Insurance program for harbour authorities

Presentation for HA members

Presented By:
Small Craft Harbours - National Headquarters
Harbour Authority Corporation

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Fisheries and Oceans Canada | Pêches et Océans Canada

Canada

Objectives

- Provide an overview of the different insurance policies for harbour authorities (HAs)
- Give examples of how HAs can reduce their liabilities
- Provide and overview of the reporting and claims processes; as well as working tools

Insurance Coverages

Third party liability insurance

Accidental death and dismemberment, and bodily injury

Directors and officers liability insurance

Third party liability insurance

Third party liability insurance

What is **TPLI**?

Provides protection to the HA and the Government of Canada if a claim is made against them for:

- accidental loss of life
- bodily injury
- and/or property damage

suffered by **third parties**, arising out of the day-to-day operations of the HA.

Examples of liabilities

Who manages the TPLI and when does coverage begin?

- Small Craft Harbours (SCH) of Fisheries and Oceans Canada (DFO) purchases TPLI for all HAs and other organizations that have a signed lease or management agreement with SCH.
- Term runs April 1 – March 31 and is renewed annually.
- All HAs are provided with a certificate of insurance confirming the coverage, usually by end of April or May of each year.

TPLI Key Coverages

- Bodily injury and loss of life
- Personal and/or advertising injury (libel, slander, defamation, wrongful eviction)
- Property damage - destruction of property belonging to third parties

The Policy provides:

- Insurance coverage up to **$20,000,000** per accident or occurrence
- Investigation on incidents
- Legal representation should the HA or their employees be sued
- Payment for claims by a third party where the investigation determines that payment is warranted

TRUE or FALSE?

The HA is covered by the TPLI policy when acting as a contractor to install floating docks for another HA.

TPLI Exclusions

- Any property owned, leased or occupied by the HA
- Seepage and pollution - except for a sudden and accidental pollution incident
- Contractors on harbour property causing damage or injuries to others

  -contractors must carry their own liability and property insurance

- Injuries sustained by HA volunteers, employees and Board members or employees of DFO
- Claims made against an outside organization using the HA property for an event
- HA owned automobiles, trailers and motorized snow vehicles
- For loss, damage or expense arising out of the operations of any vessel or craft owned by the HA in excess of 26 feet in length

Seepage and pollution example: Similar events in different contexts

- HA unaware there is an issue with the fuel tank
- There is a sudden and accidental pollution incident

✓ *Covered*

- HA is aware that the fuel tank is not working correctly and did not correct the situation
- HA is aware there is a leak for an extended period of time

X *Not covered*

Additional information on exclusions

- If an employee becomes injured while performing their duties as an employee of the HA, provincial workers compensation may be available.
- HAs require additional insurance when hosting or co-hosting an event on their site.

- It is recommended that HAs purchase their own property insurance policy to cover their assets.

This policy would cover all property owned by the HA (buildings, fuel systems, computers, furniture, equipment, etc.) in case of theft, fire or damage.

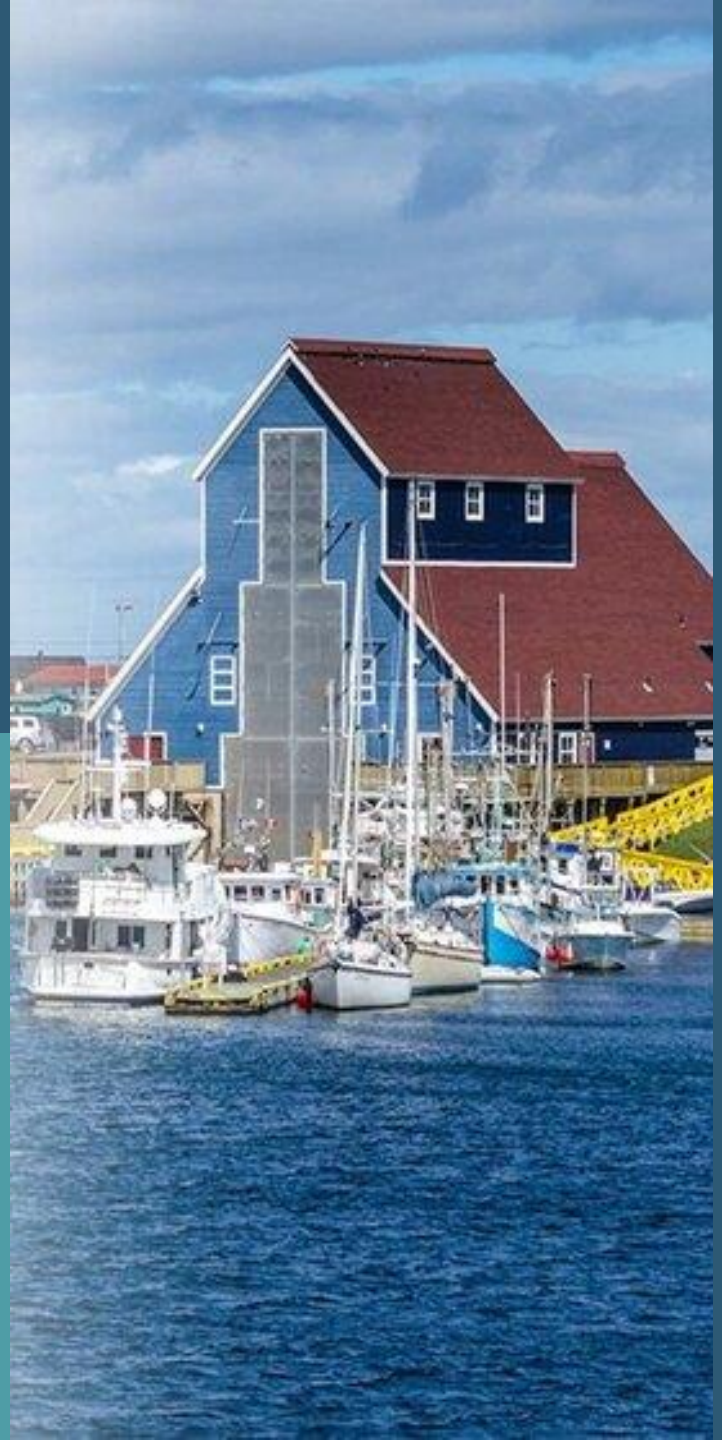
QUIZ

Strong winds have damaged a bait shed owned by the HA. The roof landed on a user owned vessel, damaging it.

What repairs might be covered by the TPLI?

Is the HA liable for all incidents and accidents that happen on the harbour?

It is ultimately the insurance company who will make the decision if the incident is eligible to be claimed under the current TPLI policy.

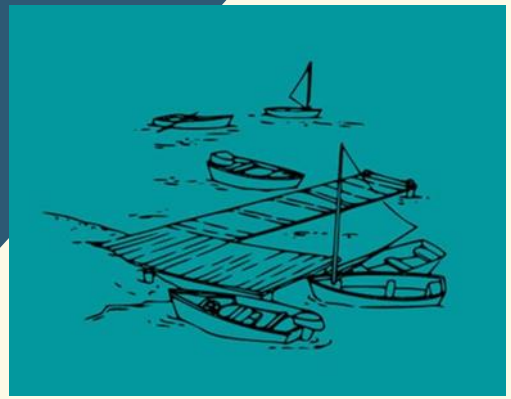


If a claim is filed against an HA, the onus is on the HA to prove that they are not liable by demonstrating that due diligence was exercised and that they have taken reasonable precautions to prevent injuries or accidents

HAs Due Diligence

HAs and must be proactive in their efforts to reduce liabilities by:

- If applicable, maintaining records of inspections and maintenance (the roles, responsibilities and capabilities of HAs may vary)
- Performing regular Occupational Health and Safety inspections
- Adopting and implementing a safety policy and best practices
- Erecting appropriate signage
- Mitigating or repairing identified hazards as soon as possible (minor repairs)
- Requiring proof of insurance from third parties
- Having signed berthage agreements and user licenses



Examples of liabilities

What to do when an incident or accident occurs?

TPLI claim process

1

HAs should :

- Contact law enforcement or emergency services
- Provide assistance and first aid to the parties involved
- Block off any hazardous areas and arrange for emergency repairs

2

Third party claimants:

- Should contact their insurer
- Notify the HA if they wish to pursue a claim for damages
- Only if applicable, write a statement of claim outlining the details of the claim
- Obtain quote for repairs (if applicable)

3

HAs should:

- Prepare an incident report
- Report all incidents even if no liability exists on behalf of the HA
- Forward the file to your SCH contact

Incident report:

https://www.dfo-mpo.gc.ca/sch-ppb/toolbox-boiteaoutils/insurance-assurance/index-eng.html

What information to include in incident report?

- Date and time
- Name/contact information of the person(s) involved/ injured
- Location where incident occurred
- Weather conditions
- Names/contact information of witnesses
- Photographs/videos
- If a claim against the HA is anticipated, indicate it on the report

If available:

- User Licenses/Berthage Agreements
- Inspection/ Maintenance records

TPLI claim process

4

SCH:

- Reviews the file
- Forwards to the Insurer

5

Insurer:

- Reviews the file and advises if it falls within the policy
- Will contact SCH, the HA and/or the third party if necessary

Procedure:
https://www.dfo-mpo.gc.ca/sch-ppb/toolbox-boiteaoutils/insurance-assurance/coverages-couvertures-eng.html#incident

Special Events

Any events, outside of normal day-to-day operations, taking place at HA managed sites, must be referred to the insurer prior to the event taking place (festivals, meetings, etc.). A special event is considered a material change in risk.

DFO reserves the right to refuse any activity deemed dangerous that may pose a risk to the safety of individuals or to the facilities.

❖ **Forms and procedure:**
https://www.dfo-mpo.gc.ca/sch-ppb/toolbox-boiteaoutils/insurance-assurance/events-info-evenements-eng.html

Image credit: « Hockey au Quai », Port of Caraquet, NB.

Special events hosted by a HA:

- HA submits the Special Events Form to their SCH contact
- The Insurer will evaluate the request to confirm whether additional insurance is required.

Special events hosted or co-hosted by an outside organization (i.e. third party):

- HA submits the Special Events Form to their SCH office
- Include proof of Third Party Liability insurance (TPLI) by the Licensee (organizers)
  - Consideration: Is the event deemed high risk?
- The Insurer extends or denies coverage, or will requesting more information
- HA submit a copy of the License Agreement signed between the HA and the third party

Note: The liability insurance certificate must extend additional insured status to the HA and to Fisheries and Oceans Canada, and provide a notice of 30 days in advance of cancellation of policy.

Directors and officers

Directors and officer's liability insurance

What is D&O?

- The D&O serves as a risk financing mechanism to fund directors & officers liability type losses for which the directors and officers of a non-profit organization may be held liable.
- These losses may be due to wrongful or negligent acts or omissions made against them, from claims which may arise from the decisions and actions taken within the scope of their regular duties.

Who manages the D&O?

- The D&O is purchased and administered by the Harbour Authority Corporation (HAC), a federally incorporated body working on behalf of HAs.
- Its primary mission is to offer its members insurance coverage that is not already provided by the TPLI purchased by the Department of Fisheries and Oceans

D&O Key Coverages

Applies to anyone who serves as a director or officer of a HA against loss resulting from claims for:

- Wrongful acts - professional misconduct
- Employment wrongful acts - wrongful dismissal
- Other cause of loss - disputes

- Offered in three different coverage amounts:
  1, 2 or 5 Million $ policy
- Covers the legal fees and other costs the organization may incur as a result of such a suit.
- Employees & volunteers: only covered from claims which may arise from the decisions and actions taken within the scope of managerial duties

D&O can generally provide non-profits with coverage for:

- Employment-related claims
- Discrimination
- Investigation & defense
- Harassment
- Certain third party damages
- Non-compliance/non-delivery
- Defamation: Libel, slander, or defamation of character
- Out of Scope Actions: acts beyond granted authority
- Negligent acts

D&O Exclusions

- Intentional illegal acts
- Illegal profits
- coverage would only extend to "wrongful acts", which may include certain acts, omissions, misstatements while acting for the organization

- Previous claims
- Internal claims
- Other coverages:
  - -professional services
  - -pollution
  - -physical Harm

What are examples of wrongful or negligent acts?

"Any error, misstatement, misleading statement, acts, omission, neglect, or breach of duty actually or allegedly committed by any of the Insured Persons in their capacity as such or by the Insured Organization".

- Wrongful dismissal, discharge, termination demotion, discipline etc.
- Breach of employment contract - oral, written or implied
- Violation of employment discrimination laws
- Failure to meet statutory or regulatory requirements
- Illegal retaliatory treatment
- Prudence/fiduciary responsibilities
- Others

SCENARIO

Robert has been a Captain for a few years. As he wants to make a difference in his community, he is running as director of the Board of directors of his HA for the first time. He's elected. Robert wants to make several changes in the way the harbour is managed. However, an employee of the HA disagrees with Robert's proposals. Tensions rise and the two men argue. Robert fires this employee on the spot. The employee decides to sue Robert for wrongful dismissal.

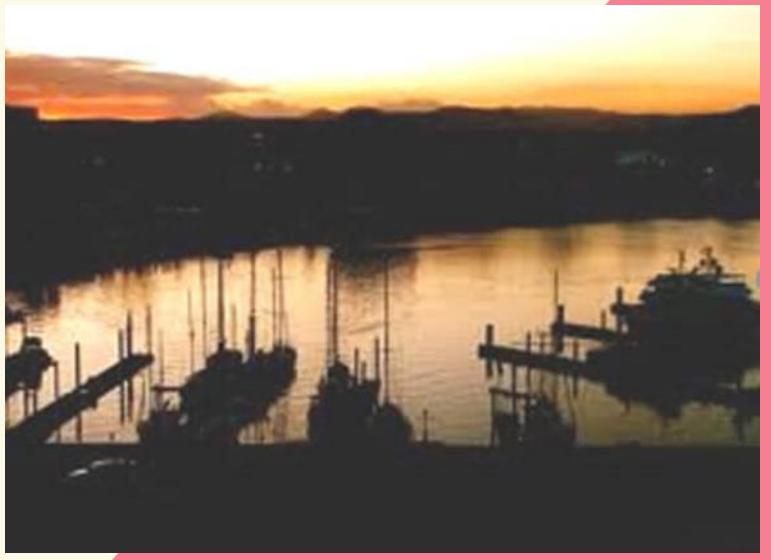
Reflexions:

- Can the D&O insurance possibly protect Robert?
- Could the incident have been avoided?
- What factors should be considered in this situation for Insurance purposes?

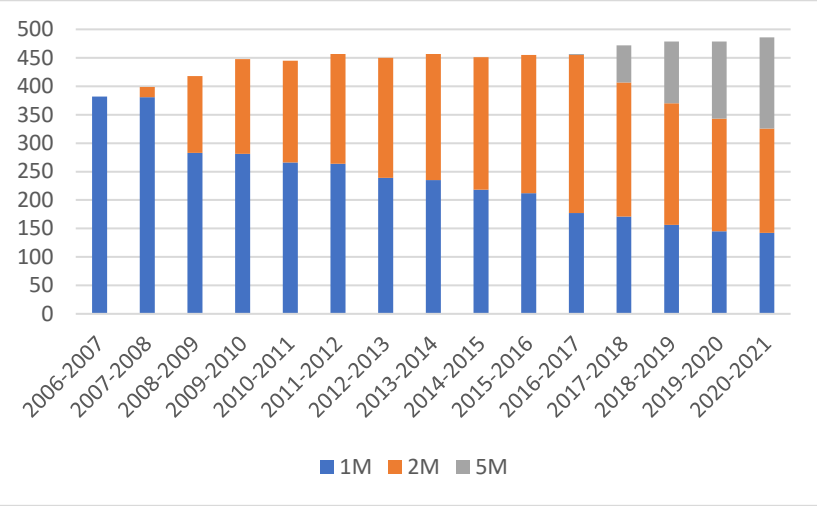
Liability Risk Management

Corporations must manage the risk of directors and officers through a process that includes:

- Understanding the risk associated with being a director or officer
- Establishing an internal awareness process
- Implement a management process to address the issues and risks
- Consider the need for protection i.e. Insurance

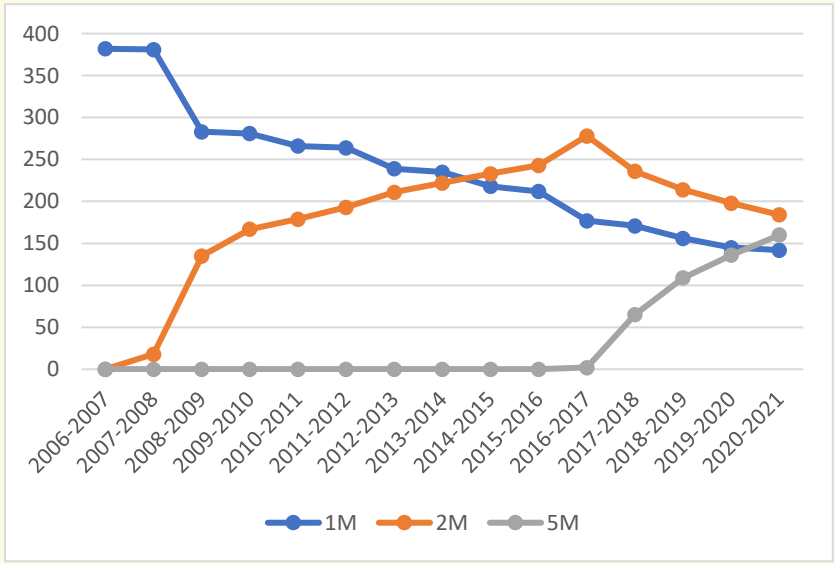


D&O Liability Insurance coverage over time - NATIONAL



- The D&O Liability Insurance was first offered in 2006 with a $1M coverage limit.
- Although there are currently 554 Harbour Authorities (HA) insured, not all have consistently participated in this program.
- There has been a steady increase in participation over time, from 382 HA (69%) during the first policy year (2006-2007) to 486 HA (88%) last year (2020-2021 policy year).
- 284 HA (51%) have consistently participated in the program.
- 21 HA (less than 4%) have never participated in the program, almost 60% of these are from the Newfoundland & Labrador region. 62 HA (11%) have participated less than 50% of the time.

- By request from HA in the Pacific region, a $2M coverage option was offered in the second year (2007-2008 policy year).
- Over time there was a steady increase of interest in the $2M coverage, becoming the most popular option during the 2014-2015 period.
- The uptake continued until the 2016-2017 period when a $5M option was introduced, also by request. At this point interest in the $2M started to shift to the $5M.
- Interest in the $5M continued to grow, making it the second most popular option at the end of the 2020-2021 period with 33% of participating HA selecting this option, compared to 38% selecting the $2M and 29% selecting the $1M.
- If the trend continues as it has for the past few years, the $5M option could quickly surpass the $2M as the most popular option.



Accidental death and dismemberment, and bodily injury

Accidental death and dismemberment, and bodily injury insurance

What is ADD/BI?

- The ADD/BI provides financial assistance and support for all volunteers, including members of the board of directors, in the event of bodily harm or loss of life as the result of an accident.
- This policy excludes employees (any person full time or part time on a HA payroll).

Eligibility and Coverage

	CLASS 1	CLASS 2
Eligibility	All volunteers, under age 75, while they are performing any task for or on behalf of the HA	Directors and Officers of the HA, under age 80
Coverage	Injuries sustained by a HA volunteer while participating in any volunteer work authorized by the Harbour Authority	Directors and Officers of the HA are covered 24 hrs./day for Accidental Death and Dismemberment and Bodily Injury, regardless of the nature of the accident, and regardless if they were performing a task for the HA at the time of incident
Policy limit	$50,000 loss of life	$150,000 loss of life
Additional information		Class 2 also includes all coverage from Class 1

ADD/BI Key Coverages

Ancillary benefits

- Funeral expense - $5,000
- Dread disease - $5,000
- Fracture - $1,000
- Severe burn - $10,000
- In-hospital indemnity - $1,000 per month
- Home alteration and vehicle modification - $10,000
- Seat belt – 10%
- Family transportation - $10,000
- Rehabilitation - $10,000
- Repatriation - $10,000

- Weekly accident indemnity - **Employed:** 75% of earnings to a weekly maximum of $750, after a 3 day waiting period, for a maximum of 52 weeks
- Weekly accident indemnity - **Not employed**: $150, after a 3 day waiting period, for a maximum of 52 weeks
- Accident medical - $10,000
- Accidental dental $2,000

The ADD/BI provides a lump sum payment for:

- Loss of limb or use
- Loss of hearing
- Loss of speech
- Loss of sight
- Fractures
- Burns
- Paraplegia
- Quadriplegia
- And more

For volunteers under Class 1 :
$50,000

For Directors and Officers under Class 2 :
$150,000

What does this mean for HA volunteers and board members?

Volunteers and HA board members can carry out their volunteer duties without fear of financial losses from potential law suits and injuries.

ADD/BI and D&O: In case of a claim

HA

1. Gather all the information available
2. Get in touch with the HAC as soon as possible
3. HAs should not assume or accept liability

HAC

Receives claim and contacts the insurance Co. → Fills out the administrative forms and forwards to file to the Insurance Co. → Insures follow-up with the HA and the Insurance Co.

Working Tools

- Guidebook on insurances
- Forms
- Procedure documents
- Pamphlets
- Posters
- Q&A
- Comparative table
- And more

Where to find them:

https://www.dfo-mpo.gc.ca/sch-ppb/toolbox-boiteaoutils/index-eng.html

Need more information on Insurance Coverages?

- **Third party liability insurance**

Small Craft Harbours - Fisheries and Oceans Canada

Get in touch with your SCH contact

https://www.dfo-mpo.gc.ca/contact/sch-ppb-eng.html

- **Directors and officer's liability insurance**
- **Accidental death and dismemberment, and bodily injury insurance**

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Questions?

Thank you!