

LIABILITY INSURANCE 101 for Christian Charities

“If you don’t ask the right question, you won’t get the right answer”

– Edward Hodnett

Plaintiffs, courts and juries are treating Christian charities with the same standards of legal liability as “for-profit” entities. Multi-million dollar civil damage awards and out-of-court settlements can result from lawsuits by a wide variety of potential parties. These include members, donors, participants, visitors, outside user groups, current and former employees, joint ministry partners, and many others. When claims are based on frivolous or false allegations, the legal and investigation costs to successfully defend them can also be substantial.

Sound risk management practices can greatly reduce foreseeable and preventable risk, however organizations and their leaders are still vulnerable to legal responsibility for accidents, injuries and damage caused by their operations, ministries, programs and events. Even with indemnification agreements in place to protect directors from personal liability while acting within the scope of their duties, the reality is that Christian ministries usually lack the resources to fulfill these financial obligations to their board members.

Effective protection is available in the form of liability insurance, however the subject of insurance can be a complicated one. The scope and types of coverage available and how they fit together to form an effective and comprehensive protection plan are often oversimplified or misunderstood.

Sometimes in order to save a few premium dollars, consumers make costly mistakes when purchasing insurance by falling prey to common myths about liability insurance.

MYTH #1 - ALL LIABILITY INSURANCE POLICIES ARE THE SAME

REALITY - Certain kinds of liability protection such as mandatory third party liability coverage for licensed automobiles are governed by provincial law and policies are required to contain standardized policy language. However the vast majority of other personal, professional, business and institutional

liability insurance policies differ from one insurance company to the next. These “apples for oranges” differences can be significant and are often contained in the “fine print” of insuring agreements, conditions, limitations, exclusions, definitions and endorsements contained in each policy.

MYTH #2 - WE ONLY NEED ONE KIND OF LIABILITY COVERAGE

REALITY - Almost all non-profit and charitable organizations require **two or more** kinds of liability protection in order to cover the entire range of insurable risks faced by their directors, officers, trustees, members, employees and volunteers. Depending on their operations and activities, these usually include General Liability and Directors

& Officers Liability. A common oversight by organizations concerned about protection for their board members is in thinking that they only require Directors & Officers Liability (i.e. D&O policy) to cover everything, thereby neglecting the importance of other essential forms of insurance protection such as General Liability coverage.

To help you and your organization better understand liability insurance, following is a general overview of the two most important forms of liability protection for the vast majority of churches and Christian ministries. Keep in mind that the following tables describe some of the typical coverages and exclusions that are currently in use in the Canadian insurance marketplace. Exact coverage terms may differ significantly between insurance companies, however the **Church Protection Plus** policy offers automatic or optional coverage for many risks that are excluded or restricted by other insurers.

TABLE 1 Common Liability Coverages	General Liability (CGL)	Directors & Officers Liability (D&O)
	<ul style="list-style-type: none"> • BODILY INJURY Physical injury, disease, death, mental injury, etc. • PROPERTY DAMAGE Damage to tangible Third Party property • PERSONAL INJURY Libel, slander, defamation, invasion of privacy, etc. 	<ul style="list-style-type: none"> • NEGLIGENT ACTS, ERRORS, OMISSIONS, MISSTATEMENTS, BREACHES OR NEGLIGENCE OF DUTY, etc. <p>EXAMPLES:</p> <ul style="list-style-type: none"> - Wrongful Dismissal - Other Employment Practices - Discriminatory Practices - Discipline Proceedings - Financial Mismanagement - Breaches of Contract

Almost all non-profit and charitable organizations require two or more kinds of liability protection in order to cover the entire range of insurable risks faced by their directors, officers, trustees, members, employees and volunteers.

- Directors & Officers Liability policies exclude any and all legal liability for bodily injury, personal injury and tangible property damage claims, as the scope of D&O coverage is not intended to overlap with a General Liability policy.
- Directors & Officers can and should be named as “Insureds” in both types of coverage to provide them with protection against the full range of insurable risks while acting within the scope of their duties on behalf of the organization.
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- Due to the types of insurable risks addressed by each coverage, it is usually recommended that the limit of coverage be higher in a General Liability policy, as the amount of civil damages awarded in a catastrophic bodily injury claim involving multiple fatalities and/or serious and permanent injury can be in the millions of dollars. Matters that are coverable under a D&O policy can include significant legal defense costs, awards and settlements, but not on the same monetary scale as bodily injury claims.
Up to \$12,000,000 coverage limits available through Robertson Hall
- Some Directors & Officers policies contain exclusions or limitations for wrongful dismissal claims and certain forms of employment practices liability. Be aware of this, as

supplemental coverage may be required.

Full Employment Practices and Wrongful Dismissal coverage is available through Robertson Hall

- General Liability policies are on an “occurrence form” coverage basis. This means the insurance policy that covers a claim arising out of a particular accident, injury or negligent act is the one that was in effect during the time period the claim or accident actually occurred, regardless of whether civil action is commenced immediately or many years into the future. This is the preferred form of coverage for bodily injury and abuse claims.
Available through Robertson Hall
- Directors & Officers policies provide coverage on a “claims made” basis. This means the insurance policy covering a particular negligent act is the one that is in effect at the time legal action is made or commenced, regardless of when the negligent act, error or omission originally took place. Most D&O policies contain this retroactive coverage feature, unless there is a retroactive limitation date indicated on the policy. Prior and pending claims or legal actions known to the directors at the time they applied for the coverage are not coverable.

TABLE 2 Common Liability Exclusions	General Liability (CGL)	Directors & Officers Liability (D&O)
	<ul style="list-style-type: none"> • Expected/Intended Injury • Abuse Claims • Professional Services • Contractual Liability • Employment Practices • Pollution Liability • Owned Vehicles • Non-Compensatory Damages and others... 	<ul style="list-style-type: none"> • Bodily Injury, Property Damage and Personal Injury • Abuse Claims • Fiduciary Liability for Pension and Benefit Plans • Pollution Liability • Professional Services • Non-Compensatory Damages and others...

...policy differences can be significant and are often contained in the “fine print” of insuring agreements, conditions, limitations, exclusions, definitions and endorsements...

- General Liability and Directors & Officers Liability policies both contain exclusions for matters that are simply uninsurable by law, including intentional injury and criminal or fraudulent acts. These exclusions apply to the “perpetrator” but do not necessarily exclude coverage for the vicarious liability of the organization and its directors.
Full vicarious coverage included with Robertson Hall
- Liability claims for mould, pollution, terrorism, war or nuclear energy are usually excluded, with few exceptions.
- Abuse claims are commonly excluded under both types of liability coverage as there are very few insurance companies prepared to cover this risk. If coverage is available, the preferred type of protection is on an “occurrence form” policy. This is because civil claims from abuse incidents may arise years or even decades after the incident takes place, as the statute of limitations is often waived by courts for alleged victims of childhood physical and sexual abuse. Occurrence form protection has an indefinite obligation to cover future litigation for claims that took place during the policy period.

Some insurance companies offer “claims made” abuse policies that have no retroactive coverage advantages and the added disadvantage that claims discovered in the future after the policy ceases are not covered. This can leave a church, children’s or youth ministry organization with a huge gap in their abuse protection. Limited and conditional abuse policies also often contain reduced coverage limits, high deductibles and policy restrictions that severely limit the scope of coverage, both now and in the future.
Occurrence form abuse coverage available through Robertson Hall

- The vast majority of liability policies cover only the Compensatory Damages awarded by a civil court. Only a few insurance companies offer coverage for insurable Punitive, Exemplary and Aggravated damages awarded by a court of law.
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Occurrence form protection has an indefinite obligation to cover future litigation for claims that took place during the policy period.

TABLE 3

Other Forms of Liability Coverage

- **FIDUCIARY LIABILITY** (pension plans)
- **MEDIA LIABILITY** (publishing, telecasting, and broadcasting)
- **AUTO LIABILITY** (owned and leased vehicles)
- **PROFESSIONAL LIABILITY** (often known as Errors and Omissions or Malpractice Insurance)
- **UMBRELLA LIABILITY** (or Excess Liability)

Church Protection Plus...offers automatic or optional coverage for many risks that are excluded or restricted by other insurers.

- All General Liability policies and most Directors & Officers Liability policies contain an exclusion for professional services. A separate Professional Liability policy (sometimes known as Errors & Omissions or Malpractice Insurance) is usually required for organizations providing professional services such as medical, dental, engineering, legal, financial, counselling, etc. *Available through Robertson Hall*
- Since Directors & Officers Liability policies exclude coverage for sponsored employee pension and benefit plans, it is important for sponsoring organizations and plan trustees to obtain coverage through a separate Fiduciary Liability policy. *Available through Robertson Hall*
- Organizations whose primary business or operations involve telecasting, broadcasting or publishing may require separate Media Liability coverage. *Available through Robertson Hall*
- A separate primary Auto Liability policy is required by law for all vehicles owned or leased by an organization (*Available through Robertson Hall*). However General Liability policies can and should contain Non-Owned Automobile Liability coverage protecting the organization against legal liability arising out of the use of private or non-owned vehicles operated on their behalf. *Available through Robertson Hall*
- Due to the increasing size and scope of civil damage awards, the insurance marketplace offers Umbrella or Excess Liability policies to provide extra protection above the standard \$1,000,000 or \$2,000,000 primary coverage amount. This type of optional coverage is intended for claims that are coverable under a General Liability or Third Party Automobile Liability policy. It is particularly important protection for churches or charities who own or lease multi-passenger vehicles (such as buses or vans) or who operate higher risk activities such as youth programs, camps, schools, day cares, etc., where accidents could potentially involve serious and permanent injuries or fatalities to multiple victims. *Up to \$12,000,000 coverage limits available through Robertson Hall*

Summary

Now that you know all liability insurance policies are not the same and that more than one type of coverage is required to protect against the full range of insurable risks, we hope this guide will help you ask the right questions to ensure the right kind of liability protection for your organization and leaders.

We're here to help and we invite you to contact our office to review your coverage requirements and find out more about why *Church Protection Plus* is the most comprehensive liability coverage available for Christian Charities in Canada.

Sincerely yours,
Kenneth A. Hall, President

NOTE: This summary is for general review purposes and is not intended to replace policy language or create any coverage rights. Please refer to the full policy wordings, endorsements, insuring agreements, coverage limits, deductibles, limitations, conditions and exclusions contained in the applicable policies of insurance for a complete description of your organization's current coverage terms.