



Board Liability and Non-Profit Organizations

Healthy Practices Address Liability Concerns

At COCo, we like to frame liability concerns as another opportunity to think about our organization's "healthy practices". These healthy practices refer to the kinds of habits that help us to take care of our employees, staff, board, volunteers as well as our physical space. When we look at our structures, employment contracts, policies, and decision making process, we take care of our organization while simultaneously reducing our liability risks. For a useful tool to check on the health of your organization, please see COCo's Healthy Practice Checklist at http://www.coco-net.org/docs/HPP_Tool.pdf

What is liability?

Liability refers to an obligation or responsibility imposed by law. When people or organizations do not meet obligations that are enforceable by law, they may face consequences. Examples include:

- * The requirement to pay a fine. For example, if Sally's Soup Kitchen did not file its Quebec taxes on time, the organization would be required to pay a fine to the Quebec government.
- * Getting sued by someone who was physically hurt because certain responsibilities were not met. For example, an organization that owns a building is responsible for clearing the stairs of snow and ice. If someone falls on the stairs and breaks their ankle because they were not adequately cleared, they can sue the organization.

Who can be liable?

In society, people and organizations can both be liable, that is, held responsible for their actions and decisions. An organization may be held liable for its acts and face serious consequences. For example, if an organization owes a lot of money to creditors and has not been paying its debt, it could be forced to sell its assets and dissolve.

A board of directors can also be found personally liable for their negligent behavior if it can be shown that board members did not act within their authority or did not adequately and reasonably manage the organization. Officers of the board, such as the president, vice-president, secretary and treasurer, are considered to be agents of the board. It is the board as a whole that is legally responsible for directing the organization.

What types of liability does a non-profit organization face?

Here are some examples:

An obligation or a responsibility can arise through agreement under any contract an organization signs. For example, *Fred's Food Bank* signs a contract with the major supermarket chain *Prime Minister's Choice* to buy food at a discount. Under the contract, *Fred's Food Bank* is liable (responsible) to *Prime Minister's* for the price of the food upon delivery

This is called **contractual liability**.

Additionally, our governments create rules to which we can be held responsible. For example, incorporated not-for-profit organizations are required by law to file an annual declaration in Quebec. If this annual declaration is filed late, a non-profit organization has to pay a fine. If, for two years in a row, no annual declaration is filed, and fines are not paid, the non-profit no longer has the right to operate in Quebec.

This is called **statutory liability**.

An organization is also obliged to be generally responsible in everyday life in to order avoid liability. For example, a non-profit organization does not clean up a pool of water on the floor for several days in a row. If someone in the office slips on the pool of water, they can sue the non-profit for being irresponsible.

This is called **extra-contractual liability**.

In what ways can an organization address liability?

Healthy practices help organizations remain aware of what is going on in an organization. Board members should be aware of the organization's goals, its financial and legal situation, and its responsibilities to individuals, other organizations and government bodies. By being sure that appropriate policies, by-laws, complaint procedures and decision-making structures are in place, board members reduce the risk of liability and also take care of all members of an organization (board, staff, volunteers, members and users).

It can also be useful for board members to create a checklist of issues to consider that is similar to the COCo's Healthy Practices Checklist mentioned above, but focuses particularly on legal and liability issues. Many organizations appoint one or two board members to ensure that such a legal and liability checklist is followed throughout the year. A sample legal and liability basic checklist can be found at: http://www.blumbergs.ca/articles_more.php?id=96_0_2_0 and a more extensive example can be found at: <http://www.carters.ca/pub/checklst/nonprofit.pdf>.

What is Director and Officers Liability Insurance?

Director and Officers Liability Insurance, Property Insurance and other types of liability insurance are just some examples of insurance that organizations can use to protect themselves from

unforeseeable events. Just like an individual, an organization can insure its property in case of fire or theft with Property Insurance. Director and Officers Liability Insurance can protect the board of directors if someone sues them because of their management of the organization, depending on the type of insurance and the nature of the lawsuit. Director and Officers Liability Insurance generally covers a limited amount of the legal fees and money your organization would have to pay if found liable. An organization can also purchase other types of liability insurance that provide coverage for the organization itself and its activities. Many insurance companies offer packages that include two or more of these types of insurance.

For a more extensive description of insurance types, see <http://www.calgarycvo.org/documents/InsuranceGuideNon-Profit.pdf> and the links for Volunteer Canada listed below.

What types of liability Insurance plans are best for not-for-profit organizations?

The following three factors can be weighed when choosing an insurance plan:

1. Is the insurance plan affordable?
2. Is the insurance coverage appropriate for the organization?
3. Does the insurance plan offer some stability?

For organizations willing to become a member of Volunteer Canada, there are insurance packages at reduced rates, which are tailored to non-profit organizations' concerns. Further information about the Volunteer Canada plan can be found online at <http://volunteer.ca/en/membership/benefits/directorliability> and <http://volunteer.ca/en/membership/benefits/generalliability>

Please Note: COCo provides legal information researched by law students and does not provide legal advice. Please contact COCo for information about additional insurance plan options that are adapted to the needs of non-profit organizations.

May 2008