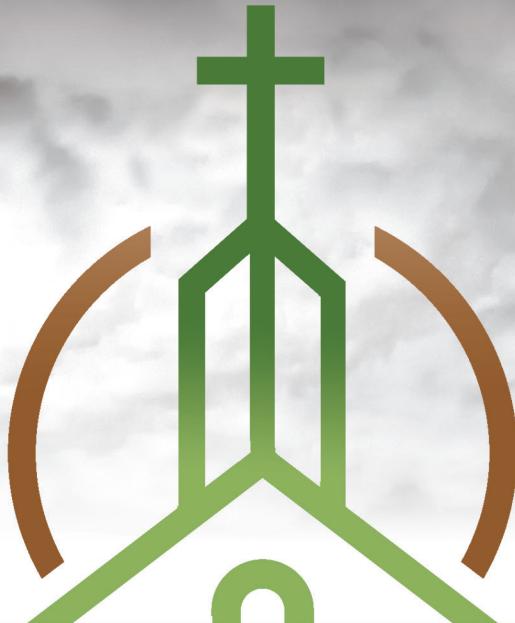




THE ACACIA GROUP

PROTECTING
YOUR
CHURCH
or **MINISTRY**
FROM HUMAN RIGHTS COMPLAINTS
AND OTHER LAWSUITS



While maintaining your Christian character and identity

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Updated in August 2022.

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Our Team

INTRODUCTION

We no longer live in a Christian nation and culture. Much of what we preach and practice is offensive to the world. Increasingly, churches and faith-based organizations are coming under fire, facing human rights complaints or discrimination at the hands of governments or regulatory bodies.

This booklet is offered as a guide to rouse churches to the need to be prepared. **It is not legal advice** and should not be taken as legal advice. While we provide sample policies and other documents, it is essential for you to understand that these are simply examples. Such policies must be tailored to your church's or charity's particular structure, environment, and activities. Please use this resource as a jumping-off point to spur discussion with your leadership and retain professionals to assist you in implementing the protections you need.

We encourage churches to prepare documentation and policies in anticipation of possible future legal controversies or human rights complaints. While we hope the work we put into this booklet will benefit you, you will need the services of qualified and experienced counsel. When it comes to litigation, the only circumstances more detrimental to a client than not having necessary practices and policies in place is having poorly drafted ones.

This process of reflection, preparation, and implementation is about more than your church or charity.

A successful complaint or lawsuit against one Christian organization can have repercussions on faith-based organizations across the province or country. Prepare yourselves to help protect the broader faith-based community in Canada.

This booklet touches on serious and complicated legal matters, and we encourage churches to retain legal counsel with experience and expertise in these areas. While The Acacia Group would consider it a privilege to walk you through this process, we are most concerned with ensuring that the work is done well. Our practice is national, and we work with churches and para-church organizations across Canada. However, we appreciate the convenience of working with local counsel. We can help you find someone with the requisite expertise and experience to assist you.

The Acacia Group was founded and structured to serve the Church in Canada. We believe so strongly in the need to legally protect the faith-based community in Canada that we offer special discounted rates for churches and charities. If you tell us that you have one of these booklets

when contacting us, we are pleased to provide your organization a free initial consultation.

The Acacia Group's lawyers have spent their careers working with clients to promote and defend religious freedom in Canada and support the protection of institutional religious identity and character.

We have litigated numerous cases dealing with these issues, from provincial human rights tribunals to the Supreme Court of Canada. We also work with churches and para-church organizations to develop policies and practices designed to avoid or minimize the risk of such claims and lawsuits.

The Acacia Group offers its clients a unique set of strategic and crisis communications services to help them navigate media inquiries and to help shape the public narrative regarding their circumstances.

In these hostile times, prudence may direct individuals or groups to attempt to "fly under the radar" in their ministry efforts. In other circumstances, organizations may feel called, like Daniel, who chose to pray to God with the window open, to stay publicly faithful to their core identity and beliefs. We are here to help you navigate these challenging decisions by offering

you the legal expertise you need to make informed decisions with your leadership.

We are here to help and to stand with you. *Our ministry is to help you lead (and protect) yours.*

Blessings,

The Acacia Group



THE ACACIA GROUP

The Acacia Group
is Canada's only
openly Christian law firm
devoted to offering legal
and crisis communications
services to churches,
organizations, individuals,
and businesses.

OUR MINISTRY
IS TO **HELP YOU**
LEAD YOURS™



ABOUT THE ACACIA GROUP

The Acacia Group is Canada's only openly Christian law firm devoted to offering full-service legal services and strategic and crisis communications services to churches and other Christian organizations. Our legal team has been counsel in dozens of religious freedom court cases, including more than 12 cases before the Supreme Court of Canada. We have particular expertise in religious freedom, human rights, and church law.

The Acacia Group offers a wide variety of services to its boutique clientele of churches, charities, non-profits, and religious institutions while providing a full range of legal services to the broader public.

The Acacia Group's legal services are offered via The Acacia Lawyers' team, which strives to keep its clients informed of the details of their case while exploring legal and non-adversarial means to managing conflict, resolving disputes, settling cases, and protecting rights and freedoms.

Our lawyers have been at the forefront of religious freedom law in Canada over the past decade and have been counsel in all the religious freedom cases heard at the Supreme Court of Canada since 2008.

Peter Stockland, who heads up our strategic communications division, has been engaged in writing and publishing for nearly four decades. Peter was formerly editor of the *Montreal Gazette* and editorial page editor of the *Calgary Herald*, and he is now the editor of the Christian magazine *Convivium*. Peter is also the former vice-president of Readers' Digest Magazines Canada Ltd., where he oversaw the launch and direction of a number of new publications.

Our national practice has taken us to courtrooms and boardrooms from New Brunswick to British Columbia. We act for churches, charities, health-care institutions, universities, political parties and campaigns, insurance companies, and individuals across Canada, providing legal and strategic advice to our clients in all matters relating to litigation and liability. In our ecclesiastical law practice, we advise Christian and other churches, denominations, dioceses, and religious orders or communities on all matters where ecclesiastical and civil law may intersect, such as in membership, employment, and discipline issues.

For more information on The Acacia Group, please visit www.acaciagroup.ca.



1.

PROTECT AND MAINTAIN YOUR ORGANIZATION'S CHRISTIAN CHARACTER

Many charitable and non-profit organizations have religious roots and religious identities. For Christian organizations, this heritage and identity are essential to maintain and protect because they are the basis of their very existence. Christian charities exist as a means for their members and staff to live out the gospel in a particular manner (1 Peter 4:10; James 2:14-17; Romans 12).

Historically, faith-based charities have been able to draw their own lines and define themselves. Increasingly, we see faith-based, mainly Christian, organizations targeted for living and working according to biblical principles. A prime example is the human rights complaint mounted against Christian Horizons in 2008. The Ontario Human Rights Tribunal reprimanded this faith-based organization for requiring its employees to live lifestyles consistent with historical and orthodox Christian teaching. Another high-profile case involved Trinity Western University when it attempted to establish a law school. The Supreme Court of Canada denied Trinity Western the ability to do so because of its institutional beliefs on marriage and sexual morality.

Putting the policies and practices in place to ensure that your organization maintains its Christian character over the long term is not a simple exercise, but it is a necessary one. Additionally, the conversations this process will engender provide an added benefit: It is invaluable to achieve consensus within your organization before a crisis erupts.

There are certain things you should consider that can assist you in defending yourself against challenges or attacks.

1. Determining corporate identity

Determining corporate identity is the first and most crucial step in this process. Your organization must determine “who” it is, and then who it serves and who can represent the organization.

It is invaluable to achieve consensus within your organization before a crisis erupts.

Corporate identity is generally easy to establish if you are denominationally affiliated, given the denomination's historical statements of faith and founding documents. If, however, you are non-denominational, you must consider what "Christian" means when your organization uses that term. Are there doctrinal issues that will set your organization apart from others? For example, you might be a non-denominational organization, but the issue of baptism (either paedobaptism or credobaptism) might be so important to your identity that it needs to be set out clearly. There may be a number of doctrinal and moral positions that are integral to your identity. They need to be stated.

2. Know the jurisdiction

Before you can begin to take steps to preserve your Christian character, you must understand and appreciate the legal landscape in which you operate. First, which provincial and federal regulations apply to your charity and its activities?

This consideration is particularly important for national organizations with a presence in multiple jurisdictions.

3. Know the relevant law

Once you have identified the applicable jurisdiction(s), it's essential to consider and appreciate the legal landscape in each of those jurisdictions. There may be several different areas of law that must be considered, including employment law, corporate law, and human rights law.

4. Build your "walls"

Once you have identified who you are as an organization and considered the applicable legal requirements or limitations, you can turn your mind to ensuring how your organization's religious character is protected.

5. Raise your banner

Once you have determined who you are and built your "walls" accordingly, it's essential to ensure that you clearly communicate who you are to the general public. Organizational rules and requirements should be explained in a fitting manner to staff, volunteers, and the public.

6. Maintain your walls

Suppose your organization has determined that employees or volunteers must subscribe to a particular doctrinal view or must refrain from specific conduct. In that case, you must maintain that standard consistently and not make exceptions. Once there is a crack in your “walls,” they cease to be effective.

7. Know where you are vulnerable

Human rights and anti-discrimination laws often raise the most significant concerns for faith-based charities seeking to maintain their Christian character. The federal human rights legislation and each provincial human rights law prohibit discrimination on the basis of certain characteristics, including race, sex, religion, sexual orientation, and disability. However, there are instances where an organization may restrict its employees or volunteers to co-religionists, provided the organization can meet a strict legal test.

Some provinces limit the scope of anti-discrimination laws for faith-based organizations in their legislation (British Columbia, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan), while others indirectly incorporate such limits by allowing organizations to adopt “*bona fide* occupational requirements.” Each province’s legislative regime differs, and the test to meet the exception is rigid and specific.

Conclusion

There is no one-size-fits-all solution to ensure that your organization’s Christian character, identity, and integrity are protected. Still, you can shield yourself from much liability by enacting and carefully following certain policies and procedures.

2.

REAL-LIFE STORY NO.1

H.S. v. THE PRIVATE ACADEMY

The Private Academy is a small non-denominational private Christian school in Ontario. It is referred to as “the Private Academy” because a publication ban kept its real name confidential.

As a private Christian school, the Private Academy held a biblical view of marriage and sexual morality: sexual intimacy ought to be confined to a biblical marriage between one man and one woman.

The Private Academy was successfully represented by Albertos Polizogopoulos, co-founder of The Acacia Group.

The Private Academy operated a pre-school program. One day, the school’s principal received a telephone call from a woman inquiring about the preschool program. Within seconds of the call beginning, the woman stated, “We are a lesbian couple. Is that a problem?” Rather than answer “yes” or “no,” the principal began reading from the school handbook’s section on sexual morality. The caller never asked for a preschool application, was never refused one, never applied, and her child was never turned down for enrollment. Nevertheless, she and her partner filed human rights complaints on their own and

their son’s behalf claiming discrimination on the basis of sexual orientation, family status, and creed (since the women self-identified as Christians).

Pursuant to section 18 of the Ontario *Human Rights Code*, religious organizations can limit their services and hiring to like-minded individuals (i.e., other Christians)

The Private Academy chose to defend itself, first arguing that since the couple never applied for preschool and were never denied, there was no discrimination. The Human Rights Tribunal rejected this argument and concluded that had the couple applied, they would have been denied.

In response, the Private Academy invoked the section 18 exemption afforded to specific organizations, including religious ones.

Pursuant to section 18 of the Ontario *Human Rights Code*, religious organizations can limit their services to like-minded individuals (i.e., other Christians) if they meet a

three-part test:

1. Is the organization religious?
2. Is the organization primarily engaged in serving like-minded individuals?
3. Does the organization limit its services to like-minded individuals?

Because the Private Academy was able to demonstrate, through its policies, handbooks, and bylaws, that parents of children were required to adhere to a specific set of doctrinal or creedal beliefs, it was able to meet the three-part test. It was ultimately successful in defending itself against the human rights complaint.

The outcome was a good one for the Private Academy. Yet the story illustrates the very real threat of human rights complaints and how easily they can catch Christian institutions off guard. Preparation based on sound legal assessment is essential. If you would like us to conduct a risk assessment of your organization's policies and procedures and provide recommendations on how to increase your protection, please contact ***The Acacia Group***.



For a copy of the reasons for decision in *H.S. v. The Private Academy*, please visit: <https://canlii.ca/t/h4qot>.



3.

SAMPLE STATEMENT OF FAITH AND DOCTRINAL STATEMENT

H.S. v. THE PRIVATE ACADEMY

Below is the Mission Statement, the Statement of Faith, and the Doctrinal Statement of the Private Academy discussed in the previous chapter, Real-Life Story No. 1. These documents are now on the public record due to the human rights complaint.

We would note that while this Statement is sound when it comes to the school's expectations regarding marriage, we increasingly encounter issues around "gender identity and gender expression," which churches would do well to address in their governing documents and policies.

MISSION STATEMENT

The mission of The Private Academy is to serve the Lord in the Christian community of [the region] by providing for their children a biblically-based curriculum in a Christ-centered learning environment where high academic standards and spiritual maturity can be realized.

STATEMENT OF FAITH

The following statements are the basic Christian convictions of our school. They represent the personal beliefs of all our staff and board members and will be the basis of our teaching:

- **We believe** in one God, eternally existent in three persons: Father, Son, and Holy Spirit.
- **We believe** the Bible to be the only authoritative, inspired, infallible and inerrant Word of God.

- *We believe* in the deity of Jesus Christ, His virgin birth, His sinless life, His miracles, His atoning death for the sins of the world, His bodily resurrection, and His ascension to the right hand of the Father, and in His future personal return to the world in power and glory.
- *We believe* in the regenerative power of the Holy Spirit for salvation because of the exceeding sinfulness of human nature; and that men are justified on the single ground of faith in the shed blood of Christ and that only by God's grace and through faith alone are we saved.
- *We believe* in the resurrection of both the saved and the lost: they that are saved unto the resurrection of life, and they that are lost unto the resurrection of damnation.
- *We believe* in the spiritual unity of all believers in the Lord Jesus Christ.
- *We believe* in the present ministry of the Holy Spirit who enables the Christian to live a Godly life.

Core Family Values

All members of the board, administration, and staff of The Private Academy believe that the Bible is the written Word of God and without error in all its teachings. Because of our understanding of the Old and New Testaments, our school teaches these Core Family Values:

- That it is unacceptable for Christians to teach hatred against any group or individual.
- That human life begins at conception and that an unborn child at any stage of development is a human being and should be treated as such.
- That sexual intimacy is only morally acceptable within a marriage relationship.
- That marriage is an exclusively heterosexual institution; and that marriage is between one man and one woman.
- That premarital or extramarital sexual intimacy, heterosexual or homosexual, including but not limited to intercourse, is morally wrong.

Lifestyle Policy for Parent Sponsor(s)

Due to the family-oriented educational philosophy of the school and its Christian foundation, a lifestyle reflecting the example of Jesus Christ is expected. This will include, but not be limited to:

- adherence to the laws of the land (*Titus 3:1*)
- affiliation with a local congregation (*Hebrews 10:25*)
- exhibiting spiritual fruit (*Galatians 5*)
- following the Matthew 18 principle in all relationships
- maintaining a Christian example in the home and community (*Phil.1:27, II Tim.2:15, I Thes.4:1-12*)
- adherence to the Biblical definition of marriage which is the union of one man and one woman. (*Eph. 5:31*)

Parents are expected to teach these Lifestyle Policies to their children, and students are expected to adhere to them. The school reserves the right to expel any family who exhibits an attitude and/or behaviour that, in the opinion of the principal, staff and school, is harmful to the physical, educational, or emotional well-being of the staff or students or is damaging to the reputation of the school.



4.

PROTECT YOUR BUILDING AND FACILITY

Most churches and many charitable organizations own property. Often, organizations allow outside groups to rent or use their facilities (e.g., weddings, community meetings, other private functions). But what happens when a group or an organization wishes to use the facility for purposes which conflict with those of the building owner? Can a church refuse to rent out its sanctuary or hall for use in a same-sex wedding? Can a Christian university refuse to permit the screening of a pro-abortion film by a student group? These are real-life examples where members of our team have been called in to provide guidance and advice.

The moment you permit groups or individuals to use or rent your spaces, you are opening the door to a possible confrontation.

The short answer to both questions above is “it depends.” Different jurisdictions have different legal tests and requirements. To ensure that you can limit the use of your building or facility, you need to proactively consider these ques-

tions and determine what you will or will not permit. The moment you permit groups or individuals to use or rent your spaces, you are opening the door to a possible confrontation. You are placing yourself in a position where you must choose between allowing the space to be used in a manner inconsistent with your institutional values or facing a potential human rights complaint or lawsuit.

To limit or reduce your risk of confrontation, we recommend developing a Facility Use Policy tailored to your facility, organizational beliefs, and legal jurisdiction. There is no one-size-fits-all approach to a Facility Use Policy that will protect you in any conflict or dispute. These are complex policies that need to be customized to your specific needs and circumstances.

If you would like us to discuss your need for a Facility Use Policy and how it may reduce or limit your risk, please contact *The Acacia Group*.

5.

REAL-LIFE STORY NO. 2

SMITH v. KNIGHTS OF COLUMBUS

This case arises out of a human rights complaint in British Columbia. The Knights of Columbus (the “Knights”) is an expressly Roman Catholic men’s organization. In this case, the complainants, Tracey Smith and Deborah Chymyshyn, a same-sex couple, sought to rent the Knights’ hall for their same-sex wedding. The Knights declined to rent them the space because the event they sought to hold in the hall conflicted with their sincerely held religious beliefs on marriage.

Although the hall’s primary purpose was not specifically to advance the interests of the Roman Catholic Church, it was clear to the Tribunal that the Knights sincerely believed that they could not rent the hall for purposes that opposed those of the Church.

In response, the women filed a human rights complaint with the B.C. Human Rights Tribunal. The Tribunal found in favour of the Knights, concluding that the

Knights’ freedom of religion would be violated if they were forced to permit their facility to be used for activities that clearly and directly conflicted with the teachings of the Roman Catholic Church.

In the course of the reasons for the decision, the Tribunal pointed to and relied on the fact that the Knights’ religious beliefs were clear on the issue of same-sex marriage because the Knights were plainly a Roman Catholic entity. Although the hall’s primary purpose was not specifically to advance the interests of the Roman Catholic Church, it was clear to the Tribunal that the Knights sincerely believed that they could not rent the hall for purposes that opposed those of the Church. The fact that the Knights’



position on marriage was publicly known helped them, but a legal battle might have been prevented if they had a clear Facility Use Policy in place.

This real-life case demonstrates the importance of having a properly drafted Facility Use Policy that reflects the nature and purpose of the facility and links its use to the purposes and objects of the organization.

For a copy of the reasons for the decision in *Smith v. Knights of Columbus*, please visit: <https://canlii.ca/t/h3930>.



6.

SAMPLE BUILDING AND FACILITY USE POLICY

1. Statement of Purpose

With this Policy, the Church seeks to make its property available to members of the community for non-primary activities. The Purpose of this Policy is to govern the use of Church property for non-primary activities in a manner that is consistent with the Church's purposes and beliefs.

The Church is established to preach and teach the gospel of Jesus Christ; to meet publicly together for worship and prayer; to form and nurture a Christian community of local Church members, governed by the Word of God and by the policies of the Denomination and Bylaws of the Denomination, of which the Church is a part; to be a community of Christians in the Christian faith and tradition under the ecclesiastical jurisdiction of a Board of Deacons loyal to the teachings of the Denomination; to participate with other charitable organizations in ministry that further the advancement of the Christian religion in Canada and beyond; to hold public worship services; to receive, hold, manage, and administer funds or

property for the foregoing objects and for such other purposes as are authorized for registered charities and are consistent with this Policy.

The Church's property must be used only in ways that are honouring to God and do not violate or contradict the teachings, traditions, and doctrine of the Church, at the sole discretion of the Church's Board of Deacons. The Church's property, including its sanctuary, has been provided by God through the generosity of Church members over many years, and entrusted by God to the Church's care. The primary purpose of the Church's property is to advance the objects of the Church (stated above) by facilitating the primary activities of the Church (stated below).

2. Primary and non-primary uses/activities

Primary activities are those activities that advance the Church's purposes, including worship services (and ancillary gatherings after special services such as baptisms); Christian educa-

tion activities (e.g., Bible Studies, Sunday School.); mission outreach activities (e.g., Vacation Bible School, Christian speakers, free meals for the needy); Christian funerals; Christian fellowship activities which help the Church grow in grace and help build the Body of Christ (e.g., church picnics, youth activities) and other Christian ministry activities (e.g., faith-based support groups, Christian counselling, etc.). Primary activities are those that are organized and overseen directly by the Church and therefore no rental agreement is required. The primary activities of the Church take priority over all other activities. Approval of non-primary activities will be made only if there is time and space available.

Although the Church's property is not generally available to the public for non-primary activities, the Church may, in accordance with this Policy, make its property available for non-primary activities, to Church members and to non-members, in a spirit of Christian charity and as a means of demonstrating the Gospel of Jesus Christ, as a means of community engagement and outreach, and for the stewardly use of the Church's assets to generate income to aid the Church in carrying out its charitable purpose. The Church intends the non-primary use of its facility to be part of its broader religious mission and outreach. As such, it is entitled to apply reasonable restrictions rooted in its religious identity and beliefs to the non-primary use of its facility.

3. No Inconsistent Use of Property

Only those activities that do not conflict with the Church's purpose and religious beliefs may be carried out on Church property. There are two main reasons for this. First, the Church cannot cooperate in activities that contradict or are deemed inconsistent with the Church's faith or moral teachings by permitting its property to be used for such activities. Doing so would violate the Church's religious beliefs (see 2 Corinthians 6:14; 1 Thessalonians 5:22). Second, it is very important to the Church that it present a consistent message to the community, which the Church staff and members conscientiously maintain as part of their witness to the Gospel of Jesus Christ. To allow facilities to be used by groups or persons who publicly express beliefs or engage in practices contrary to the Church's faith may have a severe negative impact on the message that the Church strives to promote. It could also be a source of confusion and scandal to Church members or the surrounding community because they may reasonably perceive that by allowing use of our facility, the Church is in tacit agreement with or indifferent towards the beliefs or practices promoted by the persons or groups using church facilities.

Property use will not be permitted for activities or events that contradict, or are deemed inconsistent with, the Church's faith or moral teach-

ings, which shall be in the Board of Deacons' sole judgment, based on the Board of Deacons' interpretation of Church teachings and judgment regarding the nature of the activity or event, in good conscience. The Church's teachings include the policies of the Denomination and the doctrinal or theological statements of the Denomination.

Property use will not be permitted for groups, associations, or organizations that publicly hold, advocate, or advance beliefs or practices that conflict with the Church's faith or religious teachings. This shall be in the Board of Deacons' sole judgment.

Pursuant to ss. 18.1(1) of the Ontario *Human Rights Code*, the Church declines to rent its facility to solemnize a marriage, or for an event related to the solemnization of a marriage, or to otherwise assist in the solemnization of a marriage for a same-sex couple, because such assistance would be contrary to the Church's understanding of the Bible and the doctrines and rites of the Church. The Church believes and teaches in its policies and Constitution that marriage is a lifelong covenant between a man and a woman in which the two become one flesh, and that it is both an ordinance of Creation, affirmed as such by our Lord, and commended by Paul the Apostle as a sign of the mystical union between Christ and His Church. The Church affirms the equal dignity of

all persons without exception as image-bearers of God. The Church seeks to make its facility available for non-primary activities by all persons regardless of their ethnicity, nationality, religion, sex, or other personal characteristics, provided that the intended use is compatible with this Policy.

The board of Deacons, as representative of the Church community and bound by the Church's teachings and the teachings of the Denomination, shall decide whether an application for use of the Church's property complies with this part (No Inconsistent Use). The Board of Deacons' decision shall be final.

4. Written application

Any person or group of persons, or any organization or association interested in using the Church property must submit an application in writing to the Board of Deacons or its delegate. An application form is provided in Appendix A to this Policy.

The application must specify the date or dates desired for renting the Church property. The requested date must be at least 30 days and not more than one year away. The application must describe the nature of the event (e.g., fundraiser for local women's shelter) and the activities that will take place (e.g., dinner and live musical performanc-

es). Sufficient detail must be provided regarding the activities, such as the name of a film to be shown, the topic of a keynote speech, the kind of music that will be played, the type of games, and so on.

The application must identify the party or parties applying to rent the Church property and the parties responsible for planning and promoting the event. If the applicant plans to promote the performers or speakers at the event, the application must identify them. If the event is being publicly sponsored by an individual or organization, the application must identify the sponsors.

The application must provide an estimate of the number of people who will attend. The maximum number of persons permitted for a particular event will be specified in the Rental Agreement. The Church reserves the right to change the maximum number of persons where necessary, such as when required by changes to public health regulations or bylaws, in which case the Renter has the option of cancelling the event without penalty within three days of receiving notice of the change, or at least one day before the event.

The Church reserves the right to close an event if the maximum number of people is exceeded. In the event that the Renter hosts an event which is contrary to government

restrictions, the Renter will indemnify and hold harmless the Church, and to pay any and all fines, damages and losses of the Church resulting from such action.

The Church reserves the right to ask for additional details about an event after receiving a rental application and to decline the application if sufficient detail is not provided.

The Church reserves the right to cancel an event or close an event if relevant details about planned or ongoing activities at the event become known to the Church, which details raise reasonable concerns under this Policy, and which details were not provided in advance through the written application.

5. Waiver, Indemnification, and Insurance

Persons or groups using the facility waive the right to any claim of legal liability against the Church arising out of their use of the facility.

The applicant Persons or groups using the facility assume full responsibility for the proper supervision of any activities they conduct on the premises and are solely responsible for any claims or damages to the facility or equipment.

The Church is not responsible for any personal injury, damage, or for the loss or theft of personal effects or

equipment of the applicants or for any person attending on the invitation of the applicants. The applicant agrees to indemnify the Church, and its representatives and agents, against all manner of claims and actions arising from the use of the facility by the Renter.

It is mandatory that all events have appropriate liability insurance in the minimum amount of \$2,000,000.00. Liability insurance is required to protect both the Renter and the Church, with the Church as an Additional Insured in the insurance policy obtained by the Renter. Liability waiver certificates are not sufficient and will not be accepted. Before use of Church property can occur, renters must satisfy the need for liability insurance by providing to the Board of Deacons or appropriate staff member physical proof of valid and current liability insurance.

6. General Rules for Facility Rental

Church representative. The Board of Deacons is the official representative of the Church in all rental matters and acts as the rental facilitator. However, all final decisions regarding incompatible uses of Church property under Part 2 of this Policy (No Inconsistent Use) rest with the Board of Deacons as the representative of the Church community and bound by

Church teaching, policies, and bylaws. All Rental Agreements must be approved by the Board of Deacons.

Non-endorsement. Rental use of the Church property does not imply endorsement by the Church for the organization or association or for the events conducted on rented Church property. Announcements or promotional materials in connection with the event may not create the impression of sponsorship or official link.

Rental by a charity. Normally a charity is expected to pay rent for the use of Church property. However, a charity may rent at no charge, at the Board of Deacons' discretion, only if the charity has compatible purposes and objectives, which determination will be made by the Board of Deacons. Other provisions of this policy (e.g., regarding indemnification and insurance) will still apply.

Rental by a non-charity. For all other individuals and entities, the Church will only rent to them at fair market value where the Church determines that the rental application satisfies the requirements of this Policy.

Governments may rent Church property for use as polling stations and blood donor clinics only. The Church considers this to be an outreach activity to the community.

Risky activities. The Church may decline to rent its property for what it deems to be activities with a greater than usual risk of causing personal injury or property damage.

Political activities. Use of Church property for partisan political purposes is prohibited.

Illegal use. The Church will not permit its property to be used for any illegal activities. The Church reserves the right to cancel or close an event if the Church reasonably believes that illegal activity will take place or is taking place at the event. No refund will be provided. In the event that the Renter hosts an event in which illegal activity occurs, the Renter will indemnify and hold harmless the Church. Thereby, the Renter agrees to pay any and all fines, damages, and losses of the Church resulting from such action.

Payment date and cancellation. All payments must be made immediately following approval of the application in order to reserve the Church property on the desired date. The rental facilitator must receive all cancellations of events at least 30 days prior to the engagement date in order to obtain a full refund. Events cancelled less than 30 days prior to the engagement date will forfeit 25% of the rental fee or \$300, whichever is more. The balance of the rental fees will be refunded.

Security deposit. If the requested date is available and the rental application is approved, the Renter must submit a security deposit of \$500 in order to secure the date specified in the application. The Renter is expected to leave all parts of the facility in their original condition. Unusual amounts of clean-up, or any property damage, will result in deductions from the security deposit and, if necessary, a claim for damages exceeding the amount of the security deposit. If the facilities are left in original condition, the security deposit will be fully refunded.

Kitchen. To ensure food-handling safety and quality standards, an approved renter may use the kitchen facilities, but only through a certified catering service company approved by the Church.

Janitorial services. The Renter will be responsible for the set-up and clean-up of all tables and chairs required for the function. The Board of Deacons or its representative may assist in clean-up but is not expected to be available for the duration of the rental period, other than opening and closing the facility according to the needs of the Renter.

Furniture. All furniture is to remain in place and is not permitted to be moved or relocated by the renters. The renters are permitted to use the furniture for its regular intended use.

Decoration. No decorations or application of materials, which will mar, deface, or damage the surfaces of the walls, ceilings, or floor are permitted.

Alcoholic beverages. Consumption of alcoholic beverages, if desired, will require the appropriate liquor license which is to be acquired by the Renter. The Renter will ensure that appropriate supervision to monitor alcoholic consumption by all participants is provided in accordance with liquor control board regulations. Liquor control board permits can take up to two weeks to process. The Church assumes no liability for any claims arising from the sale and consumption of alcohol at the Renter's events.

Confetti. Persons or groups renting Church property will refrain from the use of confetti or anything resembling confetti.

Smoking. Smoking in the Church building, parish hall, or anywhere on Church property, indoors or outdoors, is strictly prohibited.

Closing time. All rentals expire at 11:30 p.m. unless extended by special permission of the Board of Deacons or their representative.

Closing an event. The Church reserves the right through its representatives to close any event at any time for failure to observe proper conduct or failure to comply with this Policy.

Rental Agreement. All other requirements, restrictions, and terms will be guided by the specifics set out in the Rental Agreement.

Rental Agreements shall refer to this Policy, and unless clearly stated otherwise in a Rental Agreement, this Policy shall apply in full.

APPENDIX A

Rental Application (Example)

Name of contact person: _____

On behalf of association / organization: _____

Persons, associations, or organizations planning, hosting, or co-sponsoring the event: _____

Address: _____

Telephone: _____

Email: _____

Date of Function (day and date): _____

Nature of event: _____

Planned or intended activities: _____

Number of Guests: _____

Times required: _____ am/pm to _____ am/pm

(Note that all events must close by 11:30pm)

Weddings only:

Date and Time Required for Rehearsal: _____

Time Required for Ceremony: _____

Time Required for Reception: _____

***Rehearsals/set-up: Facilities will be available the day prior to rental date
beginning at 4 p.m.***

Facilities required:

	✓	FEE (See Rental Fee Schedule)
Facilities		
Church Sanctuary		
Church Kitchen (Full)		
Kitchen (Coffee Only)		
Meeting Rooms and Nurseries		
Parish Hall		
Parish Hall Kitchen		
Sound Requirements		
Sound System / Operator (Sanctuary)		
One wired microphone (Parish Hall)		
Event Audio Recorded (CD)		
Event Video Recorded (DVD)		
Custodial Fees		
Total Rental Fees		
Security Deposit		

All fees are to be paid to the Church. Please include a separate post-dated cheque for \$500 security deposit. This cheque will not be cashed if no damages to the property have been found.

Your signature below indicates that you have read, understand, and will be abide by the Rental Policy and Regulations.

Renter Signature: _____

Date: _____

Approved By: _____

Date: _____

For Office Use Only

Rental Cheque Received: ____ Deposit Cheque Received: _____

Inspection done and deposit returned: _____

APPENDIX B

Rental Fee Schedule (Example)

FACILITIES AREA	FEE
<i>Sanctuary</i>	
Wedding, Benefit Concert, Conference	\$
Concert or Performance	\$
Funeral	\$
<i>Parish Hall</i>	
Up to 50 persons	\$
50 - 100 persons	\$
Over 100 persons	\$
Wake or Funeral	\$
<i>Kitchen</i>	
Coffee necessities only	\$
Full Kitchen	\$
<i>Meeting Rooms</i>	
All Rentals	\$
<i>Sound System / Operator</i>	
Sound System / Operator (only if sanctuary is used)	\$
Sound System / Operator (only if sanctuary is used)	\$
Live Stream / Operator (only if sanctuary is used)	\$
Projector / Operator (only if sanctuary is used)	\$
Projector / Operator (only if sanctuary is used)	\$
One wired & one wireless microphone for parish hall	\$
<i>Custodial Fees</i>	
Sanctuary	\$
Meeting Rooms and Nurseries	\$
Parish Hall	\$
Kitchen	\$
Sanctuary, Parish Hall and Kitchen	\$
<i>Security Deposit</i>	
All rentals	\$



7.

ABUSE PREVENTION POLICIES: WHY THEY ARE NEEDED AND WHAT THEY SHOULD INCLUDE

The implementation of Abuse Prevention Policies has become essential for churches and religious institutions that carry out programming for children or vulnerable people.

Why should an organization implement an Abuse Prevention Policy?

The primary purpose of an Abuse Prevention Policy is to reduce the likelihood of abusive or inappropriate behaviour occurring on the organization's premises or during specific sponsored events. Implementing an Abuse Prevention Policy also demonstrates that the Board of directors is addressing the issue as prudent directors. Such a policy should lay out clear rules and guidelines for organizing events, interacting with youth, and addressing questionable or abusive behaviour.

Implementing an Abuse Prevention Policy also demonstrates that the Board of directors is addressing the issue as prudent directors.

An Abuse Prevention Policy will not always prevent abuse or fully protect an organization against liability. However, having and following a well-drafted Abuse Prevention Policy makes abuse less likely. It may help defend a church or other charity against legal claims for negligence or punitive damages. Abuse Prevention Policies have become routine for many religious and charitable organizations, which has raised the standard of care for such organizations. The test to meet to prove a negligence claim, therefore, has been lowered.

An Abuse Prevention Policy can also help to protect the organization and its agents against false allegations of abuse. Suppose the Abuse Prevention Policy prohibits employees and volunteers involved in youth activities from being with young or vulnerable people without another adult present. In that case, the

likelihood of abuse ever occurring is greatly diminished, and the possibility of an individual successfully making false allegations of abuse is significantly reduced. Also, if the policy is followed, then fellow staff or volunteers will more likely be able to vouch for where someone was at a given time.

Adopting and strictly adhering to a thorough Abuse Prevention Policy can protect the reputation of the organization and its agents.

Finally, there is a trend whereby insurance companies refuse to provide liability insurance coverage or, in some cases, any insurance coverage at all to an organization that fails or refuses to implement such a policy. An Abuse Prevention Policy may also reduce the organization's premiums for liability insurance.

Preparing an Abuse Prevention Policy

For an Abuse Prevention Policy to be effective, it must be prepared specifically for the organization implementing it. Each guideline, directive, and rule must be tailored to the organization with its leadership system, policies and procedures, and programs in mind. As no two organizations are the same, each Abuse Prevention Policy is unique and must be updated whenever the organization's governing policies are changed. When new programming is established, or when there are new legislative or jurisprudential developments, the Policy will need to be modified.

Of utmost importance in the preparation and implementation of an Abuse Prevention Policy is its compliance with relevant laws. These laws include the *Criminal Code of Canada* and (in Ontario) the *Child, Youth, and Family Services Act*, which has specific definitions of abuse and requirements for reporting suspected abuse.

For example, in Ontario suspicions of abuse must be reported directly to the Ontario Children's Aid Society. It would not be sufficient for an employee or volunteer suspecting abuse to bring their concerns to management, and in fact, doing so could potentially make them liable should the suspicion not be dealt with properly and should the abuse continue.

In addition to the applicable legislation, relevant jurisprudence should be considered when preparing an Abuse Prevention Policy. With an extensive body of case law setting out tests for issues such as vicarious liability, an insurer's obligation to defend, and what constitutes a relationship of trust, a thorough study and review of the applicable jurisprudence ought to be undertaken to ensure conformity.

Can I use a template or another organization's Policy?

Templates are great tools and are an excellent place to start. Using another organization's Policy is appropriate, but only as a guide. For your Policy to be most effective, it must be tailored to your organization's structure and specific activities.

We are regularly retained to review policies, and when we do, we rarely redraft the entire document; instead, we update and tailor it as needed. A template or existing Policy can help reduce the cost associated with ensuring your policies are as effective as possible.

What should an Abuse Prevention Policy include/cover?

Several issues must be addressed in an Abuse Prevention Policy. These issues can be divided into the following categories (though this list is not extensive):

Implementation of the Abuse Prevention Policy:

As each organization is constituted differently and subject to a different type of management structure, how the Abuse Prevention Policy is implemented will differ from organization to organization. It is important to ensure that the organization and its management have the authority to prepare and implement such a policy. In some cases, authorizing a Policy could require approval from the board of directors.

An important consideration will be the extent of the Policy's coverage: who and what will the Abuse Prevention Policy consider? For example, will the Policy cover only those programs specifically sponsored by the organization, or will it extend to programs or events that staff and volunteers of the organization attend but are not responsible for organizing? Suppose the Policy is unique to the programs of the organization. How will staff ensure that they are not put in a vulnerable position if they engage with youth or vulnerable people at other events they only attend?

The Policy must set out specific definitions. Definitions in accordance with the applicable legislation of what constitutes "the organization," "children," "vulnerable person," "abuse," and "inappropriate behaviour" will be required. Still, it may also be appropriate to define certain organizationally-unique or other terms as well. Precise definitions of terms such as "employee" and "volunteer" could eliminate or reduce confusion and ambiguity in the Abuse Prevention Policy.

Screening:

An essential role of the Abuse Prevention Policy is to ensure that the employees and volunteers in a supervisory or guidance role within the organization are fit for the positions. As such, it is important that the Abuse Prevention Policy establish clear guidelines for the selection of employees and volunteers in those positions and screening measures to ensure that the guidelines are followed. Screening measures such as criminal record checks, mandatory character references, interviews, and regular reviews are usually incorporated in Abuse Prevention Policies. These measures will help to ensure that employees and volunteers interacting with children and vulnerable persons are appropriate for the positions.

Teaching and Instruction:

In addition to ensuring that the adults interacting with children are appropriate for the positions, the organization ought to take measures to ensure that they are qualified for the roles. By establishing guidelines for teaching and ongoing training of these individuals within the Abuse Prevention Policy, the organization will be ensuring that adults engaging with children are aware of their obligations.

Guidelines addressing this issue involve educating employees and volunteers on means to identify, report and address abuse or inappropriate behaviour. These employees and volunteers should also be made aware of their roles and responsibilities, the rules and guidelines that will regulate their behaviour and policies on parental consent, and what is considered abuse and inappropriate behaviour.

Enforcement:

It is important that the Abuse Prevention Policy be strictly adhered to. It ought to designate the individual or individuals responsible for the implementation and enforcement of the Abuse Prevention Policy. The individual or individuals responsible for implementing and enforcing the Abuse Prevention Policy should have their roles, responsibilities, and any guidelines clearly set out. The guidelines ought to address whether the Abuse Prevention Policy applies only to events and meetings on the organization's property or whether it applies to all sponsored events and meetings.

Reporting Obligations:

The Abuse Prevention Policy should set out the procedure to be followed should abuse or inappropriate behaviour be suspected, known, or alleged. As previously indicated, the law in Ontario requires that an individual who suspects or is aware of abuse report it directly to the Children's Aid Society. All provinces have equivalent obligations. Although existing organizational policies may call for allegations of misconduct by an employee or volunteer to be brought to management, the

Abuse Prevention Policy must specify that suspicions, allegations, or known occurrences of abuse are reported to the appropriate Children's Aid Society.

In addition to reporting abuse or suspected abuse to the appropriate Children's Aid Society, it is also recommended that the Abuse Prevention Policy establish a mechanism by which management is made aware of the incident expeditiously. Guidelines on the form and content of a summary prepared by the individual reporting the incident, or a form to be filled out for the organization's internal records are recommended to ensure that clear, comprehensive, and dated records exist should a claim be pursued against the alleged abuser or the organization.

The Abuse Prevention Policy should also include guidelines on provisional disciplinary measures to be taken against an individual who is accused or suspected of abuse or inappropriate behaviour. The organization may choose to remove the individual from his or her role as an employee and volunteer until the investigation is complete, but this must be done in accordance with the applicable employment standards and human rights law. Similarly, the organization may choose to have disciplinary procedures established if the individual is convicted of abuse.

Other policies can be included to ensure that those reporting suspected abuse are kept confidential or that internal investigative measures exist and are followed.

Child Protection:

Of course, of most importance in an Abuse Prevention Policy are the guidelines, rules, and regulations to protect children and vulnerable persons with whom the organization engages. These guidelines will need to be tailored to the specific activities of the organization. Some examples of issues that need to be addressed include, but are not limited to, rules requiring at least two employees and volunteers to be present when in the company of children and vulnerable persons, health and safety guidelines that deal with specific substances or allergens, procedures in case of fire and medical emergencies, parental drop-off and pick-up of children and child supervision in public places.

Final Note

As described, preparing and implementing an Abuse Prevention Policy is a significant endeavour, but it is highly recommended. The implementation of, and strict adherence to, such a policy will help reduce the risk of abuse or inappropriate behaviour occurring at or during organization-sponsored events and meetings. If abuse or inappropriate behaviour does occur, having an Abuse

Prevention Policy and being able to verify that it was followed serve as evidence of the organization's due diligence and may reduce its liability. Similarly, if a false allegation is made against an individual or the organization, the organization's Abuse Prevention Policy will assist in preparing a defense to the allegations and serves as a tool to help protect the individual's and the organization's reputation.



8.

BEST PRACTICES: MEETING MINUTES

It is a legal requirement for charities and incorporated not-for-profit organizations to keep accurate minutes of meetings. The minutes serve as a legal record of the members, directors, or committee meetings. Accurate and up-to-date record keeping assists board members and organizations with maintaining their legislative and regulatory requirements. Proper minutes serve as evidence of the decision-making process, showing what was considered, authorized, and who is responsible for the actionable items.

What Should Be Recorded

1. Date, time, and place of meeting;
2. Who was in attendance;
3. Agenda items;
4. Summary of key points of each discussion in conjunction with the agenda item;
5. Summary of deliberation of those in attendance;
6. Record any conflict of interest;
7. Who is responsible for any actionable item;
8. Decisions made and list anyone who does not support the decision.

What Should Not Be Recorded

1. Word for word record discussions;
2. Personal opinions or arguments;
3. Legal advice.

Accurate and up-to-date record keeping assists board members and organizations with maintaining their legislative and regulatory requirements. Proper minutes serve as evidence of the decision-making process, showing what was considered, authorized, and who is responsible for the actionable items.

Record Keeping

Minutes must be kept in a secure place. Minutes should be kept with the organization's Minute Book. Minutes can be kept electronically; however, it is recommended that a physical copy be kept at the organization's registered address in addition to any electronic copy.

Best Practices

1. Provide copies of the minutes 48 to 72 hours after meeting for review;
2. Minutes should be reviewed before approving them;
3. If approval is performed electronically (via email), ensure this complies with bylaws;
4. Have the Chair and the Secretary sign minutes as evidence of approval as to form and content;
5. Store minutes in the Minute Book of the organization.

In-Camera Session

In-camera sessions permit the board members to discuss sensitive matters, including legal issues. Minutes of in-camera sessions should be maintained; however, they should be separate from the ordinary meeting. We recommend that the organization have a policy with regard to minutes of meetings of in-camera sessions.

If you would like us to discuss your need for establishing meeting minutes best practices, please contact ***The Acacia Group***.



9.

PRESERVE YOUR ORGANIZATION'S CHRISTIAN CHARACTER THROUGH EMPLOYMENT DECISIONS

Most people would not find it shocking that to be employed by a particular church, the employee needs to identify with that church's religious beliefs and traditions, but this is not always so when looking at employment in a faith-based organization that is not a church.

In all jurisdictions in Canada, it is unlawful to discriminate in your hiring unless the discrimination is based on a *bona fide* occupational requirement. A simple example is that it would be unlawful to refuse to hire someone because of a physical disability. If, however, that physical disability made it impossible for the individual to carry out essential components of the job for which they are applying (i.e., firefighter or lifeguard), then the discrimination would be permitted.

In all jurisdictions
in Canada, it is unlawful
to discriminate in your
hiring unless the
discrimination is based
on a *bona fide*
occupational requirement.

The same analysis applies to discrimination on the basis of religion. Suppose a Christian church requires its pastor to be a Christian who subscribes to that church's doctrinal and theological teachings. In that case, the requirement is *bona fide* because the pastor's job includes instruction and ministering within that faith tradition. However, if the church sought to apply the same requirement to the groundskeeper, the hurdle for demonstrating that belief in and adherence to the theological and doctrinal teachings becomes more challenging to justify. Such circumstances demonstrate why retaining experienced legal counsel is so important for faith-based employers.

To be best positioned to defend their hiring practices, faith-based employers ought to have clear hiring and employment policies and guidelines, as well as specific employment contracts containing adequate job descriptions. In most

cases, the employer does not consult a lawyer until a problem or conflict has manifested itself. Employers should consult experienced counsel before hiring and, in many cases, before even posting the job opening to avoid modifying the job description and duties after the fact.

Conclusion

As with all policies meant to preserve an organization's Christian character, there is no one-size-fits-all solution. By taking proactive steps to enact certain policies and developing and implementing appropriate employment contracts, you can limit your organization's risk and exposure.

If you would like assistance with your hiring and employment practices and procedures, please contact *The Acacia Group*.

10.

REAL-LIFE STORY NO. 3

HEINTZ v. CHRISTIAN HORIZONS

Christian Horizons is the largest group home for people with developmental disabilities in Ontario. It was founded as an expressly Evangelical organization and required all employees to agree to a Statement of Faith and Lifestyle Agreement. The Lifestyle Agreement included many provisions such as a prohibition on viewing pornography and a commitment to refrain from all sexual relationships outside that of a biblical marriage between one man and one woman.

One of Christian Horizons' employees, Connie Heintz, agreed to abide by both the Statement of Faith and the Lifestyle Agreement when she was hired. In April 2000, it was confirmed that Ms. Heintz was a lesbian. Her employment was not affected. Approximately one year later, however, Ms. Heintz admitted to cohabitating with her same-sex partner. It was confirmed that she did not comply with the Lifestyle Agreement, and Christian Horizons approached her about resolving the lack of compliance. As a result, Ms. Heintz's employment was terminated, and she proceeded to file a human rights complaint with the Human Rights Tribunal of Ontario.

The Tribunal concluded that because Christian Horizons did not limit its services to Evangelical Christians with developmental disabilities, it failed to meet the second part of the three-part test.

In its decision released in April 2008, the Tribunal concluded that adherence to the *Lifestyle Agreement* was not a *bona fide* occupational requirement because Christian Horizons failed the last two parts of the three-part test for a requirement to be *bona fide*:

1. Is the employer religious, philanthropic, educational, fraternal, or social?
2. Is the employer "primarily engaged in serving the interest of persons identified by one of the prohibited grounds of discrimination"?
3. Does the employer seek to restrict employment to persons similarly identified?

The Tribunal concluded that because Christian Horizons did not limit its services to Evangelical Christians with developmental disabilities, it failed to meet the second part of the three-part test. Thankfully this finding was reversed on appeal. The Tribunal also concluded that because Ms. Heintz was a personal support worker and her job description did not include any pastoral or evangelistic duties, the requirement that she strictly adhere to the Lifestyle and Morality Agreement was not a reasonable *bona fide* occupational requirement.

On appeal, the Divisional Court reversed the finding that Christian Horizons did not meet the second part of the three-part test but upheld the finding that adherence to the Lifestyle and Morality Agreement was not a reasonable and *bona fide* occupational requirement.

The Christian Horizons case and appeal demonstrate the importance of having properly drafted employment agreements that contain adequate job descriptions and arguing the correct points at first instance.

For a copy of the reasons for decision in *Heintz v. Christian Horizons*, please visit: <https://canlii.ca/t/Iwldn> and for the reasons on appeal, please visit: <https://canlii.ca/t/29sf6>.



11.

POLITICAL ACTIVITIES

Registered charities, including churches, may only engage in political activities that (1) advance the organization’s charitable purposes, as stated in the organization’s governing documents, and (2) are non-partisan.

In 2018, the Ontario Superior Court struck down the relevant section of the *Income Tax Act* as unconstitutional. Consequently, rules for churches (and other charities) and political activities have changed. Today, all of a charity’s resources must be devoted to charitable activities, but charitable activities may include certain types of political activity.

Until recently, the statutory rule (under the *Income Tax Act*) was that charities had to devote “substantially all” (90%, according to the Canada Revenue Agency) of their resources towards charitable activities, and political activities were not considered charitable. However, in 2018, the Ontario Superior Court struck down the relevant section of the *Income Tax Act* as unconstitutional. Consequently, rules for churches (and other charities) and political activities have changed. Today, all of a charity’s resources must be devoted to charitable activities, but charitable activities may include certain types of political activity.

“Public Policy Dialogue and Development Activities” or PPDDAs

The rule against partisan political activity (direct or indirect support of, or opposition to, any political party or candidate) remains. However, charitable activities may include what the CRA calls “public policy dialogue and development activities” (see CRA Guidance CG-027), provided they further an organization’s charitable purpose(s) and provide a benefit to the public.

PPDDAs are activities your charity carries out to participate in a public policy development process or facilitate the public's participation. PPDDAs generally seek to influence the laws, policies, or decisions of a government. Such activities might include informing or educating the public about an issue, mobilizing people, expressing opinions on certain issues, or lobbying government officials. A charity may advocate for changing or retaining any law, policy, or government decision to further its stated charitable purpose.

As long as your charity's PPDDAs serve its stated charitable purposes, there is no limit to the portion of your charity's resources that you spend on PPDDAs. Even so, your church or charity would do well to keep records of its activities and how they connect to its charitable purposes.

Avoiding partisan political activity

PPDDAs may not include partisan political activities. A charity may not carry on any partisan activity. Endorsements and political donations are obviously out of bounds, but so is permitting a charity's paid staff or volunteers (in that capacity) to help a candidate, or inviting only one candidate to speak to the charity's supporters, or allowing a political party to use the charity's property at below fair market value. The CRA says a charity should monitor its social media platforms to ensure that people are not using

those platforms for partisan political purposes.

A charity may publicly agree or disagree with a decision or position of government, but in doing so, must not support or oppose any political party or candidate for public office. When it comes to presenting its views on a policy or legal issue, a charity's communications should focus on the substance of the issue and avoid referring to any candidate or political party.

A charity may publish or distribute information about all parties' or candidates' policy platforms or positions, provided such a publication is impartially presented. Advocating a position is not a problem in itself. Encouraging people to vote for the party or candidate whose position best reflects the charitable organization's is not permitted.

Again, it is important to keep in mind that even if the charity avoids partisanship, it may only engage in PPDDAs that are connected to its charitable purposes and provide a public benefit.

Elections, lobbying, and other laws

Like non-charitable organizations, charities are subject to other legislation governing advertising during elections and activities surrounding representations to parliamentarians, such as the *Canada Elections Act* and the *Lobbying Act*. This is particularly

important to remember during an election period. Charities are not prohibited from public engagement on political issues during an election, but registration and reporting requirements may apply.

Churches and charities may communicate with elected representatives, public officials, or candidates. Even if the charity explicitly advocates that the law, policy, or decision of any level of government in Canada or a foreign country ought to be retained, opposed, or changed, the activity is permissible if it is connected to the organization's charitable purposes. A charity must ensure it complies with the applicable lobbying legislation, including registering if necessary.

There may be provincial laws that apply to the use of charitable assets for political purposes. In some provinces, human rights laws might also apply to public messaging or publications by churches, particularly on controversial issues.

Conclusion: Be politically engaged, if it fits your charitable purposes, but be careful

The law as it relates to political activities is complex and always changing. The core principles discussed above, namely that political activity must be non-partisan and must advance an organization's charitable purposes, may be difficult to apply in some cases.

Churches and charities that advocate for specific political and legal issues must be careful not to criticize or endorse a particular party or candidate. Thankfully, there is much churches and other charities may say and do. But there are also many ways that a charity could get in trouble.

In addition to charity law implications of engaging in PPDDAs, there may also be issues regarding elections, lobbying, or other areas of law. Due to this complexity, we encourage churches, charities, and other organizations to discuss their public advocacy or lobbying activities with competent legal counsel.

If you would like us to discuss your desire to engage in advocacy or lobbying activities, please contact ***The Acacia Group***.



12. CONVERSION THERAPY

The federal government under Prime Minister Trudeau repeatedly promised to criminally ban “conversion therapy” and finally did so by passing Bill C-4 in December 2021 (in effect as of January 2022).

Even if prosecutions are very rare in the early years, as we expect, Bill C-4 is momentous nonetheless. It prohibits, in some contexts, the teaching of certain beliefs about human sexuality, gender, and related conduct. The bill also introduces several new, ideologically loaded terms and phrases into the *Criminal Code*. Christian schools, counsellors, churches, and more need to be prepared.

The *Criminal Code* now prohibits:

- causing any person to undergo “conversion therapy” (see definition below), regardless of whether the person requested it or consents to it;
- taking a minor outside the country to receive conversion therapy;
- profiting from providing conversion therapy; and
- promoting or advertising conversion therapy.

Conversion therapy is defined as follows:

- a practice, treatment, or service designed:
 - to change a person’s sexual orientation to heterosexual,
 - to change a person’s gender identity to cisgender,
 - to change a person’s gender expression so that it conforms to the sex assigned to the person at birth,
 - to repress or reduce
 - non-heterosexual attraction or sexual behaviour, or
 - non-cisgender gender expression.

Even if prosecutions are very rare in the early years, as we expect, Bill C-4 is momentous nonetheless.

Bill C-4 also enacted a clarification to the above definition, which states as follows:

For greater certainty, this definition does not include a practice, treatment

or service that relates to the exploration or development of an integrated personal identity — such as a practice, treatment or service that relates to a person’s gender transition — and that is not based on an assumption that a particular sexual orientation, gender identity or gender expression is to be preferred over another.

Notably, Bill C-4 not only bans efforts to change someone’s “sexual orientation” (which is the more commonly understood meaning of conversion therapy) but also to change someone’s “non-heterosexual sexual behaviour” or “non-cisgender gender expression.” These provisions create an obvious conflict with foundational Christian teaching about the normative implications, for both sexual behaviour and gender expression, of God’s creation of human beings as male and female and of God’s design for marriage.

Bill C-4 criminalizes counselling someone to reduce or abstain from homosexual sexual activity but not to reduce or abstain from heterosexual sexual activity. This seems to ignore the fact that there are good mental and physical health reasons for reducing or abstaining from sexual activity, let alone legitimate moral and religious reasons.

Notably, Bill C-4 not only bans efforts to change someone’s “sexual orientation” (which is the more commonly understood meaning of conversion therapy) but also to change someone’s “non-heterosexual sexual behaviour” or “non-cisgender gender expression.”

Bill C-4 does not define the terms “practice, treatment, or service,” making it difficult to explain the scope of the ban with precision, but the use of all three terms together suggests that the ban is intended to be broad.

We expect to see the law implemented progressively, possibly expanding its reach gradually over time. Its scope appears to reach beyond the services of regulated health professionals since other parts of the *Criminal Code* speak of medical practitioners and medical treatment, whereas Bill C-4 does not. However, we note that the terms “practice, treatment, or service,” in typical legal usage, would likely not capture public writing, public speaking, or preaching, or informal private conversations (as opposed to, for example, a conversation between a teacher and a student, or a counsellor and counselee).

Under the *Criminal Code*, a person can be prosecuted not only for directly committing an offence, but also for:

- attempting to commit an offence,
- aiding or abetting an offence (e.g. an elder arranging a meeting for a parishioner with a Christian pastor or counsellor),
- counselling someone to commit an offence (e.g. a senior pastor encouraging a junior pastor to counsel a member of their congregation in a certain way), or
- being an accessory to an offence after the fact (e.g. helping to keep it a secret that somebody provided “conversion therapy”).

A school’s or church’s educational programs or counselling services may be vulnerable. Now is the time for Christian organizations, and especially counsellors, churches, and schools, to carefully consider how, both on paper and in practice, to address issues of sexuality and gender.

In general, it will be to your advantage to clearly and winsomely articulate your beliefs on these matters and to prepare policies and procedures to ensure your staff and volunteers handle these matters appropriately. Doing so may not guarantee that you will avoid legal problems – which, of course, is not the ultimate goal – but it will make legal problems less likely. Careful preparation puts you in a stronger position if your organization’s “practice” or “service” becomes a target, whether of law enforcement or hostile media. Thankfully, faithful witness and legal security need not necessarily conflict. In this area, it pays to prepare.





13.

THE COURT OF PUBLIC (READ: MEDIA) OPINION

The Acacia Group is primarily a law firm designed to serve the legal needs of Christians in Canada.

Through our experience with the trials (in all senses of the word) that face churches and Christian charities beset by secular society, we've learned how frequently they are tried and convicted in the media and the court of public opinion regardless of the law or even the truth.

We know from our clients themselves that one of their major concerns is being bedevilled by journalists and opinion makers – and simply not knowing when or how to respond.

Since our communications advice is developed in-house, it can be coordinated precisely with the work of the legal team.

It's why, at the very creation of The Acacia Group, we chose to have an in-house strategic and crisis communications advisor. Such counselling can be called on even if a potential risk arises. It can help clients ensure they are in front of the story, and ideally prevent them from even becoming part of a story. Most importantly, because our communications advice is developed in-house, it can be coordinated precisely with the work of the legal team. Indeed, assessing the communications needs of clients is part of our overall process from the very beginning.

The approach saves time. It saves clients having to spend money to hire separate communications consultants. And through it being a natural part of the whole, can save a great deal of worry and grief.

In recent months, for example, we worked with a church facing painful accusations that one of its leaders had engaged in an inappropriate sexual relationship. While church leaders were able to effectively deal with discipline issue (for which our legal division provided legal and practical advice), they were flummoxed when it came to dealing with inquiring reporters looking for comments. What to say? To whom should it be said? What constituted proper transparency, and what crossed the line into saying too much?

Working with those leaders, we were able to craft statements and key messages that were candid and wholly truthful yet used prudent language. Doing so helped avoid feeding the appetites of journalists hungry for a story while at the same time protecting the integrity of the church and the legitimate privacy rights of the individual involved.

Just as careful preparation of practices and documentation is essential for effective legal protection of Christian churches and charities, so being fully ready in the court of media/public opinion is vital to avoiding reputational and operational damage that can become the most enduring trial of all.



14.

ENDORSEMENTS

"The Acacia Group is a solid team of professionals who have helped us navigate a variety of legal issues and test cases. We turn to them every time we need solid advice and nuanced understanding of complex problems."

NICOLE SCHEIDL

Executive Director, Canadian Physicians for Life

"Over the past decade, I've worked with all the members of the Acacia team. They represent their clients with passion and excellence. I'd recommend The Acacia Group without hesitation."

ANDRÉ SCHUTTEN

**Director of Law & Public Policy and General Legal Counsel,
Association for Reformed Political Action (ARPA)**

"When I was terminated from my employment after requesting a human rights accommodation which was denied, I retained the Acacia Group. Not only did they get me my job back, but my employer apologized and provided me with the accommodation I required."

KIM O.

“When our small church had a sensitive membership situation, we approached The Acacia Group. Their team provided us with sound legal, ecclesiastical, and communications advice to help us quietly, biblically, and successfully navigate the issue. Their services were affordable, and their team was always accessible.”

PASTOR GLEN ROBINS
Hamilton, Ontario

“We were going through very difficult times and the wise advice Albertos gave us was much appreciated and utilized. Our problems were resolved and our camp is now thriving. I highly recommend Albertos as an advocate for Christians from all walks.”

BARBARA JOHNSTON
President, Camp Cherith (Lanark)

“When RightNow was being targeted by Elections Canada for helping pro-lifers engage in the political process during the 2019 federal election, we immediately sought the advice of Albertos Polizogopoulos. Very shortly after his involvement, Elections Canada backed down and the issue was resolved.”

SCOTT HAYWARD
President, RightNow



15. SERVICES

Legal Services

Constitutional Law
Charity and Not-for-Profit Law
Ecclesiastical and Church Law
Education Law
Estates Law
Health Law
Human Rights Law
Political and Public Policy Law
General Litigation
Corporate/Commercial Law
Legal Research and Supreme Court Advocacy
Employment Law

Communications Services

Strategic Communications
Lobbying and Public Affairs
Crisis Management
Media Training

OUR TEAM



ALBERTOS POLIZOGOPOULOS
Principal

Albertos Polizogopoulos is the Principal and founder of The Acacia Group. His national practice focuses on the areas of constitutional, commercial, and civil litigation. Albertos represents individuals, businesses and corporations, financial institutions, healthcare institutions, universities, political parties and campaigns, insurance companies, churches, and charities. He provides legal and strategic advice to his clients in all matters relating to litigation and liability.

As litigation counsel, Albertos is frequently called upon to address a variety of matters including contract, employment, insurance and human rights disputes, professional malpractice, defamation, tax litigation, and debt recovery and enforcement. In his ecclesiastical law practice, Albertos advises Roman Catholic, Protestant, and other churches, providing counsel on church policies, church discipline and church membership.

An advocate, Albertos has been counsel in many leading constitutional cases and high-profile matters, including more than 10 appeals before the Supreme Court of Canada. He has appeared before various administrative tribunals and courts including:

- The Ontario, Alberta and New Brunswick Human Rights Tribunals;
- The Canadian Industrial Relations Board;
- The Provincial Courts of Ontario and Nova Scotia;

- The Superior Courts of Ontario, Nova Scotia, Manitoba and British Columbia;
- The Divisional Court of Ontario;
- The Court of Appeals for Ontario, Alberta, Nova Scotia and British Columbia;
- The Tax Court of Canada;
- The Federal Court of Canada;
- The Federal Court of Appeal; and,
- The Supreme Court of Canada on multiple occasions.

Albertos also sits or has sat on the boards of a number of local charities and organizations.

Albertos is regularly retained by other counsel, providing advice and agency services regarding motions and appeals before the Supreme Court of Canada as well as research and opinions on complex legal matters. He is also frequently invited to comment or speak on constitutional and human rights law matters.

A number of his high-profile cases have received widespread media coverage in publications such as the Globe and Mail, Maclean's Magazine, the Vancouver Sun, the Catholic Register, and the Ottawa Citizen. Albertos has also had commentary featured in media outlets such as the Globe and Mail, CTV News, The Wall Street Journal, Faith Today, and the National Post among others.

EXPERTISE

Practice Areas:

Constitutional and Human Rights Law
 Civil and Commercial Litigation
 Appellate Advocacy and Supreme Court Agency Services
 Ecclesiastical Law
 Charity and Not-for-Profit Law
 Employment and Labour Law for Employers
 Complex Legal Research and Opinions
 Personal Injury and Insurance Litigation
 Strategic Litigation and Test Cases

Bar Admissions:

Ontario (2008)

Education:

University of Ottawa (2007) LLB
 University of Ottawa (2004) BA Communications



FAYE SONIER

Counsel & General Manager

Faye Sonier is the General Manager of the Acacia Group.

Faye has extensive management, leadership, and legal experience in the non-profit and charitable sector.

Prior to joining The Acacia Group, Faye served as Legal Counsel to The Evangelical Fellowship of Canada and as Executive Director and General Counsel for Canadian Physicians for Life.

Fluent in both English and French, Faye has practiced constitutional and human rights law, with a special focus on freedom of religion and conscience, and sanctity of human life issues. She has participated in interventions before appellate courts and the Supreme Court of Canada, engaged with Parliamentarians and national groups on public policy matters, and made submissions to government.

Faye has appeared before the Divisional Court of Ontario, the Saskatchewan Court of Appeal, and the Supreme Court of Canada.

She has been published by various outlets, including the *National Post*, *Comment Magazine*, *Christian Legal Journal*, *Faith Today*, and *Church and Faith Trends*.

Faye has appeared on CTV News, Sun News, CFRB NewsTalk 1010 AM, CJOB 680 AM, 100 Huntley Street, and other media program as well as having commentary featured in news outlets such as *The Globe and Mail*, *The Montreal Gazette*, *The Vancouver Sun*, *The Winnipeg Free Press*, *The Regina Leader-Post*, and *The Christian Post*.

In 2014, Faye was named one of the “100 Fantastic Canadian Christian Women Leaders” by the Bridgeway Foundation.

EXPERTISE

Practice Areas:

Constitutional and Human Rights Law
Charity and Not-for-profit Law
Board Governance

Bar Admissions:

Ontario (2008)

Education:

University of Ottawa (2007) LLB



JOHN SIKKEMA

Litigation Director

John Sikkema is a founding member of the Acacia Group practicing in both our litigation and solicitor departments. John's litigation practice focuses on constitutional and human rights issues. John has written extensively about these issues for both popular and scholarly publications.

John also works with churches, charities, and other faith-based organizations to assist them with all their legal needs including litigation, policy development, and corporate or charitable matters.

Prior to joining the Acacia Group, John served as Legal Counsel to the Association for Reformed Political Action (ARPA) Canada. In that role, John provided legal research for ARPA's board and staff, conducted federal and provincial legal policy analysis, contributed to their publications, and worked on court cases and interventions. Prior to his work with ARPA, John served as Associate Legal Counsel for Christian Legal Fellowship (CLF). Prior to CLF, John articulated with a mid-sized firm in Toronto. He was called to the bar in 2015.

John earned his JD from Queen's University in 2014 and his LLM from Emory University in 2019, where he was awarded the Gertie and John Witte Prize in Law and Religion "for outstanding work in law and Christianity."

John has appeared as counsel before the Supreme Court of Canada, the Federal Court of Canada, the Ontario Court of Appeal, the Ontario Superior Court of Justice, the Divisional Court of Ontario, the Ontario Court of Justice, and the B.C. Supreme Court. John was counsel in a precedent-setting Charter case in Ontario which struck portions of the Ontario Freedom of Information and Privacy Protection Act. In that case, John successfully argued that the Charter of Rights and Freedoms' guarantee to freedom of expression required the government to provide access to certain data that the government had placed off limits.

John's writing has appeared in the Supreme Court Law Review, Law Matters, Christian Legal Journal, Policy Options, National Post, Comment, and C2C Journal, among other publications.

John serves as an Executive Member of Advocates for the Rule of Law, a Canadian legal think tank. John is also an adjunct instructor in human rights at Redeemer University.

EXPERTISE

Practice Areas:

Constitutional and Human Rights Law
Civil Litigation
Appellate Advocacy and Supreme Court Agency
Ecclesiastical Law
Education Law
Human Rights Law
Charity and Not-for-profit Law
Complex Legal Research and Opinions
Strategic Litigation and Test Cases

Bar Admissions:

Called to the bar: 2015

Education:

Brock University (2011) BA (Hon) in Political Science and Business
Queen's University (2014) JD
Emory University (2019) LLM



PETER STOCKLAND

Strategic Communications Consultant

Peter Stockland is a consultant and head of our Strategic Communications division.

Peter brings to The Acacia Group more than four decades of experience in journalism and publishing. He is a former editor-in-chief of the *Montreal Gazette*, was editorial page editor of the *Calgary Herald* and has worked as journalist throughout Canada during his lengthy career. He was vice-president of English-language magazines for *Readers' Digest* Magazines Canada Ltd. where he oversaw the launch and direction of a number of new publications.

He is currently Publisher of the Catholic Register newspaper, and former Publisher-editor of *Convivium* Magazine, which he co-founded with National Post columnist Father Raymond de Souza. In addition to journalism, he is a fiction writer who has published in numerous publications across Canada. His collection of short stories, *If Only*, was published by Siren Song Press. He is a student in the Irish Studies Department at Concordia University where he intends to pursue graduate work in Irish political history.

EXPERTISE

Practice Areas:

Strategic Communications
Media Training
Crisis Management



CHRISTINA CANAGASABEY

Counsel, Corporate And Charity Law

Christina Canagasabay is a corporate lawyer of the Acacia Group.

Prior to joining The Acacia Group, Christina worked at Gowling WLG, where her practice focused on corporate and commercial law, assisting clients with incorporations, drafting contracts and negotiating agreements. Christina's background includes in-house experience in the legal department of a large telecommunications company.

Christina completed her law degree at Osgoode Hall Law School, jointly with her Master of Business Administration at the Schulich School of Business.

Christina has often been involved in church administration and leading Children's Ministry.

EXPERTISE

Practice Areas:

Corporate
Commercial
Charities & Not-for-Profits

Bar Admissions:

Ontario (2020)

Education:

Schulich School of Business, York University (2015), BBA
Osgoode Hall Law School, York University (2019), JD
Schulich School of Business, York University (2019), MBA



ELIZABETH LOCKHART

Counsel, Estate Law

Elizabeth Lockhart is a barrister, solicitor, and mediator with an LL.B. from the University of Windsor and a B.A. from the University of Waterloo. She was called to the Ontario bar in 2000, at which time she received a share of the Elisabeth Slasor Prize donated by Gowling Lafleur Henderson LLP for the student attaining the highest grade in Estate Planning at Ottawa.

Elizabeth practices primarily in estate law. She prepares Wills and Powers of Attorney for clients as well as guiding clients in matters related to the *Succession Law Reform Act*, *The Substitute Decisions Act*, *The Absentees Act*, and the *Declarations of Death Act* as well as other estate related legislation. She has been successful counsel in precedent-setting Ontario cases including *Mladen Estate v. McGuire* and *Poole v. Poole*.

A frequent speaker on issues related to estate planning, powers of attorney and guardianship, Elizabeth has done presentations and papers for the County of Carleton Law Association's annual conferences as well as other CCLA continuing legal education programs. She has presented at the Ontario Bar Association Professional Development Trusts and Estates Law Program. She regularly does seminars related to planning for disabled beneficiaries for various community groups including REACH Canada and Families Matter Co-operative Inc.

Elizabeth has a particular interest in helping families who have children with special needs.

EXPERTISE

Practice Areas:

Estate Law
Estate Administration
Estate Planning
Estate Litigation
Trusts
Wills
Powers of Attorney
Guardianship Applications
Asset protection
Trusts
Bequests and Gifts

Bar Admissions:

Ontario (2000)

Education:

University of Waterloo, (1986) B.A.
University of Windsor, (1998) LL.B.



JONATHON VAN MAREN
Strategic Communications

Jonathon Van Maren is a communications consultant in our Strategic Communications division.

Jonathon is a public speaker, writer, and activist. He has served for more than ten years as communications director at the Canadian Centre for Bio-Ethical Reform, a national pro-life organization. He has delivered speeches and lectures on a wide range of cultural issues in Canada, the United States, and across Europe. His work has appeared in *First Things*, *National Review*, *The American Conservative*, *Christianity Today*, *the National Post*, and he is a contributing editor at *The European Conservative*, one of Europe's premier journals of politics and culture.

Jonathon Van Maren is the author of several books including *The Culture War*, *Seeing is Believing*, *A Guide to Discussing Assisted Suicide*, and most recently *Patriots: The Untold Story of Ireland's Pro-Life Movement*. His biography of Canadian journalist and political icon Ted Byfield will be published soon. He holds a Bachelor of Arts degree in history from Simon Fraser University.

EXPERTISE

Practice Areas:

Strategic Communications
Media Training
Crisis Management



BETH FLEMING

Client Relations Manager

Beth Fleming is the Client Relations Manager for the Acacia Group.

Beth has extensive management, communications, and donor/member relations experience in the not-for-profit, church, and faith missions sectors.

Prior to joining The Acacia Group, Beth served for 20 years as a donor-supported missionary. Along with her fieldwork, she communicated vision, strategy, and appreciation in compelling ways to supporters throughout North America. A Californian by birth, she has ministered in Hungary, Romania, and Mexico, as well as several American states and Canadian provinces, allowing her to hone skills in cross-cultural relations and development.

Beth has also worked as an administrative assistant for church and charitable organizations, ensuring that members and donors felt connected and cared for. These experiences also include executive and strategic communications, event planning, database management, volunteer coordination, and office oversight.



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