

# FACING THE RISK

BY KENNETH A. HALL

## INSURANCE ISSUES FOR CHURCHES AND CHRISTIAN CHARITABLE ORGANIZATIONS

### Issue #2 – Directors and Officers Liability

#### 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
- \* Mismanagement
- \* Practices
- \* Disciplinary Actions
- \* Financial
- \* Discriminatory
- \* Misuse of Designated Funds
- \* 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:

- \* Unlimited retroactive coverage for unknown prior acts on a "claims made" basis
- \* Coverage should "pay on behalf of", (rather than "reimburse") and should include legal and other defence expenses
- \* No exclusion for wrongful dismissal or termination
- \* Broadened definition of insured's, including directors, officers, trustees, employees, members and volunteers
- \* 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: