



TRANSFER OF LIABILITY

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DID YOU KNOW that transfer of liability is part of risk control strategies?

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AN INFORMATION SHEET FOR ST. JOHN AMBULANCE MEMBERS

The December 2003 Did You Know discussed the Risk Management process within St. John Ambulance. Risk management involves looking at the possibilities of loss or injury that might arise in programs, activities, and services and taking any number of necessary steps to control them to prevent, reduce, or eliminate them.

Liability is a growing concern to increasing numbers of nonprofit organizations and from time to time agencies find themselves the target of legal action. Law suits against nonprofit organizations can take many forms. Allegations of negligence are among the most frequent of civil charges, and vicarious liability is among the most troubling since it can take place even where the organization has done nothing “wrong” or illegal.

What is transferring liability?

By far the best way to address concerns about liability is to prevent risks from materializing. Too often boards and senior managers seek quick-fix protection through insurance, and fail to take reasonable precautions to keep the source of the liability from happening in the first place. The best strategy is to engage in effective risk management first, then pursue other liability reduction mechanisms to deal with any *residual* liability that might still exist.

Insurance is only one way of dealing with liability. There are other mechanisms to consider as well, and which, like insurance, transfer liability to other parties. In its simplest form, a volunteer calling his or her supervisor to report a problem and/or to ask for direction in an uncertain situation is a way of transferring some of the responsibility, and therefore some of the liability for consequences, on to someone in higher authority.

Waivers, save harmless agreements, and other contractual approaches also constitute liability transfer mechanisms. There are many different kinds of waivers. It is important to ensure that the right format is used. Remember that waivers do not provide a shield against legal action and are no substitute for the range of other risk management techniques that help to prevent losses and harm from materializing in the first place. If you think there may be a role for a waiver in one of your programs, be sure to ask for a legal opinion, and if you decide to implement one, have an attorney prepare the appropriate wording.

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This information has been excerpted from Linda's Graff's book "*Better Safe...Risk Management in Volunteer Programs & Community Services*". *Better Safe ...* contains many practical risk management tips and assessment tools that can help you to identify and manage risks related to your program. It is available through Linda's web site: www.lindagraff.ca



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In some circumstances, an organization may choose to have someone else (an individual, an organization) take on part of a particularly demanding, specialized or risky activity and thereby transfer over to that other party some or much of the liability involved, e.g., an outside party transporting youth to an event; enlisting the assistance of professionals for various tasks that we are not trained to do, etc. Keep in mind that when an organization contracts out parts of its programming or services, it has a duty to do so responsibly. Make sure that party in question is appropriately qualified, licensed, bonded, insured, etc.

It is nearly impossible to transfer away all liability in any given situation, and organizations must exercise, and be seen to exercise, due diligence in their volunteer and community service programs. Everything reasonable should be done to prevent and reduce harm before attention and resources are devoted to liability reduction.

What About Insurance?

Insurance is essential, but, like waivers, it is not an impenetrable shield. Insurance payouts always have limits and a judgment may exceed the coverage limit. Insurance policies typically have exclusions. Check yours to ensure that it covers all you expect it to. And insurance can't recover everything that can be lost through a law suit, including, for example the time and anguish of launching a defense, and the loss of public trust that can result, even if the organization is absolved of guilt at some later point in the courts. The bottom line is that reasonable measures to reduce and transfer liability should be pursued, but prevention is always the best strategy and risk management should be the focus of efforts to operate safe and effective programs and services.

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