

Insurance Matters

"because we care"

The insurance newsletter of the Diocese of NS & PEI

Recent Events Raise Liability Issues

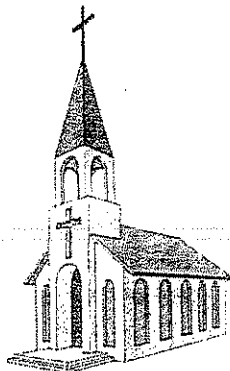
By now most church members are aware of the claim against the diocese, two churches and two priests based on incidents which occurred some 20 years ago.

In this issue we would like to discuss our responsibilities, legally and financially, on the whole question of liability.

There are many different forms of liability policies. If you are involved in a motor vehicle accident, you look to your automobile insurance policy. If you were to be injured in an aviation accident, you would seek redress under the aircraft carriers aviation policy. If someone was injured at your personal residence, you would seek coverage under the personal liability portion of your homeowners/tenant policy.

There are many instances where we, as a diocese, parish, church, council or individual can be held legally responsible, either collectively or personally, for our actions or inaction.

The Diocesan Insurance Program offers two types of liability coverage to the synod, as well as the parishes, churches and their councils covered by the program. Comprehensive General Liability (CGL) and Directors and Officers Liability.



Mission

The Mission of the Diocesan Insurance Program is to provide all participating parishes with the broadest possible insurance coverage at the lowest possible price and through the Insurance Committee, to assist Parishes with the stewardship and responsible management of their insurable assets and liabilities.

CGL & Legal Liability

The Comprehensive General Liability (CGL) policy provides a limit of \$5,000,000 each occurrence, subject to a deductible of \$500 each occurrence. This coverage is written to include all operations of the Diocesan Synod and parishes. Coverage applies anywhere in Canada or the contiguous United States of America.

This is a legal liability policy. In other words the policy will pay for suits/claims for losses causing Third

Party Bodily Injury and Third Party Property Damage arising out of or caused by our negligence or fault. We cannot be held liable IF we are not at fault. While we may not be at fault there is another area which concerns us, that being the costs to defend ourselves. Defense costs are covered by the CGL policy and are not subject to any deductible. The annual premium, currently at \$160, covers both defense costs and any actual payments made. This is quite a good rate when considering a lawyer's fee is about \$150 an hour.

By extension, claims resulting from other causes such as tenants' legal liability, non-owned automobiles, counseling, advertisers, abuse, sports liability, or voluntary compensation are included within the CGL policy. While we have indicated that these are covered, you cannot assume that the policy will respond to cover every incident which might occur, as no two incidents are identical. Each extension is subject to its own set of exclusions.

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Past and Future Claims

Liability insurance is coverage arranged to protect policy holders against an incident which happens today but may not surface for many years. Therefore, what we do today or do not do today has a direct impact on what options or coverages are available at some future date. Will the loss be covered by an insurance policy or will the loss be covered "out of pocket"? The insurance policy, if one existed, in force at the time the "incident" took place is the policy which will respond, not the policy currently in effect, so it is vital that "liability" policies are **NEVER** destroyed. In the case of the current scenario we must establish:

- If a liability policy was in force
- The name of the Insurer
- The policy number
- The insurance term
- The limit provided
- The name of the agent or broker
- The coverage provided.

Twenty years later, this becomes a monumental task and is inflicted on those people responsible for the operation of the diocese, parish, church and council of today. If we cannot establish the existence of the information listed above, on whom do we call?

By definition, the named insured under the Diocesan policy means not just the diocese, parish and church, but also the rector, council, employees, volunteers and any other parish organization whether duly constituted or not. Therefore, collectively or individually, all are deemed to be the named insured under the policy.

Directors & Officers

The second form of insurance provided to all parishes through the diocese is the coverage for Directors and Officers Liability.

The Canada Business Corporations Act states that all directors and officers are to exercise and discharge their duties and responsibilities in a prudent and responsible manner. The act does not differentiate between a "for profit" and a "not for profit" organization. Failure to act in a prudent and responsible manner allows for action to be taken against the parish or church and the individual or individuals in charge. While creation of the act and subsequent insurance coverage was designed to cover "for profit" corporations, it has migrated by social and legal pressure to become important for "not for profit" organizations.

This policy does not respond to claims charging bodily injury or property damage; these are covered by the Comprehensive General Liability policy. It is designed to cover for loss arising from claims alleging wrongful acts, based on decisions made or not made by council. Claims could also be based on procedures, established or not established, which cause monetary loss.

The action can be lodged against the diocesan synod or a parish, church or respective council. Furthermore, this action can be lodged either collectively or individually, so members of the various councils are covered.

Being a member of any council requires you to act prudently and responsibly in all matters relating to decisions made by the council. In addition to your own responsibilities you are also responsible for the decisions made by all council members or the council as a whole. You are not free of liability because "you have not

been attending meetings or it was not within your duties"

A textbook example was an claim in which a corporate treasurer embezzled corporate funds. The actual loss of the money was covered by the Employee Dishonesty policy and the loss was recovered. An action, however, was taken against the remaining board for (1) not having the proper procedures in place to avoid such a situation from occurring and (2) for not policing their fellow director properly. The action was successful. A decision made by one council member is made in the name of the council, which includes all members of the council; thus the importance of Directors and Officers Liability Insurance.

SOME DEFINITIONS...

A "wrongful act" means any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the directors or officers or trustees or the organization itself, or any other matter claimed against the directors or officers or trustees, solely by reason of their status as directors or officers or trustees of the organization.

Under the directors and officers policy, the "insured(s)" or "director(s)" or "officer(s)" or "trustee(s)" means any past, present or future duly elected or appointed directors or officers or trustees of the organization or any "not-for-profit" subsidiary thereof. Coverage will automatically apply to all new directors or officers or trustees after the inception date of the policy. Insured(s) or Director(s) or Officer(s)" or "trustee(s)" shall also include any past, present or future member of any duly constituted committee ("committee member(s)") of the organization or any individual in charge of any operational department [department head(s)] of the organization whether or not such a member or individual is employed by the organization, and any staff

physician or employee or volunteer of the organization. In addition, this coverage is also extended to cover loss arising from claims made against the estates, heirs or legal representatives of deceased directors or officers or trustees and the legal representatives of directors or officers or trustees in the event of their incompetence, insolvency or bankruptcy, who were directors or officers or trustees at the time the wrongful acts upon which such claims are based were committed.

Our Future Legacy

Today, we are gifted with that wonderful invention called "20/20 hindsight". Incidents which took place decades ago and which are only surfacing today, are being viewed, handled and negotiated in today's financial environment, not the environment of 20 years ago. Decisions on the coverage and limits purchased decades ago may be considered inadequate by today's standards. We, today, must act prudently with this hindsight experience in mind, and utilize this hindsight experience in what we do now, as it can have an important impact on us 20 years in the future. Even now, an incident may have occurred within your parish of which you have absolutely no knowledge. As a result, no one at this time can know when an actual claim may be instituted. Regardless of when the suit is launched, it is the coverage and limit in force today which will apply to cover not only any amount which might be awarded, but also the cost of defense. Also bear in mind, the incident has to be an insured loss. As a diocese, parish, council or individual we must ensure, to the best of our abilities, that the legacy which we leave to our future generations is not detrimental to them. We must act

responsibly and prudently in the stewardship of our responsibilities, actions and decisions.

Did You Know?

It is your sole responsibility to accurately determine the true value of your buildings and contents which is important in determining:-

- 1) the financial impact to the church/parish if the property is damaged or destroyed.
- 2) the amount and type of insurance necessary to protect the church/parish from financial loss.
- 3) utilizing the services of a recognized appraisal firm is the best approach in determining real (building) values. Obtaining the services of such a firm will require a financial expenditure by the church/parish.

An Issue of Stewardship

If, for no other reason, responsible stewardship demands protection of the church's/parish's people and property from certain risks. This protection to name a few falls under various categories:-

- building and contents
- loss of income
- liability
- non-owned automobile liability
- boiler/machinery
- employee dishonesty
- theft of money & securities

Good stewardship leads to "risk management". Risk management is a

management discipline where by steps are taken to identify and reduce needless waste of human, physical, financial or natural resources. A program of risk management can be broken into two basic elements:-

- loss control (identifying and reducing the likelihood of loss) and,
- risk transfer (acquisition of insurance).

Building Fires

At least 50% of building fires could be prevented if hazardous conditions were identified in time and appropriate action taken. Remember, defective or improperly serviced heating systems alone account for 25% of all building fires, and defective or overloaded wiring for another 22%. These, and most other causes of loss are controllable if recognized and effectively dealt with in time.

March 1, 2000 Renewal

The March 1, 2000 renewal of the Diocesan's insurance programs have been completed with coverage bound with the insurers via our broker - Marsh Canada Ltd.

There has been a general hardening of the marketplace with rates and premiums on the increase. Over the past five years, the market has been "soft" producing steadily declining rates. This cycle appears to be tightening. We know that other church programs have been subject to considerable increases in their 2000 renewal terms. Some of these increases

tightening. We know that other church programs have been subject to considerable increases in their 2000 renewal terms. Some of these increases have been in the magnitude of 20% to 30%. In spite of the heavy losses incurred on the property side of our program, our insurer, in recognition of the dedication and hard work being expended by our parishes have limited their increase to 7.5%. This increase is applicable solely to the property rates. All other sections of the program, plus the Directors and Officers Liability insurance have been renewed on the same terms and conditions as expiring - i.e. no increase.

The Insurance Committee has played an important part in conveying to our insurer our commitment to properly determine our insurable values. As an insured we must be committed to proper risk management and control.

This commitment and dedication has resulted in a lessor rate increase being levied on the March 1, 2000 renewal.

We must, therefore, continue the efforts commenced during the past 12 months, strive to maintain what we have accomplished and continue to improve our standards.

Renewal Rates

The rates per \$100 of coverage as of March 1, 2000 are:-

Class "A"

Frame Protected	\$0.1166
Frame Unprotected	\$0.1558
Frame Sprinklered	\$0.0715
Masonry Protected	\$0.0731
Masonry Unprotected	\$0.1053
Masonry Sprinklered	\$0.0473
Camps Frame	\$0.2340
Camps Masonry	\$0.1574

Class "B"

Frame Protected	\$0.1677
Frame Unprotected	\$0.2219
Frame Sprinklered	\$0.0962
Masonry Protected	\$0.1021
Masonry Unprotected	\$0.1365
Masonry Sprinklered	\$0.0602
Camps Frame	\$0.3356
Camps Masonry	\$0.2046

Class "C"

Any location type	\$0.6095
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Vacant Locations

Any location type	\$0.6433
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Paintings (Icons)

Any location type	\$0.6288
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Rector's Personal Effects

Any Location type	\$0.3225
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Other Sections

The premium of \$160 for the Five Million Comprehensive General Liability remains as is,

The premium of \$50 for the Employee Dishonesty, Money and Securities remains as is even with the enhanced limits of \$50,000 and \$25,000 respectively.

The Third Party Pollution Liability premium of \$32 per tank remains unchanged for the \$500,000 limit.

The premium of \$80 for the \$1,000,000 Directors and Officers Liability Insurance remains unchanged.

The 5% Diocesan Administration Fee remains as is.

Please Note...

The forgoing, with the exception of Directors and Officers Liability Insurance, pertains to parishes covered under the Diocesan Insurance Program. Those parishes outside of the program will need to determine what coverage exists within their respective policies and whether coverage is extended to clergy and other individuals. Under Canon 38, they are required to carry the same coverages as if they were insured under the Diocesan Program.



This newsletter is published intermittently by the Synod Office of the Diocese of Nova Scotia and Prince Edward Island. It is meant to convey only general information concerning parish insurance and risk management issues. It is not intended to be a statement of policy or a legal document. For specific information on coverage or other topics please contact the Broker, Marsh Canada at 1-800-405-6668 or the Synod office at:

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