What’s On Your Mind?

Trustee Liability
Don Muir, Associate Secretary, General Assembly Office

It is often said that we live in an increasingly litigious age. While some lawsuits are fair and can help hold individuals and groups accountable, the statement usually implies that far too many people are far too ready to launch seemingly frivolous suits at the drop of a hat.

For example, a woman sued a television station for making an inaccurate weather prediction. The prediction was for a warm sunny day - but it rained. The woman claimed the faulty forecast caused her to dress lightly resulting in her developing the flu, missing work, incurring medical expenses and suffering stress. She sued for $1000 and won. Such stories, especially those that result in unimaginably huge awards, can make us worry about being “taken to the cleaners” as the saying goes.

In this slightly nervous spirit, I receive cautious enquiries about the legal vulnerability of church leaders, especially trustees. Reportedly, some congregations are having trouble finding volunteers to serve in this capacity for fear of being held personally responsible, and sued, for decisions made by the congregation because it is their signature scrawled at the bottom of the page.

Can a trustee be sued?

One reality is that anybody can be sued at any time. Another reality is that I have never heard of a trustee being taken to court in that capacity. Nevertheless, I often recommend that congregations take certain precautions, such as checking to find out if their congregational insurance package provides adequate general as well as directors and officers insurance coverage as a level protection for all their leadership.

It is important to remember trustees serve as legal signatories. In other words, trustees are, in effect, “a pen in the hand of the congregation.” Their work is defined and directed by the congregation. They hold property for the congregation. Trustees acting on behalf of the congregation should be indemnified (protected against damage, loss, or injury) by the congregation. In other words, they only do what the congregation asks or empowers them to do and they share responsibility with the whole congregation for any action taken. This, I believe, is an important point for any who are considering being trustees to keep in mind.

By the time you read this, the 2012 General Assembly will have considered a new Trust Deed template that is meant to help congregations prepare their own trust deed to describe how their trustees are chosen and the work they are to do for the congregation. If it is adopted as it currently stands, you will find a section that refers to liability. It says, in part, “The Congregational Trustees ... shall not be liable for any error or mistake, save for willful misconduct or willful breach of trust or fraud, and the congregation will indemnify Congregational Trustees ... against all costs, charges and expenses with respect to any proceeding to which they are made a party by reason of being a Trustee, if they acted honestly and in good faith, with a view to the best interests of the congregation.”

Naturally, if a trustee wilfully acts outside the direction of the congregation or outside the law, that trustee could be subject to discipline or face liability.

Blessings,
Don Muir