



Risk Management Considerations for Volunteer Organizations

It is important that volunteer organizations are properly protected from liability, especially in the current Canadian legal environment where the number of civil cases are on the rise, in addition to the awarded settlements.

Exposure to Liability

Volunteer organizations may think they are immune from liability, however, they will be judged in accordance with similar groups when the courts apply the “reasonable person” test. Under the *Occupier’s Liability Act*, the occupier has a duty of care to see that every person on the premises is reasonably safe.

The definition of “occupier” under the *Occupier’s Liability Act* refers to:

1. A person who is in physical possession of the premises, or
2. A person who has responsibility for and control over the condition of the premises, the activities in the premises, or control over persons allowed to enter the premises.

The definition of “occupier” further states that there may be more than one occupier of the same premises. Therefore both the renter (volunteer organization) and the facility owner (municipality) could be named in a third party claim for bodily injury or property damage.

Joint and Several

Where two or more defendants are found to be at least 1% responsible for the injury or damages suffered by the plaintiff, the plaintiff is able to seek the entire judgment amount from any one of the defendants, regardless of the responsibility percentage allotted by the court. The defendant then has the opportunity to obtain the proportionate share of the judgment from the other co-defendants.

If the volunteer organization does not have insurance, or has inadequate limits of insurance, and a third party is injured, the municipality may have to pay some or all of the third party’s damages.

Need for Separate Liability Insurance Policy

Volunteer organizations need their own liability insurance. Their insurance should protect not only the organization, but also its executives, officers, directors, employees and volunteers who administer the activities of the group.

Do They Really Need Insurance?

Do volunteer organizations really need insurance when they’re only holding a meeting, teaching a class or showing photos of a trip?

Liability is often associated with bodily injury or property damage. So, if there’s very little risk of either, why do they

need to purchase a liability policy? A liability policy also provides coverage for personal injury, libel, slander and forceful eviction. Though the rental may seem innocuous from a physical injury perspective, there is always the possibility of a mental distress allegation due to libelous or slanderous comments.

The policy also provides Tenants Legal Liability. Whenever anyone rents your premises there is the risk that they can cause damage to your property. The Tenants Legal Liability pays for physical damage to your property, such as fire and broken windows, etc.

Municipal Volunteers

Municipalities often wonder why volunteer groups are not included under the "Definition of Insured" of municipal policies. If the organization has an independent board of directors, they are separate and independent from the municipality.

To be considered a volunteer of the municipality, characteristics similar to an employee must exist, with the exception of remuneration. To qualify an individual or group of individuals as municipal volunteers, these conditions must exist:

1. They must work under the direction and control of the municipality.
2. The municipality must have the ability to accept, suspend or dismiss their services.
3. A master/servant relationship must exist.
4. The activities of the volunteers must be carried out in accordance with the guidelines and standards set by the municipality.

Risk Management Suggestions

Municipal departments that rent out their premises should use a rental agreement that is signed by the renting volunteer organization. The agreement should state:

1. The rules and regulations pertaining to the use of the facilities.
2. The requirements to obtain the services or approvals of other agencies, if appropriate (police, fire).

3. Any liquor related policies/procedures that must be followed.
4. Damage deposits and rental rates.
5. Hold harmless/indemnity clauses and insurance requirements.

Hold Harmless & Indemnification Clauses

In most agreements, the municipality would incorporate a hold harmless/indemnity clause to protect against claims which might arise as a result of the rental. Such an agreement would not relieve the municipality from its own negligence, but would provide some protection when the municipality has no responsibility for, or control, over the activities taking place in the rental facility.

Insurance

In order to verify that the person or organization renting the facility has the financial strength to support the hold harmless clause, the municipality must ask for proof of insurance. Most municipalities assess the degree of risk involved in renting their facility to a particular organization, and based on that assessment, would increase their demand for insurance accordingly.