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# 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 kind 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. Check on the health of your organization with the help of this useful COCo tool:

### **COCO Checklist**

*"Assessing Our Organization's Healthy Practices"*

[http://www.coco-net.org/docs/HPP\\_Tool.pdf](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* does not file its Quebec taxes on time, the organization will 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 may sue the organization.

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### **Who can be liable?**

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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 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?**

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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 Choice* for the price of the food upon delivery. This is called **contractual liability**, because the obligation comes from a contract between *Fred's Food Bank* and *Prime Minister's Choice*.

Additionally, our governments create rules, and if we don't follow them we can be held responsible. For example, provincially incorporated non-profit organizations are required by law to file an "annual declaration" with the enterprise registrar. 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 organization no longer has the right to operate in Quebec. This is called **statutory liability**, because the obligation to file an "annual declaration" comes from a statute (also called a law, or legislation).

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An organization is also obliged to be generally responsible in everyday life in order to 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**, because the responsibility to the person who slips on the floor does not come from a contract, but rather our general responsibility to other individuals.

### **What are the legal responsibilities of the board of directors?**

Here is a brief overview of some the board of directors' legal responsibilities:

- Board members must act personally. They cannot assign someone to act on their behalf, although the board as a whole can delegate some of its powers;
- Board members must respect the limits imposed on their powers by the organization's bylaws, the law, its charitable status, and the letters patent (the founding "birth certificate" of incorporated organizations);
- Board members must act in the interest of the organization itself, not particular members;
- Board members need to carefully and diligently make concrete efforts to ensure that employee remittances and source deductions are being made and remitted on behalf of all employees;
- Board members must act with honesty and loyalty towards the organization. Examples of honest and loyal behaviour include:
  - participating in board meetings
  - acting in the face of possible fraud
  - seeking financial or legal help when needed to make informed decisions and avoid mistakes
  - avoiding and declaring all conflicts of interest

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- naming competent people to coordinate the organization and periodically evaluating their performance.

For a full overview of the board of directors' responsibilities, please consult the resources listed in the next section.

### Where can I find more information about board liability in Quebec?

Two excellent resources that discuss board liability and which are specific to the Quebec context are:

#### **Guide (Martel, Paul)**

*"Administrateurs de corporations sans but lucratif: Le guide de vos droits, devoirs et responsabilités" (Éditions Wilson & Lafleur, Martel Ltée., Montréal, 2<sup>e</sup> édition, 2000)*

#### **Comité sectoriel de main-d'œuvre (CSMO)**

*"Fiche 2 : La structure juridique des OBNL et la gouvernance démocratique" in Boîte à outils : La gouvernance démocratique*  
[http://www.csmoesac.qc.ca/uploads/documents/menu\\_sections/boite\\_a\\_outils.pdf](http://www.csmoesac.qc.ca/uploads/documents/menu_sections/boite_a_outils.pdf)

These resources are currently only available in French. Please contact COCo if you need help navigating them.

### In what ways can a board of directors reduce liability risks?

Healthy practices help reduce liability risks. Board members should be aware of the organization's goals, its financial and legal situation, and its responsibilities to individuals, businesses, other organizations and government bodies. By being sure that appropriate policies, bylaws,

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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 COCo's Healthy Practices Checklist mentioned above, but focuses particularly on legal and liability issues. Many organizations give one or two board members the responsibility of ensuring that such a legal and liability checklist is followed throughout the year. A sample legal and liability basic checklist for charities can be found at:

### ***Basic Checklist***

*"Canadian Charity Legal Checklist"*

[http://www.blumbergs.ca/articles\\_more.php?id=96\\_0\\_2\\_0](http://www.blumbergs.ca/articles_more.php?id=96_0_2_0)

### ***Detailed Checklist***

*"Legal Risk Management Checklist for Not-For-Profit Organizations"*

<http://www.carters.ca/pub/checklst/nonprofit.pdf>

## **What is board member indemnification?**

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Often, organizations will include a statement in their bylaws stating that board members will be covered by the organization for all expenses that come from being sued, unless the lawsuit is a result of the bad behaviour or negligence of the board member.

### ***Sample Indemnification Statements***

*English: (subject heading "Liabilities")*

[http://www.boarddevelopment.com/display\\_document.cfm?document\\_id=69 - a9](http://www.boarddevelopment.com/display_document.cfm?document_id=69 - a9)

*French: (subject heading "Indemnisation")*

<http://www.cliniquejuridique.uqam.ca/osblreglementsgeneraux.htm>

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### **What is directors' and officers' liability insurance?**

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Directors' and officers' liability insurance and property insurance are just two types of insurance that organizations can purchase to protect themselves. Just like an individual, an organization can insure its property in case of fire or theft with property insurance. Directors' and officers' liability insurance can protect the board of directors if someone sues them for their management of the organization, depending on the type of insurance and the nature of the lawsuit.

Directors' 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 several types of insurance. For an explanation of different types of insurance and what type of incidents they cover, see:

#### ***Types of Liability Insurance***

*Imagine Canada's 8 Common Liabilities Policies*

[http://insuranceinfo.imaginecanada.ca/files/en/publications/appendix\\_insurance\\_coverages\\_20080904.pdf](http://insuranceinfo.imaginecanada.ca/files/en/publications/appendix_insurance_coverages_20080904.pdf)

*Imagine Canada's Insurance and Liability Resource Centre for Non-Profits*

<http://insuranceinfo.imaginecanada.ca/?q=en/node/672>

### **What types of liability insurance plans are available for non-profit organizations?**

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For organizations willing to become a member of Volunteer Canada, there are insurance packages at reduced rates, which are tailored to a non-profit organization's particular risks and concerns. More information about the Volunteer Canada plans can be found online at:

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### **Volunteer Canada Insurance Packages**

*National Directors' and Officers' Liability Insurance program*  
<http://volunteer.ca/en/membership/benefits/directorliability>

*National Office Package Insurance Program*  
<http://volunteer.ca/en/membership/benefits/generalliability>

Please contact COCo for a list of other insurance plans that are familiar with non-profit organizations.

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