









RISKY BUSINESS



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Will HST Affect Insurance Premiums?

Ontario will combine its provincial sales tax and goods & services tax on *July 1, 2010*, producing the new Harmonized Sales Tax (HST). This will inevitably affect the cost of insurance.

That said, under the Harmonized Sales Tax (HST), Insurance is a financial service, and is therefore exempt from HST. This means policyholders will not see HST appear on their premiums; the same applicable PST rate will still apply. There may, however, be a premium increase on the horizon. That's because insurance providers will be required to pay HST for all their operating and claims costs and include them in their reserves.

In particular, insurers will pay a hefty price on the claims side of their business. Insurers will pay more for services, including legal fees, which are currently not subject to PST but will now add an extra eight per cent every time a claim is settled.

There will also be an impact on reserves for the industry. When insurance companies sold policies in recent years, they did not anticipate the possibility that claims would be more costly to settle after the HST would come into effective. The result is a retroactive hit, since insurers cannot retroactively increase the price of policies already sold. This is mostly a one-time impact, so insurers will feel the greatest sting this year.

The Insurance Bureau of Canada has presented options to the government in an effort to mitigate the effect HST will have on insurance. Meanwhile, until the industry receives word of any initiatives, insurance companies will have to revisit what they charge for premiums.

SHSC promises to keep our insurance program participants posted on any new developments.



SHSC Client Question: The Invisible Workforce

An SHSC client recently asked us if it was okay to hire a husband-and-wife team as superintendents. There was one catch: only the husband would be on the property's payroll. His wife would help out with cleaning and other tasks in an unofficial capacity.

This all-too-common trend is what we like to call the "invisible workforce." In this scenario, the superintendent's wife is "invisible" because there is no record of her being employed. The prospect of what at first might seem like "two employees for the price of one" might appeal to some landlords, but it is simply not worth the risk.

Housing providers can learn a lesson or two from Canada's agricultural sector. Farmers have learned the hard way that any perks of, say, unofficially employing their 9-year-old son to help out on the family farm might cost them dearly. All is well until a tractor accident injures the farmer's son, and the farm is then accountable under labour laws. Furthermore, the son receives no compensation for

his injuries because he is not on anyone's books as an employee. Nor will the farm's liability insurance cover damage to the tractor.

The same applies for our superintendents. Ontario's Workplace Safety and Insurance Board (WSIB) will not cover the "invisible" wife if she is injured on the job. Crime insurance will not cover losses associated with her absconding with tenants' rent money, or if she fails to salt the driveway and someone gets hurt, the corporation is left without an adequate defence since they didn't have their employees performing their necessary tasks under the *Occupiers' Liability Act*. Allowing someone to be an unofficial employee is unfair to the worker and a risk to the housing provider. If the wife in the above scenario is injured on the "job", she could – and should – sue the provider if she is injured and had no protection under WSIB.

Resist the lure of the invisible worker. There are no two-for-one deals on hiring staff.

The Medical Marijuana Conundrum (*Part One of a two-part series*)

A tenant recently asked his apartment manager if he could grow marijuana, for medicinal purposes, in his apartment. He was authorized by Health Canada to grow it. If you were that apartment manager, where would you go from here?

Medical marijuana brings up a host of property management and human rights issues. According to Charles Dowdall, Director, Client Services, SHSC, housing providers need to address them from two separate perspectives: growing marijuana and smoking it.

In this issue of *Risky Business* we will address the issue of smoking marijuana for medicinal purposes.

If the tenant has a card from Health Canada, landlords must allow it. “No one can ban the tenant who has been authorized to smoke marijuana on the premises for medicinal purposes,” says Dowdall. “It would be a violation of the Ontario Human Rights Code Amendments - Bill 137.”

Currently there is no cap on the fines and awards the claimant can request as restitution, and an increasing number of human rights cases are pending. Violating the Ontario Human Rights Code can be a big-ticket item for landlords and could pose potential liability issues for non-profit boards.

Now to complicate matters: under the Residential Tenancies Act, 2006, the other tenants in the building have a right to “quiet and reasonable enjoyment” of their units under their respective Tenancy Agreements.

“If a tenant complains about the odour of the medicinal marijuana or the smoke itself,” says

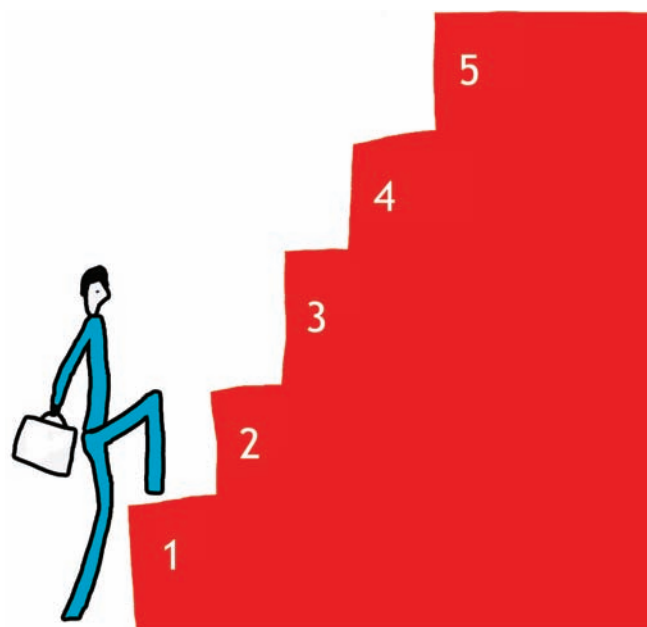
Dowdall, “the tenant has the ability to file application with the Landlord-Tenant Board for violation of their rights under the Residential Tenancies Act, 2006. Furthermore, the landlord has the responsibility under the Ontario Human Rights Code Amendments - Bill 137 to take all steps necessary under the *duty to accommodate* without creating undue financial hardship to ensure that all necessary precautions have been taken to ensure that the impacted tenant is not being compromised.”

That could entail retrofitting a specific unit to ensure that there is no seepage of odour between units, installing appropriate ventilation and sealers (or making modifications to existing ones), and more.

Hence the conundrum: the landlord is caught in the middle and could possibly face considerable financial expenditure either through capital retrofits or through potential fines and punitive damage-related awards.

SHSC has developed a full-day training workshop entitled *Ontario Human Rights Code Amendments - To be Forewarned is to be Forearmed!* which provides an in-depth overview of the specific changes in the Ontario Human Rights Code. For further information contact Lisa Kotsopoulos, Manager of Training at 416.594.9325 ext 242 or via email at lkotsopoulos@shscorp.ca

Watch for Part 2 of this discussion in the next issue of Risky Business, where we will address the even trickier issue of growing medicinal marijuana.



Managing Risk In Five Steps

Are you in charge of risk management for a social housing provider and wondering where to start? Once you understand the basics, risk management is a fairly smooth and logical process.

The goal is to identify potential hazards, then determine what can be done to either eliminate or reduce the possibility of a loss from that hazard, implement that loss reduction technique and then take steps to make sure you can pay for any losses that occur despite your best efforts (i.e. buy insurance). The risk management process involves five steps:

Step 1: Identify and analyze exposures

Compile a list of every loss the property could conceivably face. It could be a liability loss, meaning a lawsuit filed against you – whether it’s an employee claiming unjust dismissal, or a tenant suing because he slipped and broke his leg in the stairwell. Or it could be property damage or loss from fire, sewer backup, an overflowing bathtub or other causes.

To identify possible exposures, review your existing policies and procedures. Are they in order, or should they be amended to include, for example, keeping inspection logs for floors and sidewalks? Another way to gather this information is to review past losses and the value of your past claims. SHSC can help you with this by running a loss report for you which will include details of your claims.

Step 2: Quantify the exposures

For each exposure identified in Step 1, you next assess the potential likelihood and cost of each scenario. Explore these questions: “how likely is this to happen? If it did happen, how great a loss would it be in terms of damage to our property or injury to a tenant, employee or visitor? Could someone get hurt? Could this damage the corporation’s reputation? And finally, which of these exposures are insurable?”

The goal is to determine frequency (likelihood) and severity (cost). An earthquake, for example, might only be a 10 percent possibility in your part of the world (frequency), but it would take just one bad earthquake to damage or destroy the building, harm the occupants and financially devastate the corporation (severity).

Step 3: Evaluate the options

When faced with situations that could lead to potential losses, there are two things you can do about them: Risk Control aims to avoid the loss altogether by stopping the risky behaviour or fixing dangerous conditions (e.g. no longer waxing the slippery floor in the lobby and installing non-slip tiles instead) or by making changes to reduce either the frequency or severity of potential losses (e.g. installing sprinkler systems or not building near a river that floods every spring).

Losses that can't be eliminated by controls are transferred either by contract to a potentially responsible party like a snow removal contractor, or to an insurance company through the purchase of an insurance policy. There are two components of "risk financing", which means coming up with ways to pay for losses. One way is through "retention," where you assume the risk and budget to pay for those losses either under a deductible or by not purchasing insurance at all (e.g. we have very good financial controls in place and therefore don't want to insure for employee dishonesty so won't purchase crime insurance). The other is to "transfer" the risk by buying insurance.

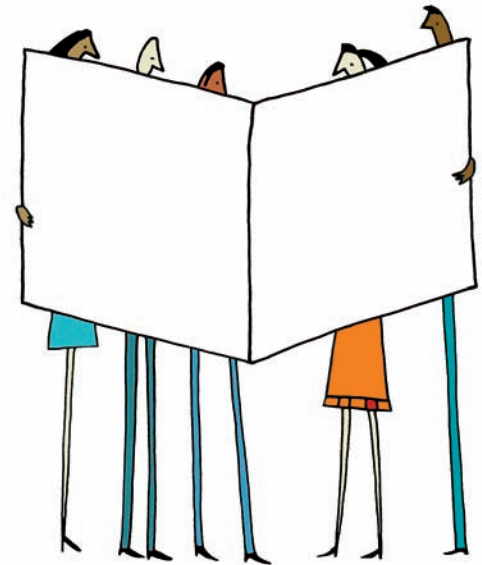
Step 4: Implement

Assuming someone is assigned to the task of managing risk (ideally a team of board representatives, including the financial and operational decision-makers), this is the action step, the time to tackle items on the risk management to-do list generated in Step 3. Actions that can be taken in this step include implementing new policies and procedures like Emergency Response Plans and regular property inspections, installing mechanical devices like water flow monitors or new alarm systems, reviewing your contracts to make sure they transfer risks that you have no control over, and purchasing appropriate insurance coverage.

Step 5: Monitor the results

It is important to follow-up on all the work you've done to identify and quantify exposures and control losses. Conduct a regular inspection of every exposure, and keep a written record of those inspections. Consistently look at your objectives and whether you reached them. Was there a decrease in slips and falls on the premises? Has employee theft stopped or decreased? How much did we spend on claims this year versus last year? What improvements can we make to the loss controls we have implemented to make them more effective?

Knowing, understanding and following these essential steps of risk management will protect you, your employees, tenants and the public, and will protect your property's assets.



Decoding ‘Insurance-Speak’: How To Read Your Policy

Your insurance broker has just placed something in your hands, something you are paying for: a thick document filled with words you have never used. Enticing it is not.

Our suggestion? Read it anyway. All of it. Reading your insurance policy is the only way to know what you are paying for. It tells you what is covered and, perhaps just as importantly, what is not.

Rather than one large document, think of your policy in terms of smaller, more digestible chunks. Every policy consists of five or six main parts:

1. The **“Declarations”** page shows the insured’s name and address, dates the policy will be in force, a description of your business, as well as monetary details – how much coverage, coverage limits, and premiums. Schedules attached to this section contain information about rating classifications, and any extra property covered.
2. The **“Insuring Agreements”** section (sometimes called “coverage”) specifies what the insurance

company has agreed to pay for, or what it will provide in exchange for your premium.

3. The **Definitions** section clarifies definitions of words that have a specific meaning in the insurance world. Get to know what they mean, because even one word in a policy can restrict or limit coverage.
 4. **Exclusions** is the section that clarifies what types of coverage are not included in the policy. A directors’ & officers’ liability insurance policy, for example, will exclude claims for fraudulent acts. The exclusions section may also include a broadening provision that indicates exceptions to the exclusion.
- Note: Although this is the main section dedicated to Exclusions, any other part of your insurance policy might contain exclusionary provisions – another reason to read the entire policy.*
5. The **“Conditions”** section basically says the insurance company will cover certain losses but only on the condition that the insured

lives up to their own end of the contractual obligations and only if an insured event occurs. Read this section to find out what the insurance company expects of you, the insured, and your organization. There are both General Conditions and Statutory Conditions for every policy. General Conditions will vary from policy to policy but Statutory Conditions are set out in the Insurance Act and are common to all.

6. There is also a sixth section in most policies, called “**Endorsements.**” These further modify the main coverage and are also important to read. They might revise a definition, restrict or exclude coverage, or even add coverage. Some insurance advisors recommend reading this section first, before moving on to the main parts of the policy.

What To Look For:

As you curl up in a chair with your insurance policy and a cup of hot cocoa, make sure everything is accurate. Check for any misspelled names and that the policy outlines everything you have agreed to, including any additional insureds.

If anything in your policy seems to be missing or inaccurate, call your insurance broker or ask SoHo for clarification.

April showers bring...

May Renewal Applications

Your SHSC renewal application will be in your mailbox in May. This is your friendly reminder to read the instructions, fill out the renewal application as indicated and update your information.

The application form also asks that you report on your Total Insured Values (TIVs), so if you haven't had your building appraised in awhile, now would be a good time.

SHSC uses the information on your renewal form to supply a quote for your 2010-2011 policy term.

When you do receive your pre-renewal package, please review it carefully, make any appropriate updates and changes and return the completed form to SoHo Insurance by fax, mail or e-mail by mid-July. More information will be available shortly, including further instructions and deadlines.

A draw for 5 iPod shuffles will be made from all applications received by July 8, 2010.



Spotlight on Coverage: Directors' & Officers' Liability Insurance (D&O)

----by Shelley Lloyd, Legal and Research Practice, Aon Financial Services Group (guest columnist)

Many not-for-profit and charitable organizations (“non-profits”) are now operated like businesses, with experienced directors and officers, and with guidelines for authority and accountability. However, in light of increasing public scrutiny and regulatory requirements, the altruistic and volunteer-based nature of non-profits will not insulate their members from the risk of litigation. Non-profits face many liability exposures today, including the risk of personal liability for their directors and officers.

Potential liability

Directors and officers of non-profits are expected to act with good faith and loyalty to their organization and its members. They have duties to avoid conflicts of interest and maintain the confidentiality of board business, as well as fiduciary duties when it comes to budgetary and financial decisions and disclosure.

Non-profits can be sued or involved in proceedings by many parties, including members, third parties and government agencies, in a wide range of areas including but not limited to:

- Breaches of fiduciary duty and duty of care
- Negligent supervision, screening or hiring of employees and volunteers
- Compliance with privacy legislation
- Conduct of fundraising activities
- Compliance with income tax statutes
- Payment of wages and deduction of taxes for employees
- Breach of statute (e.g. anti-money laundering laws; lobbying legislation)
- Torts (e.g. defamation and discrimination allegations)
- Additional obligations and higher standards of care as trustees
- Compliance with the new Canada Not-for-Profit Corporations Act, where applicable

(continued on next page)

Non-Profits In The Crossfire: D&O Claims Examples

Workplace issues

A non-profit organization fails to investigate an employee's verbal and written complaints of sexual harassment. The organization investigates after the employee quits and threatens to sue. The employee's allegations are discovered to be true, and the harasser is fired. The complainant sues the non-profit and its board of directors for allowing harassment in the workplace, failing to investigate, and constructive termination. The non-profit is also sued by the harasser for wrongful termination.

Misrepresentation, failure to advise

A non-profit housing advocacy group helps twenty families obtain government-subsidized loans to purchase low-income condominiums. Soon, real estate prices drop dramatically and the condos' value is less than the amount of the outstanding loans. The non-profit and its directors are sued by several of the homeowners for misrepresentation and failure to advise of the possible loss of the value of their homes.

Excessive compensation

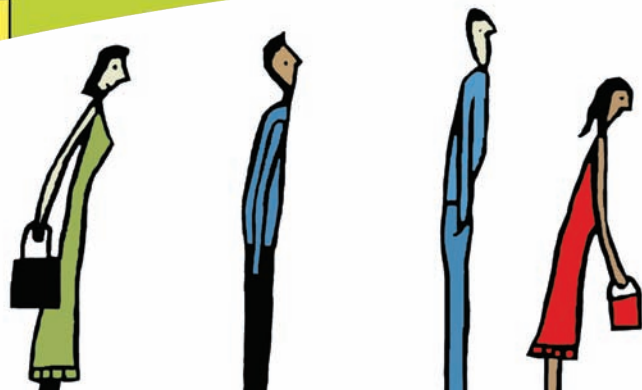
In 2004, the state attorney general sues a former stock exchange chairman under state law governing non-profit institutions, to compel the chairman to return the greater part of an "objectively unreasonable" \$190 million deferred compensation and pension package. Two and a half years later, the trial court finds the chairman breached his fiduciary duty and must return almost \$100 million. Six months later, the appellate court reverses, dismissing four of the six causes of action. However, it is not known whether any of the parties will appeal.

Fraud, misuse of charitable funds, overstatement of earnings

When a U.S. health education and research foundation files for bankruptcy in 1998, its six top managers have received \$8 million in previously deferred benefits, 26 managers have received base pay salary exceeding \$350,000 and were enjoying luxury benefits including use of a corporate jet, and its chairman lives in a foundation-owned mansion and has an annual salary of over \$1 million. At the time of bankruptcy, the foundation has laid off employees, is losing \$1 million per day in costs and operating losses, and has \$1.2 billion in debt. Its subsidiaries are responsible for repayment of at least 13 bond issues totaling more than \$900 million. The state attorney general sues for the return of \$79 million in charitable assets, ultimately settling for approximately \$20 million. The U.S. Securities and Exchange Commission brings civil fraud charges including misuse of charitable funds and overstatement of earnings against the foundation's CFO, two former vice presidents, and three auditors. Criminal charges are also filed against the CFO and the chairman.

Innocent directors

A division of a national safety council suffers financial collapse due to the fraud of the organization's managing director. However, each of the directors – who are acting in voluntary capacities – is sued by the council's principal creditor. All but one board member settles out of court. The remaining director chooses to defend the action; a \$97M judgment is rendered against him. The loss costs the director his personal assets, including his home.



Spotlight on Coverage: Directors' & Officers' Liability Insurance (D&O) *(continued)*

---- by Shelley Lloyd, Legal and Research Practice, Aon Financial Services Group *(guest columnist)*

How do you protect yourself from personal liability?

A fulsome D&O liability insurance policy will provide valuable coverage for past, present

and future directors and officers, for the defence costs, judgments or settlements they incur in response to allegations of wrongful acts made against them. A D&O policy can also include coverage for the organization for the cost of

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indemnifying its board members.

However, D&O policies may/will not cover certain situations, such as intentional misconduct, fraudulent acts, matters that were known to an insured prior to the inception of coverage, and professional errors or omissions. Due diligence, statutory protection, and indemnification by your organization work hand-in-hand with your D&O policy to address the types of liabilities you may face when agreeing to serve a non-profit board.

Due diligence

Take care to: fulfill duties of good faith and loyalty to the organization and its members; avoid conflicts of interest; maintain confidentiality of board business; use caution when authorizing and approving budgets and financial disclosure; make reasonable efforts to ensure your organization acts lawfully and appropriately; adopt internal controls for authorizing transactions and managing assets and costs; and establish and/or revise as needed, a written code of ethics for directors and officers of your organization.

Statutory protection

Some jurisdictions have enacted statutes to protect uncompensated non-profit board members and trustees in certain circumstances.

Indemnification by the organization

This measure is only viable if the non-profit has sufficient assets to provide indemnification. However, indemnification may not be appropriate if the directors are acting in a trustee capacity.

D&O liability insurance

If you are involved in a lawsuit or regulatory proceeding, a D&O liability policy can provide coverage for the legal costs you incur, as well as the judgment or settlement that might result from the proceeding. D&O policies vary much more than other types of insurance, however, so it is important to understand your coverage and review it for any gaps that need to be addressed.

- Review the organization's operations, to determine potential areas of director exposure
- D&O policies can provide coverage for directors for claims arising from their acts, omissions or decisions
- Where the organization indemnifies its board, a D&O policy can reimburse the organization for amounts it has paid in indemnification
- Consider whether policy limits and coverage structure are sufficient to protect personal assets

To determine the appropriateness of indemnification and/or D&O insurance for your not-for-profit, charity, community association or other non-profit organization, it is important to review your operations, the checks and balances in the organization's procedures, and the potential for board liability.

Ask the SHSC Insurance Program broker for more information and a detailed risk review for your organization.

RISKY BUSINESS

Contact Us

- For more information on the SHSC Group Insurance Program, including risk management, insurance or advocacy, contact:

Daryl Carre:

416.594.9325 ext 244

Toll free 1.866.268.4451

dcarre@shscorp.ca

- For more information on coverage, limits or deductibles, contact Aon Reed Stenhouse, the program broker:

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Zobeeda Rouch:

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Toll free 1.800.711.7511

zobeeda.rouch@aon.ca

- Reporting Claims and Incidents: Please report all claims and incidents, whether self or externally adjusted, to ClaimsPro at 1.866.532.7315



THE BUSINESS OF HOUSING

About the SHSC Group Insurance Program

The SHSC Group Insurance is one of the largest in North America and offers competitive prices and coverage tailored specifically for social housing providers. Our program operates from a single master insurance policy administered by SHSC. The program is extremely flexible and allows our customers to choose their own coverage types, limits and deductibles.

The Social Housing Services Corporation is a non-profit corporation led by social housing representatives who are committed to providing Ontario's housing providers and municipal service managers with programs that add significant value to their operations. SHSC provides services that empower housing providers to develop safe and affordable homes and vibrant communities. We use our expertise to develop and deliver investment, insurance, natural gas purchasing, research, training and energy management programs.

For more information on SHSC and our programs, visit: www.shscorp.ca, call: 1.866.268.4451 or 416.594.9325, or email: feedback@shscorp.ca.



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