown prior acts on a "claims made" basis
- (ii) Coverage should "pay on behalf of", (rather than "reimburse") and should include legal and other defence expenses
- (iii) No exclusion for wrongful dismissal or termination
- (iv) Broadened definition of insured's, including directors, officers, trustees, employees, members and volunteers
- (v) An extended reporting or discovery period

(3) Make sure that your General Liability policy does not contain any exclusions or limitations for physical or sexual abuse or counselling activities and that it includes the organization's directors, officers, trustees, employees, members and volunteers as additional insured's with respect to claims arising out of bodily injury, property damage and personal injury.

**For more information, or a no obligation review of your insurance program please contact our office.**

ROBERTSON  HALL  
INSURANCE

## civil liability damages and insurance protection

It could come as a big surprise to many charitable organizations and board members that their liability protection may not cover all civil damages in a lawsuit. The fact is that the general liability insurance policies issued by the vast majority of insurance companies in Canada restrict coverage to "compensatory damages" only. Most policy wordings specifically exclude coverage for any other form of civil damages being sought by a third party in a lawsuit, including:

- punitive damages
- exemplary damages
- multiplied damages

To understand why this exclusion might be potentially catastrophic to your church or organization, it is important to understand the differences in damages that can be awarded and the precedents being set in Canadian courts in the past decade. Compensatory damages can be divided into two broad categories of awards made to injured parties; pecuniary and non-pecuniary. Pecuniary damages are essentially a form of financial compensation or relief to the victim of a bodily or personal injury that can be quantified in monetary terms, such as:

- loss of future income
- rehabilitation costs
- long-term medical care.

Non-pecuniary damages are those that cannot be easily quantified in dollars and cents, such as:

- mental anguish
- mental injury
- pain and suffering

**The judicial landscape is changing and punitive damage awards are being considered much more frequently by civil courts in Canada.**

- loss of enjoyment
- loss of companionship
- loss of sexual function;

and other conditions that are often suffered by individuals in a bodily injury, personal injury or abuse claim. Unlike civil liability claims in the United States, where awards for punitive and exemplary are commonplace, compensatory damages have historically represented the lion's share of civil damages awarded in Canadian courts. However, the judicial landscape is changing and punitive damage awards are being considered much more frequently by civil courts in Canada.

As a result of lower court rulings appealed 1978 and known collectively as the "Trilogy", the Supreme Court of Canada set a precedent for future court rulings by placing a cap on awards for non-pecuniary compensatory damages at a maximum of \$100,000 for any one victim. The cap is indexed and currently stands at just under \$400,000 in 2012. This cap is in large part the reason why Canadian court awards are not nearly as generous, inflated or outrageous as those made in U.S. jurisdictions. However, the cap has also created a

great deal of incentive for injury victims in Canada to seek additional damages above and beyond the usual non-pecuniary compensatory awards. There has also been pressure for Canadian courts to consider the award of punitive damages, particularly in cases of egregious negligence and severe injury. The burden of proof for these types of damages is higher, however, there is no cap on the amount that can be awarded.

With respect specifically to abuse claims, which cannot easily be quantified in terms of monetary loss and where victims are generally limited to the non-pecuniary cap (even in the most serious cases of abuse or molestation), there is even more incentive for courts to consider the award of punitive damages. In order to get around the cap, lawyers representing abuse victims have been increasingly seeking legal remedy through the award of punitive damages against perpetrators and against defendant organizations, who are being held vicariously liable for the actions of those perpetrators as their employees or volunteers, including schools, day cares, youth associations and churches.

The plaintiffs in two of the most

**The burden of proof for...(punitive) damages is higher, however there is no cap on the amount that can be awarded.**



## Civil Liability Damages and Insurance Protection...continued

recent liability suits launched against church client organizations of Robertson Hall Insurance have sought substantial punitive damages against the organization and its board members. In one case the non-pecuniary compensatory damages being sought by the victim were just over \$300,000, while the punitive damages were in excess of \$1,800,000!

With respect to civil damages in a physical, sexual or emotional abuse claim, it is important to remember that insurance coverage for abuse liability claims is not widely available in the insurance marketplace. However when available, it is always preferable for a church or charity to secure coverage on an "occurrence-form" policy, rather than on a "claims-made" policy. The reason is that claims-made policies have no obligation to cover past claims once the policy is cancelled or non-renewed, whether the organization ever changes insurance

**In one case the non-pecuniary compensatory damages being sought were just over \$300,000, while the punitive damages were in excess of \$1,800,000!**

companies in future or the insurer ever chooses to non-renew the policy. By contrast, "occurrence-form" coverage guarantees that the insurance company and the policy contract covering an organization during the time frame in which an abuse incident takes place must provide coverage for ensuing defense costs, awards or settlements in an insurable claim, regardless of when the claim and lawsuit is made in the future. This is particularly important in abuse litigation, where the standard two-year

**...many organizations and (board members) who thought they had coverage for injury claims may in fact only have very limited protection for the potential awards or settlements they face in the future.**

statute of limitations for injury claims can be waived and courts usually allow childhood victims of abuse to initiate lawsuits decades afterward.

Even insurers who do offer abuse liability coverage on an occurrence-form basis often impose a restriction on the stacking of multiple policy limits, by deeming continuing or repeated abuse caused by one perpetrator, or suffered by one victim, to be one single occurrence commencing from the first incident. The reason for this is so that continuing abuse occurring over many years and policy periods will trigger only one single policy limit, not multiple policy limits from many renewal periods. This type of restriction can be detrimental to organizations defending abuse claims that took place over many years.

The potential for uninsured damages is also a concern in wrongful dismissal and employment practices lawsuits, as

evidenced by the recent award of \$573,000 by a BC court to an employee terminated without notice after 34 years of service.

Changing legal standards, new precedents, inflation and restrictive insurance policy conditions can pose a real challenge for organizations and leaders trying to adequately protect their organization, directors, employees and volunteers against liability suits arising from future claims. The insurance policy contract and coverage limit that the board members of a church or charitable organization purchases today may be their only source of protection for a bodily injury, personal injury and abuse incident that occurs now or in the near future, but which may not come to light in the form of a civil liability suit for many years or decades into the future.

The fact that most Canadian insurance companies provide only compensatory damage coverage in their liability policy wordings, combined with the growing trend in civil courts awarding other forms of civil damages, now and in the future, means that many organizations and the board members serving them who thought they had coverage for injury claims may in fact only have very limited protection for the potential awards or settlements they face in the future.

**We are pleased to say that Church Protection Plus clients have full liability protection for all insurable civil damage claims and defense costs, including compensatory, punitive, exemplary, multiplied and other damages. We can also confirm that our coverage contains no restriction on the stacking of multiple policy limits.**

**This unique protection has been available to our Church and Charity client organizations since 1995 and is one of the many reasons why the Canadian Council of Christian Charities (CCCC), 25 national denominational organizations and over 6,000 individual church and charitable organizations entrust their protection to Robertson Hall Insurance.**

**"The difference is in the details" and we invite you and your board members to contact our office if you have any questions about this or other important coverage features.**



# ONE-MINUTE Insurance Manager

## CO-INSURANCE

All commercial and institutional insurance policies contain a Co-Insurance Clause. For a church or charitable organization, it means you need to insure your building(s) and contents to at least a percentage, usually 90%, of the total replacement value.

If your insurance coverage is in an amount of at least the percentage of value required at the time a claim occurs, there is no Co-Insurance Penalty.

However, if the amount of insurance in your policy is less than the required percentage, a penalty will apply in a claim. In effect, your organization becomes a "co-insurer" to the extent your buildings and contents are underinsured, including in a partial claim.

The calculation of how Co-Insurance works in an insurance claim is best illustrated by the following example:

VALUE OF BUILDING	\$1,000,000
CO-INSURANCE PERCENTAGE	90%
REQUIRED MINIMUM INSURANCE	\$900,000
AMOUNT OF INSURANCE CARRIED	\$600,000
DAMAGE CAUSE BY FIRE, WINDSTORM OR WATER	\$450,000
AMOUNT PAID BY INSURANCE	$450,000 \times \frac{600,000}{900,000} = \$300,000$
<b>CO-INSURANCE PENALTY</b>	<b>\$150,000 (\$450,000 - \$300,000)</b>

**So what's the solution?** If your board, trustees or administrator can provide a replacement value opinion (i.e. the cost to rebuild/replace today) from a qualified appraiser or building contractor, your insurer will agree to remove the Co-Insurance Clause from your policy and replace it with an Agreed Value Clause. With Agreed Value, it means never having to worry about a co-insurance penalty or being underinsured in a claim.

## Did you know?

As a client of Robertson Hall Insurance, one of the many benefits of your Protection Plus Membership is a "no-cost" replacement valuation through a third party professional appraisal firm who specializes in churches, camps, schools and other charitable property. Just complete a Statement of Values form, check off the "We want a no-cost valuation" box and send it to our office by email, fax or mail.

Contact our office today for more details and we'd be pleased to help you get your free valuation!

## Insuring to replacement value doesn't cost, it pays.

## are you really covered: Tips From Over 10,000 Insurance Claims

It's probably safe to say that most consumers don't read the fine print of their home, auto, business or organization's insurance policy. Reading an insurance policy, even one written in plain-language, is a daunting task for anyone! However a lack of basic insurance knowledge can cause serious gaps in important protection when choosing an insurance provider, policy and coverage options.

What if your organization could have the benefit of experience from over 10,000 claims at other churches and Christian charities?

What if it could help your organization avoid lawsuits, uninsured or underinsured claims and preventable injuries to your employees, volunteers, members, participants and guests?

Well that's exactly the kind of experience and advantage we offer as an insurance provider specializing in property and liability protection for over 7,000 Christian charities across Canada!



### BY THE NUMBERS

11,800 claims paid out since 1978

Over \$100,000,000 in claims settlements in the past 20 years

On average our insured organizations have 1 claim every 6.5 years

The most frequent Property claims are:

- Water Damage
- Windstorm
- Theft

The most frequent Liability claims are:

- Bodily Injury, including Trip and Fall claims
- Wrongful Dismissal
- Actual or alleged Abuse

The most severe claims are:

- Fire
- Water Damage
- Windstorm
- Bodily Injury

### COMMERCIAL INSURANCE POLICIES ARE NOT CREATED EQUALLY!

- The insuring agreements, conditions, exclusions and definitions in a policy wording can result in hundreds of thousands of dollars in coinsurance penalties in a major building claim, or the difference between full coverage and no coverage in a lawsuit.
- Uninformed decisions or cutting corners on important coverages to save a few dollars can be a costly mistake for an organization and its leaders.

### Covering your Church... Inside and Out!

**REMEMBER:** Whether you are a large organization or a small community charity operating on a limited budget, the potential for a multi-million dollar lawsuit against your organization is a reality. The largest liability settlements paid out in an insurance claim against our client organizations were for charities with annual revenues of less than \$250,000 or church membership under 150 people.





Following are five (5) key insurance coverage considerations that are often missed by Christian ministry leaders, board members (and sometimes by their insurance brokers or agents), that can leave an organization seriously underinsured, jeopardize charitable assets and open directors and members up to uninsured personal liability in a claim.



## 1. Insuring To Value

### INFLATIONARY TRENDS: 2003- 2015

- The consumer price index has increased by a factor of 154.8% for nonresidential buildings (institutional construction) in the past decade. Buildings that cost \$1,000,000 to construct in 2003 should be insured for \$1,548,000 today. (Source: Canada.gc.ca Aug/2015)
- A visit to Home Depot or Rona to purchase a 2" X 4" or a sheet of plywood is a good reminder of what has happened to the cost of building materials over the past decade!
- The Canadian consumer price index (CPI) has increased by a factor of 132.6% for most types of consumer goods and services. This means that equipment, furnishings and other contents purchased for \$100,000 in 2003 should be insured for \$135,300 today to keep pace with the rate of inflation.

### MARKET VALUE VERSUS REPLACEMENT VALUE

- Market Value, also known as Real Estate Value, is what a particular building or property is worth to a willing purchaser at any given time during the real estate market cycle.
- Replacement Value, is the current cost to rebuild, repair or replace an existing structure with current building materials of like kind and quality, regardless of when that building was originally constructed.
- Replacement Value is the proper basis for establishing the limits of building and contents coverage on an insurance policy in order to ensure that the claim settlement covers the full cost of a partial or total claim.

### CO- INSURANCE: THE HIDDEN DANGER

- Most commercial fire or property insurance policies contain a Co-Insurance Clause requiring the policyholder to insure their building and contents to within a specified percentage of current replacement value (i.e. 90%).
  - Failure to do so can result in a penalty that is equivalent to the proportion that the building or contents are underinsured at the time of an insurance loss, even in a partial claim!
  - Property owners, including charities, who have neglected to keep their buildings insured to full replacement value can face significant co-insurance penalties in a major fire, water damage or windstorm claim that may result in the organization being responsible to pay hundreds of thousands of dollars out of pocket.
  - Even when an organization has a sufficient limit of coverage to pay for a smaller claim such as a sewer backup, an act of vandalism or the theft of equipment, they may still have to pay tens of thousands of dollars as co-insurer, if their total coverage limit is less than 90% of the current overall replacement value of their building and contents at the time of a loss.
- For example if, an organization with a policy coverage limit representing only 50% of the full replacement value of their building suffers a \$200,000 partial fire claim, they may face the unpleasant surprise of receiving a claim cheque for only one half of the cost of repairs!

### INSURING TO VALUE TIPS:

1. Check your insurance policy to ensure that it **DOES NOT** have...
  - A Co- Insurance Clause and Penalty
  - A Same- Site Rebuilding Requirement
  - Actual Cash Value Coverage (i.e. depreciated settlement)
2. Check that your policy **DOES** have...
  - An Agreed Value Clause
  - A Replacement Cost Endorsement
  - Inflation Guard Protection

To qualify for coverage without a Co- Insurance Clause, obtain a replacement value appraisal opinion from a qualified property appraiser or an experienced building contractor.

Alternatively with Church Protection Plus an insurer may accept a completed Statement of Values form verifying the building value based on a realistic "per square foot" replacement cost factor. If approved, the Co- Insurance Clause can be removed and replaced with an Agreed Value Clause

No Co- Insurance Clause means never having to pay a penalty in a claim settlement!

### STATEMENT OF VALUES For Churches and Charitable Organizations

Name of Organization: \_\_\_\_\_ Telephone #: \_\_\_\_\_  
Address: \_\_\_\_\_  
Name of Contact: \_\_\_\_\_ Telephone #: \_\_\_\_\_  
Alternate Contact: \_\_\_\_\_ Telephone #: \_\_\_\_\_

\*\*\* It is extremely important that this form be completed each year in order to avoid co-insurance penalties and to continue to qualify for coverage on an Agreed Value basis. If the values indicated on this form do not coincide with the limits now insured, your coverage will be updated accordingly.

#### 1. What would it cost today to construct your building(s)?

\$ \_\_\_\_\_ Church/Hall (including pews permanently attached) \$ \_\_\_\_\_ Parsonage/Manse  
\$ \_\_\_\_\_ Improvements and Betterments (Rentals and Condominiums) \$ \_\_\_\_\_ Other Buildings

#### 2. Were these construction costs established by: ☐ Building Contractor ☐ Qualified Real Estate Appraiser ☐ Estimate based on \_\_\_\_\_ total sq.ft. at \$ \_\_\_\_\_ per sq.ft.

Please complete the Building Update Form on the reverse side of this form and return to our office, along with a recent exterior photograph of your building(s), as it is required by your insurance company for their underwriting records.

#### 3. What would it cost to replace your contents?

	Church/Hall	Parsonage/Manse	Other
Furniture / Furnishings	\$ _____	\$ _____	\$ _____
Supplies / Stock	\$ _____	\$ _____	\$ _____
Sound Equipment	\$ _____	\$ _____	\$ _____
Computer Equipment / Media	\$ _____	\$ _____	\$ _____
Pipe Organ	\$ _____	\$ _____	\$ _____
Musical Instruments	\$ _____	\$ _____	\$ _____
Sports & Recreational Equipment	\$ _____	\$ _____	\$ _____
Watercraft / Canoes / Kayaks	\$ _____	\$ _____	\$ _____
Appliance / Dishes / Utensils	\$ _____	\$ _____	\$ _____
Props / Sets / Displays	\$ _____	\$ _____	\$ _____
Day Care Equipment / Outdoor Playground	\$ _____	\$ _____	\$ _____

## 2. More Than Just “Bricks and Mortar”

Fire, water, windstorm and explosion claims involving structural damage or the complete destruction of a building can result in a church or charity being without important building facilities for months, and in the cases of a total loss, a year or longer. The delay can trigger significant “business interruption” costs, even for non-profits and charities!



In the aftermath of a major claim there can be delays due to:

- Fire Marshall's investigation
- Structural engineering reports
- Partial or complete demolition of the undamaged portion of a structurally unsound building
- Geotechnical (Soil) Surveys
- Debris removal
- Tendering the project to general contractors and sub-trades
- Obtaining approval from the municipality with respect to upgrades in building by-laws (e.g. handicap access, internal fire walls, etc.), temporary easements to access the site and construction building permits
- The actual construction period can take 6 months to 18 months, depending on the size of the project
- Because most church congregations and charities seek to remain fully functional during

a reconstruction period, they may incur significant extra

expenses to operate, including:

- Recreating valuable papers and records
- Moving salvaged contents and renting storage facilities
- Telephone, media and computer hook-ups
- Changes to stationery supplies and website content
- Rental of alternate temporary facilities which may involve multiple locations for church services, Christian education, mid-week activities and office facilities
- Business Interruption may be even more challenging and costly for charities that operate schools, day cares and camping ministries when the rental of temporary buildings and portable generators may be the only solution to operate.

### EXTRA EXPENSE AND NON-PROFIT LOSS OF INCOME COVERAGE TIPS:

1. Most churches and charities should carry an Extra Expense coverage limit that represents at least 12 months of the anticipated cost to operate at a temporary location(s)
2. Charitable organizations usually seek to temporarily relocate as quickly as possible and are often able to continue to provide services, programs and ministries with little or no interruption.  
  
However in the aftermath of a major claim there can be loss of rental income, reduced attendance and a temporary decline in tithes, donations and revenue. We recommend that any organization also have Loss of Income coverage equivalent to at least 6 months of revenue and preferably a full 12 months.
3. For organizations who derive significant revenue from tenants and outside user groups, ensure that your policy includes Rental Income coverage equivalent to 12 months revenue.

4. Standard Commercial Property insurance policies will often either contain no coverage for the cost of increased construction due to upgraded building by-laws, or contain coverage that is limited to “within” the total building coverage amount. This means that the organization will effectively have no provision for the increased cost of construction due to by-law upgrades in a total loss above and beyond the coverage limit. Therefore we recommend that you check that your policy contains Broad Form By-Laws coverage in excess of your building and contents coverage limit.



In a recent claim involving a \$2.7 million fire loss to a church building and fellowship hall, the extra bill for claims-related expenses and the cost to upgrade facilities to meet current building code totalled over \$800,000!



### 3. Water Damage: The New Fire

Water damage claims are on the rise exceeding fire as the #1 insurable loss and according to the Insurance Bureau of Canada (IBC), the insurance industry in Canada paid out over \$1.7 billion in claims for water escape, sewer backup and flooding in 2012 and almost \$3 billion in 2013.

- The heavy rainfall that triggered catastrophic flooding in southern Alberta in June 2013 caused over 100,000 people to be displaced and up to \$5 billion in damage, much of it uninsured.
- The July 2013 flood in Toronto was Ontario's most costly natural disaster and resulted in an estimated \$850 million in damage, including \$3 million in flooding and sewer backup damage suffered by 20 of our church and charitable organizations located along the Highway 427 corridor.
- During the past two decades, water damage claims have surpassed fire and smoke damage as the leading cause of property insurance losses among our 7,000 church and charity client organization policyholders
- The frequency of water damage claims has increased due a variety of factors; including increased weather volatility, deteriorating or improperly maintained municipal sewer system infrastructure and an increased prevalence of finished basements with more expensive floor coverings, wall coverings and furnishings.



- According to AVIVA Canada, over 40% of all Homeowner's insurance claims are for water damage and among our church and charitable organization clients, the average cost of an insurable water damage claim has more than tripled since 2001, increasing from \$9,000 to over \$32,000.
- A major factor contributing to the increasing size of water damage claim payouts is mold and the cost of mold remediation and removal.

#### WATER DAMAGE INSURANCE TIPS:

Check with your insurance broker or agent to make sure that your Property Insurance policy includes the following features:

1. Flood Insurance to cover damage caused by the overflow of water from natural or manmade bodies of water and from the influx of ground or surface water into the building. Consumers are often unaware that most policies do not include Flood coverage. This coverage may not be available in certain regions prone to flooding and even when it is available, it is subject to a higher deductible (e.g. \$25,000 or more) and to exclusions for water influx through foundation cracks, windows and other openings.
2. Sewer Backup Insurance to cover water damage caused as the result of the backing up of sewers or sumps, often because of a severe storm overloading a municipal sewer system or through a sump pit. Again this coverage is usually subject to a higher deductible (e.g. \$2,500 or more) and may be unavailable in certain areas prone to sewer backups and unless the building owner has installed a backflow valve and/or monitored sump pump.



#### MOLD AND INSURANCE

- There is a growing awareness in society of the health issues associated with long-term exposure to black mold, including upper respiratory tract conditions, heightened asthmatic sensitivity and the possibility of other more rare and unique illnesses in certain individuals (Source: Centre for Disease Control)
- The long-term growth of mold behind walls and in other enclosed or hidden spaces due to past water escape, leakage or humidity is generally not insurable. However newly formed mold as a direct consequence of an insurable claim is covered and it is now standard practice for insurance companies and adjusters to engage the services of contractors who are certified mold remediation specialists. Gone are the days of pulling up carpet, underpad and using fans! Claims now routinely involve complete replacement of flooring materials, sub-floors and affected areas of drywall, lower cabinetry and other materials to ensure that all mold is removed.



## 4. Liability Coverage: How Much Is Enough?

Recent multi-million dollar liability suits have been a wake-up call for Christian charities in Canada, including:

- Victims and surviving family members seeking damages in excess of \$11,000,000 against a church and leaders for fatalities and injuries resulting from an accident involving a volunteer's personal vehicle transporting teenagers to a youth rally
- An individual plaintiff seeking \$17,000,000 against a church and missions organization due to an injury during a jointly sponsored short-term mission trip that resulted in quadriplegia as the result of a fall from a balcony at the hotel where the church group was staying



One of the most frequently asked questions is "Do we have enough liability insurance?" While it is impossible to know for sure what type of catastrophic accident might take place, how many people could potentially be injured in a single accident or what civil damages a court may award in a future lawsuit, the above examples send a clear message that a liability policy with a \$1,000,000, \$2,000,000 or even \$5,000,000 coverage limit, may no longer be enough to adequately protect an organization and its leaders.



- Liability coverage limits should be chosen carefully to reflect the nature, scope and scale of your organization's ministries and activities.
- Churches and charities conducting sports and recreational activities, schools, day cares, children's and youth programs, and short term mission trips are particularly susceptible to multiple injury and catastrophic claims.
- Ownership and use of automobiles, vans and buses (whether owned by the organization or by staff, volunteers and members for sponsored activities) can also greatly increase potential legal liability risks.
- Over the past decade, many organizations have increased their liability limits to as much as \$10M, \$15M or even \$25M in combined General Liability and Excess Liability coverage by purchasing an Umbrella Liability policy.

### WHAT IS UMBRELLA LIABILITY?

- Umbrella Liability is a separate policy providing an excess layer of coverage over and above an organization's primary General Liability policy limit. For example, a charity may have a \$5M primary General Liability policy and add a \$10M Umbrella Liability policy, for a combined protection of \$15M.
- It provides excess coverage on a follow-form basis for most underlying risks covered in a primary General Liability policy and can also provide excess coverage over and above primary Third Party Automobile Liability coverage if the organization owns or leases vehicles, including autos, vans or buses.
- Umbrella Liability is the single most effective way to reduce the risk of underinsured claims and the potential for having to liquidate an organization's assets and/or personal assets of directors (or members of an unincorporated entity) to pay for damages in a multi-million dollar lawsuit!



**Robertson Hall's Church Protection Plus Insurance Plan offers optional Umbrella Liability protection with combined coverage limits up to \$25M**

CONTINUED

## 4. Liability Coverage: How Much Is Enough?...continued

### ALL INSURANCE POLICIES ARE NOT CREATED EQUAL!

It is important to remember that no matter how high the limit of liability coverage you choose, you may have zero coverage "if" your policy contains certain major exclusions, conditions or sub-limits. Some common examples of excluded, restricted or limited in standard liability policies by some insurers include:

- Abuse, Molestation and Harassment
- Employment Practices and Wrongful Dismissal

- Punitive, Exemplary, Aggravated or Multiplied civil damages
- Territorial restrictions for operations outside of Canada and the U.S.
- Participants in sports and recreational activities
- Media Liability including website content and internet streaming
- General Aggregate Limits restricting coverage for multiple claims

**Robertson Hall's Church Protection Plus Insurance Plan offers coverage for all of the above risks**

### A NOTE ABOUT GENERAL LIABILITY AND DIRECTORS AND OFFICERS LIABILITY

- The greatest risk of multi-million dollar lawsuits is bodily injury or multiple injuries arising from an accident, whether on-premises, at offpremises activities or while in a vehicle being operated on behalf of an organization Bodily injury is covered in a **General Liability** (and Umbrella Liability) policy. Both types of policies can and should include the entity, directors, officers, employees and volunteers as Insureds to defend and protect them in case they are sued in a third party liability claim. Charities and leaders should place a high priority on carrying sufficient General Liability and Umbrella Liability policy limits to cover against the bodily injury risk e.g. combined limits of \$10,000,000 or higher!

- **Directors and Officers Liability** policies do not cover Bodily Injury, Personal Injury or Third Party Property Damage claims.

Directors and Officers Liability is intended to cover an organization and its leaders for other types of fiduciary legal liability claims, including negligent acts, errors, breaches of duty, neglect of duty and misstatements which result in an actual or alleged financial loss by a third party.

Claims covered by a D&O Liability policy have less potential for multimillion civil damage awards, based on actual awards and settlement in Canadian courts.

Choose coverage limits of \$1M, \$2M or \$5M, depending on the financial size and fiduciary obligations of your organization.

### TIPS FOR CHOOSING ADEQUATE LIABILITY LIMITS

1. Inquire with your insurance provider about the cost of excess liability protection for your organization and leaders through an Umbrella Liability policy.
2. Choose an Umbrella Liability limit that reflects the potential risk posed by your operations, ministries and events, on and off premises.
3. Maintain combined General Liability and Umbrella Liability limits of between \$10M and \$25M and a Directors and Officers Liability limit of between \$1M and \$5M.
4. Read "the fine print" in your policies. Ask your insurance provider to ensure that you do not have any insurable gaps in protection that may cause zero coverage for certain risks or for certain types of civil damages in a claim.
5. Include excess protection for any owned or leased vehicles (i.e. cars, vans, buses) by adding your Auto Insurance Third Party Liability as an underlying policy covered by your excess Umbrella Liability policy limit of protection.



## 5. Spending Insurance Premiums Wisely

### EXAMPLES OF MAJOR COVERAGE DIFFERENCES

	Church Protection Plus Insurance Plan	Standard Policy
Agreed Value Clause		-
"Excess" By-Laws Coverage		-
No Same-site Re-Building Requirement		-
Excess Extra Expenses (\$1,000,000)		-
All Insurable Civil Liability Damages Covered		-
Full Worldwide Liability Territory		-
Abuse Liability up to \$5,000,000		-
Umbrella Liability up to \$25,000,000		-

The above is a partial summary of the coverages and options available through the Church Protection Plus Insurance Plan. Please refer to actual policy wordings for full details.

- Uninformed decisions or cutting corners with important insurance coverages can be financially disastrous
  - Underinsured property claims may result in hundreds of thousands of dollars in shortfall to repair or rebuild a building and to replace expensive contents, furnishings and equipment
  - Inadequate liability protection can result in a lack of financial resources to pay for bodily injury lawsuits that can force an organization to liquidate its properties, result in directors being sued personally, and in the case of unincorporated organizations, open members up to potential personal liability
  - The original concept of insurance was to transfer the risk of a catastrophic event that the policyholder did not have the financial resources to pay for, by pooling the risk with other individuals or organizations, in the event that one policy holder suffers a loss that could wipe them out.
  - One way of effectively transferring those risks is through an insurance policy, whereby each policyholder pays a premium against the likelihood of suffering a major fire, water damage or liability claim.
  - Therefore it is important to remember when choosing your insurance coverage, amounts and deductibles... "don't sweat the small stuff"
  - "Self insure" minor property claims through higher deductibles.
  - Focus on protecting against high risk perils that nobody likes to think about, but can happen to any organization.
1. Check with your broker or agent about the premium credit available for a higher deductible on your building and contents coverage in order to save premium dollars for claims and amounts that you can easily self insure. Churches and charities who own buildings can save hundreds of dollars or more each and every year by carrying a property claim deductible of \$5,000 or higher.
  2. Consideration should also be given to removing full current coverage on buildings that your organization plans to demolish in the near future, or that you would have no plans to replace. Instead, cover them for Liability and Wreckage Value only, in order to save additional premium.
  3. Utilizing the premium savings above, ensure that your Buildings and Contents are covered to full current replacement value, to avoid being underinsured in a total claim or having to pay a co-insurance penalty in a partial claim.
  4. Also with the savings from self-insuring, make sure you have Directors and Officers Liability coverage for your board members and an Umbrella Liability policy with excess limits of coverage to avoid your organization, leaders and members being underinsured in a multi-million dollar bodily injury lawsuit.

CONTINUED



## 5. Spending Insurance Premiums Wisely...continued

This sample Risk Mapping graph for not-for-profit entities plots the frequency and potential severity of claims faced by organizations such as churches and charities.

Larger organizations face a higher frequency of claims based on sheer size of their operations and value of their property; however ALL organizations large or small, face the same potential severity of claims, especially liability claims. The largest two liability claims suffered by our

church and charity clients in terms of liability awards and settlements were very small organizations.

So remember to focus your insurance premium dollars on protecting against high risk perils by insuring to full replacement value to cover major property damage claims and by obtaining excess Umbrella Liability coverage for bodily injury lawsuits that nobody likes to think about, but can happen to any organization!

### RISK MAPPING (Not-For-Profit Entities)

**"Self Insure" what you can afford  
"Transfer Risk" through insurance for what you cannot afford!**

