

When Volunteers Hit the Road: Insurance Gaps Schools Can't Afford to Ignore

There is a saying that no good deed goes unpunished, or the road to “you-know-where” is paved on good intentions. Volunteer practices, or lack thereof, sometime exemplify these well-worn adages. The following article aims to address some misconceptions and fill in some knowledge gaps when it comes to volunteer workforces and the insurance that can, at times, backstop these activities.

Volunteers, in one form or another, are often the driving force in delivering programs and services that help make a school unique, and in some cases, help the community to flourish. From field trips to sporting events, volunteers bring undeniable value to the school community. Schools that rely on volunteers to fulfill special programs, even special events, must understand the impact of a volunteer-related incident: Will insurance respond? Whose policy will take precedence? How can we protect students and volunteers, even the school itself, from mishaps involving volunteers?

When an accident happens, or a mishap occurs, volunteers may be under the mistaken belief that they will be covered by the school's insurance policy for their damage or injury. That is not always the case. The school or school board administrators, on the other hand, may believe that they are insulated from any claims because the volunteer is not an employee. That too, is not always true. The confusion surrounding volunteers' roles and responsibilities is typically only uncovered when a claim occurs – and the outcome is not always to either party's liking or expectations.

The following scenarios demonstrate some of the ways that volunteers can be covered by insurance, and different perspectives that could challenge the preconceived ideas and practices held by both school and volunteer alike.

Dragging the Diamond

Erick Jones used to work for the local high school as a PE teacher and coach. Upon retiring, he began volunteering regularly for the school's sports program. To prepare and maintain the field, he regularly “drags the diamond,” smoothing it with a steel mat rake that is dragged from the back of his old Chevy truck.

- While raking the field one afternoon, a child runs onto the field while Erick is focused on the rake behind the truck. The young child is struck by the truck and severely injured. *Who is responsible? Whose insurance policy will respond?*
- Many may think that “*Erick is a sanctioned volunteer with the township, so the municipal policy ought to respond on Erick's behalf.*”
 - If the vehicle is registered and insured provincially (Alberta) and Erick is the registered owner, the insurance will “follow” the vehicle – so in this case, Erick's automobile insurer would typically respond to the child's injuries. At the very least, as the primary insurer.
 - The school's non-owned automobile coverage could be triggered if Erick's limits are insufficient (if Erick didn't purchase enough liability coverage to fully reimburse the child's injury claims) OR if Erick's auto insurer denies the claim because they weren't told he was using it for those specific volunteer activities.

Schools and school boards are well-advised to understand and control the use of “non-owned” automobiles by volunteers. The vehicle in this example would be “non-owned” from the school's perspective, and its use, or misuse, could still trigger coverage under the school's insurance policy.

In the Line of Duty

Marc is a parent volunteer and is officially the coach of the school softball team. He also enjoys helping out when tournaments come to town. While coaching a game with the team, Marc is struck by a line drive and suffers a significant head injury. He is hopeful that the school will reimburse him for lost wages he incurs because he can no longer work in his regular job as a gas fitter.

- While Marc's medical treatments will, for the most part, be covered by provincial healthcare, his lost wages will be a less-straightforward issue. In assessing responsibility for his lost wages, a process of elimination may come into play:
- Does Marc have a private health benefit insurance policy that could be the primary payer in a scenario such as this? His employer may have short-term or long-term disability policies.
- Was Marc acting in his (formalized) capacity as a volunteer for the school? Or was he volunteering for the district school league? Once it is determined for which group he was actually volunteering, there could be coverage for some, if not all, of his lost wages: it will depend on the policy that has been purchased, and the amounts in question.
- If, for example, Marc is a high-earner, it is likely that the maximum amount payable will not come close to his actual loss of income. However, if he is a high-wage earner, he will, in all likelihood, carry his own private extended health benefit policy through his employer that may better meet his total lost-wage amounts; there could be a question of whether this policy will be primary payer, which will depend on several factors (see inset).
- If Marc was indeed acting in his capacity as a formal school volunteer when he was injured, there may be coverage under the school's Volunteer Accidental Death and Dismemberment (AD&D) policy, but again, it will depend on a few different factors:
 - Whether the school or district purchased the appropriate coverage for their volunteer force.
 - Confirmation that Marc is a sanctioned volunteer and was working within the scope of his role at the time of the accident.
 - Doctors confirm that Marc can no longer work or must be off work for a protracted period due to the Confirmation that no other possible policies are

triggered that would be primary or contributory for Marc's lost wages.

- If injuries to a volunteer are minor, there may be coverage under the school's general liability policy under the Voluntary Medical Payments coverage. Claims adjusters will work with the school to find coverage if the particular injury or loss applies.

What is Primary Insurance?

For all intents and purposes, Primary Insurance refers to the policy that is the first payer when a covered loss occurs and other insurance policies also are triggered by the same loss. This can happen in property, as well as various forms of liability policies. Most policy wordings will specify whether this policy is intended to be "first payer," or will contain an "other insurance" provision which could pro-rate, or share payments.

For the most part, the more specific a policy is, the more likely it will be the first to pay when a loss occurs – barring any specific exclusions.

When working with other agencies or non-profits, the school should draft a formalized agreement detailing the expected roles and responsibilities. If the other agency uses its own volunteers, the school should confirm the types of coverage they have in place for the volunteers before they are permitted to operate on school property.

Carpooling Concerns

Marisol and her neighbour, Alice, share the driving responsibilities to transport their two children to and from school every day. If an accident were to occur while on the public roadway, typically the respective auto policies would respond: If Alice was in an accident where she was deemed at-fault, typically, her auto policy would respond to any injuries sustained in the vehicle. If Marisol's child was injured in the accident, their injuries would typically be paid for by Alice's policy. There could be other policies (AD&D) that may respond as well, but for the most part, Alice's automobile policy will provide Accident Benefits coverage (for rehabilitation and some other benefits). Importantly,

because the school did nothing to arrange the ride-sharing, and the loss occurred on a public roadway, typically, the loss would not trigger any type of response from the school's insurance.

If however, Alice had been driving a group of students, for example, for a pre-arranged field trip, the situation could be more complex. Liability, for an at-fault accident would still tend to follow the automobile, so if Alice sustained a collision for which she was to blame (as per the Alberta Fault

Determination Rules – not just the Highway Traffic Act), her automobile policy would be primary, but if several children were injured, or heaven forbid killed, a typical liability limit of \$2Million would be woefully inadequate to address the claims that would emanate from that one accident. Because this was a school field trip, the school would, no doubt, be implicated and named in any subsequent litigation. In the course of the investigation, questions would be asked as to what type of due diligence was carried out by the school to ensure that Alice was a safe, well-insured driver. What if, for example, it turns out that Alice was driving with a suspended license? This would put her own insurance in doubt, leaving the school even more perilously exposed.

Alice could be under the erroneous belief that the school should respond entirely to the accident because she was acting in a formal capacity as a driver for the school. The automobile insurance policy however, will, aside from any denials of coverage, follow the vehicle.

If Alice is permitted to drive a school van for the purposes of a sanctioned field trip, insurance will indeed follow the vehicle and the van will typically be covered by the school's automobile policy. This may be appropriate, but permitting unsanctioned drivers to drive school vehicles and especially transport students, should be discouraged and replaced by a process of oversight and scrutiny. If the school permits parents to drive school vehicles for field trips, create a demonstrable process that encompasses:

- Criminal record and driving record check for parent volunteers – including an attestation that there is no alcohol or drug use – especially while driving the vehicles or prior to, driving.
- Confirmation that the driver is capable of driving the vehicle: including safety checks, and transporting disabled or vulnerable passengers. This includes

securement of disabled individuals in wheelchairs within any type of transportation.

- Notification and communication to parents as to who will be driving the students, how many chaperones will be tending to students (student/teacher/chaperone ratios) and what the scope of the varying responsibilities will be.
- Parents must be informed and agree to volunteer parent drivers transporting their child. This approval must be in writing with a full declaration (often in the form of a waiver).
- The proper procedure for incident reporting: what shall be done in the event of an accident; who will be contacted, what to do in the event of injuries, and which company to call for towing/storage/repairs.
- Rules about off-hour use of school vehicles, typically addressing:
 - sanctioned school use only,
 - no drinking or drug use,
 - no ad hoc use for moving furniture, or transporting personal goods or equipment,
 - no alteration or maintenance of the vehicle,
 - no overnight use (parking at home, for example),
 - only sanctioned drivers are permitted; no spouse or children permitted to drive,
 - no towing (unless sanctioned to do so),
 - no valuables kept in vehicle.

There is a difference between volunteers driving their own vehicles and them driving school-insured vehicles. If volunteers are driving their own vehicle, then their automobile policy is primary (see inset), and the school's *Non-Owned Automobile Insurance may become excess of that primary policy*. Because the school's policy is triggered only after the underlying policy is exhausted, the limit for the underlying policy is critical. If the school is going to rely on volunteer drivers, it must ensure there is a procedure and policy that addresses this potential conflict.

Not all liability policies are alike; definitions that specify who is considered a volunteer, and what type of coverage is provided, can vary widely between insurance policies, insurance companies, and applicable provincial regulations. Each potentially applicable policy should be reviewed by an insurance professional who understands the different coverages and nuances that may, or may not, apply.

Recommendations

Every school should have a robust volunteer strategy/process and procedure to ensure these valuable parents, and sometimes teachers, are protected in a manner that is amenable to both the volunteer and school officials. Volunteers must be well-suited to the roles they are meant to fulfill. Each school may have a different volunteer strategy, but at the very least, we suggest that your strategy encompasses:

- What are the “sanctioned” volunteer opportunities within the school environment?
 - If they are sanctioned, they must comply with the expectations, as laid out by the school’s volunteer policy: No exceptions. *Remember, unsanctioned volunteers pose a significant risk – one that must be mitigated.*
- Understanding the importance of roles being matched with the right volunteer:
 - No strenuous activity for physically challenged individuals,
 - Most policies will not respond to injuries caused outside volunteer activities nor any pre-existing conditions. It is important to ask the volunteer if they have any physical conditions that may limit their ability and leave them, or others, susceptible to injury.
 - Criminal record checks for roles that require it (remember to renew them regularly),
 - Age-appropriate duties; Some insurance coverages only apply to individuals between 18 and 80. Student volunteerism should be addressed by a separate policy. Most certainly, students who may hold a vehicle license should not be permitted to drive other students in a volunteer capacity.
- What type of oversight and monitoring will the volunteers require?:
 - Students may need timesheets to fulfill their mandated obligations.
 - Is the volunteer worker properly trained (potentially certified?) for the task at hand? If there are legislated requirements of workers, they are not side-stepped simply because a volunteer is carrying out the task:

typically, if the role requires proper certification, it does not matter whether the individual carrying it out is a salaried employee or a volunteer.

- Turning a blind eye to the activities of volunteers is not a good risk management strategy; from every potential loss perspective, school administrators must understand fully what the volunteers’ roles are, where they are physically, and how they are doing in their job.
- Who is driving vehicles or using specialized equipment?
 - Volunteers who use their own vehicle to carry out their tasks expose the school to liability. If volunteers are using their own private vehicles, administrators should check
 - The volunteer’s underlying (and primary) auto policy is sufficient to cover off liability as well as coverage for damage to the vehicle if it is damaged in an at-fault collision (collision and comprehensive optional coverages should be obtained by the owner of the vehicle).
 - The volunteer’s auto insurer should be made aware that they are using their vehicle for volunteer duties – this is especially true where the volunteer is transporting people as part of their role. Most standard auto policies do not readily permit drivers to use their vehicle for a fee, so especially if there is an “honorarium,” or reimbursement, the volunteer should be checking with their own insurer.
 - Is the volunteer fully licensed with a clear driver’s abstract? Even if they are “only” a volunteer, the school is responsible for checking their driving record for suspensions, DUIs, or limitations on the driver’s license.
 - If the volunteer is driving school vehicles, they must be checked and comply in the same manner as a paid worker would.
 - Is the vehicle safe? Are the roads safe to travel? If there are unsafe road conditions, volunteers should be told to stay safe and not drive, and most certainly should not be encouraged to transport others. During emergency situations, this may be necessary (ie: an evacuation), but only under the direction of emergency authorities

Workers' Compensation Protection

Every province and territory in Canada has some form of worker protection. There are significant variations between policies and definitions, which affect whether volunteers are covered by Worker's Compensation legislation and insurance. Some important exceptions apply in the case of volunteer firefighters and emergency workers. Schools should check with their own local workers' compensation board to get a clear idea of how this important protection will, or won't, be triggered in the event of an accident or mishap.

Unionized Environments

Unionized environments represent another layer of concern and compliance for the school's administration. Unions tend to frown when union workers are supplanted by volunteer workers, consequently, referring to the rules and guidance from the union is an important consideration, both in regards to volunteer parent drivers, as well as "volunteer" teachers who may find themselves driving school vehicles and transporting students, as long as it falls within the scope of their designated role.

School administrators are well-advised to both recognize and fully understand "who is doing what" within the scope of volunteers and their school-day responsibilities. The intent of insurance is to provide the school, and in some cases, its volunteers, protection in the event of a mishap. In doing so, the school protects its workers, its volunteers, its property, and, of course, the students. The school may very well find that with a robust program and a full understanding of the insurance coverage provided, it can attract more volunteers and also mitigate the significant exposure presented by its volunteer force.

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