



This seasonal newsletter is written for the Clients and Friends of HUNTERS. It's really a personal and practical piece - written by our President, Brooke Hunter - with ideas to protect your family and your assets.

Not all articles will apply to everyone - at different ages and stages - but we hope there is a constructive nugget for every reader in every issue!

### WORKING WITH LAND TRUSTS AND CONSERVATION AUTHORITIES

We take our hats off to those who choose to protect ecologically sensitive land for future generations.

We recently did some work for a land conservancy – which got us to thinking about risk from the individual donor or participant perspective.

You have experts to manage tax implications – but what about third party injury occurring on the land in question. Who is responsible and what insurance is available?

Generally, there are three ways conservation authorities or land trusts secure land - being purchase, donation and easement.

If a conservancy or land trust buys property from you or if you choose to donate property, future injury flows with the title. This is a relatively straight forward matter from a risk perspective.

Let's assume for a moment that you agree to make a capital land donation to a nature conservancy or land trust upon your death but in the meantime management of the land is the responsibility of the trust. The management agreement needs to spell out which party is responsible for liability and how the other will be protected.

A conservation easement is a legal agreement by which a landowner voluntarily restricts or limits the types and amounts of development that may take place on her/his land in order to protect its natural features. The easement runs with title to the land and binds future landowners. For example, an easement

may remove the right to subdivide from the landowner, and may require the landowner to keep fences in good repair.

In this case, title stays with you and therefore any liabilities arising from the land ownership. Assuming the land is in your name, then it needs to be scheduled under your Homeowners Insurance in order to cover third party liability claims for injury. If the land is in a family trust, estate or holding company, then that entity needs to be named as an insured under your Homeowners or a separate General Liability policy should be purchased. Insurance company attitudes to adding entities / properties to Homeowners Insurance vary widely.

Of course risk is affected by the activities that take place on the land in question. For example, hikers regularly use privately-held land with easements to protect the Bruce Trail, community land trusts lease land to windfarms and lots of landowners choose sharecropping. Your insurer should be apprised of these activities.

Any buildings on the property need to be disclosed to your insurer - whether you intend to insure them or not. If you choose to insure them - recognize that coverage may not apply while the building is vacant and damage done by tenants may not be covered.

In each of these three examples - sale, donation or easement - the form of agreement needs to spell out responsibility, liability and insurance.

Brooke

### HUNTERS Community Update



LADIES OF THE LAKE CALENDAR 2009  
TO BENEFIT THE RESCUE OF LAKE SIMCOE 

Calendar Cover Photograph © Jim Panou

Ladies of the Lake is a group of over 100 women (of which Brooke Hunter is one) championing a healthy Lake Simcoe and its Watershed. The stunning new 2009 Ladies of the Lake Calendar celebrates Lake Simcoe's natural elements. (Brooke and at the time, daughter-to-be, Ailish, are part of it!) All calendar proceeds fund ongoing efforts to help rescue Lake Simcoe and the lands flowing into it. The calendars make ideal gifts for friends, business associates and family.

Please consider buying one at \$15 - click here for an order form: <http://lakeladies.ca/uploads/Media/Shared/Online%20Order%20form%20WORD.pdf> or email [brooke.hunter@hunterscorners.com](mailto:brooke.hunter@hunterscorners.com)

Or go to [www.lakeladies.ca](http://www.lakeladies.ca) to find a store near you!

#### In this issue:

Working with Land Trusts and Conservation authorities	1
HUNTERS Community Update	1
Non-Profits – Director Liability Insurance Basics	2
HUNTERS Colleague Update	2

## NON-PROFITS – DIRECTOR LIABILITY INSURANCE BASICS

At the risk of over-simplification, we thought it would be worth looking at the very basics of Director Risk and Insurance as it relates to Non-Profit Boards.

Directors are required to exercise their power with competence (or skill) and diligence in the best interests of the non-profit organization they serve. They owe what is called a "fiduciary duty" to the organization - an obligation to act in the best interests of the organization with loyalty, honesty and good faith. A director can be held personally liable for his or her own actions or inactions. Situational examples include:

- where directors act without or beyond proper corporate authority
- where directors enter into a contract without proper authorization or on behalf of a non-existent corporation.
- for breach of fiduciary duty – i.e. not acting in best interests of the organization
- statutory liabilities - various personal obligations imposed on directors under federal and provincial legislation such as unremitted taxes, source deductions and in some cases wages

Often the biggest personal exposure is to defence costs – long before the action is dismissed or settled. Protection available to directors is generally considered to be:

- Their own due diligence
- Indemnification by the organization
- Insurance

The **General Liability Insurance** policy of a not-for-profit gives only limited coverage to directors or officers. This type of policy, which is commonly carried by corporations as part of a "Commercial Insurance Package", addresses claims arising out of third party bodily injury, property damage. (If the not-for-profit corporation's current General Liability insurance policy excludes claims for sexual abuse and the corporation faces a risk in this regard, the board should examine specialist insurance coverage.)

**Directors and Officers Liability Insurance** policies typically protect against claims arising out of board decisions or omissions, or out

of actions or activities performed directly under the auspices of the board or directors. Bodily Injury and Property Damage are excluded because coverage is available under the "General Liability Insurance". Policy wordings and exclusions vary widely insurer to insurer. (You may even have an extent of coverage under your Homeowners Insurance.)

An example of a General Liability claim would be:

**Trip & Fall** - An elderly guest at a fund-raiser broke his arm on the dance floor tripping over a poorly placed extension cord. The gentlemen brought an action against the organization raising the funds.

Below are claims examples that would likely trigger an organization's Directors and Officers Liability Insurance:

**Breach of Fiduciary Duty** - A foundation, established for the purpose of running a sporting event, received a federal government grant to finance the event. Later, it was discovered that the foundation had exceeded their revenue with incurred expenses. A government investigation concluded that the board failed to effectively budget and monitor spending. A claim was brought against the directors for breach of fiduciary duty.

**Mismanaged Funds** - When a wealthy family made a substantial donation to a charity, it was to be 'earmarked' for a specific cause. After spending the money in a fashion that seriously contradicted the donors' strong religious beliefs, an action was brought against the directors.

**Fired Executive** - An association terminated a senior executive after complaints from employees with respect to behaviour including sexual misconduct and harassment. The executive successfully sued the association for wrongful dismissal and the directors for interference with contractual relations. The decision of the trial judge was then appealed successfully by the defendants following which the plaintiff sought to appeal to the Supreme Court of Canada but was denied. The total cost of defending the claim was more than \$250,000.

To determine the extent of coverage your Non-Profit board has or needs – please contact Brooke Hunter (416.323.9300 or [brooke.hunter@hunterscorners.com](mailto:brooke.hunter@hunterscorners.com)) to arrange a full review.

## HUNTERS

Protecting business and community  
leaders for five generations

Hunters International Insurance Brokers  
The Weston Centre  
Ste 401, 22 St Clair Ave East  
Toronto, ON Canada M4T 2S3

P. 416.323.9300  
F. 416.323.9994

W. [www.hunterscorners.com](http://www.hunterscorners.com)

E. [askus@hunterscorners.com](mailto:askus@hunterscorners.com)

24 hour Emergency Claims Line - 1.877.604.3777

## HUNTERS COLLEAGUE UPDATE



Marlene Jones, our Executive Assistant, is now Marlene Long!

Marlene was married on May 10th. Her new husband is a little shy so is not pictured but we think Marlene looks fantastic so just had to include her!