



Not for Profit Directors' and Officers' and Entity Liability Insurance

Not for Profit Directors' and Officers' Liability Insurance is crucial as more not for profit organizations make headlines in the media. There is increased scrutiny from the public regarding the finances and management of not for profit organizations. This, coupled with increasing regulations and the rising frequency and severity of legal actions, leaves the Entity, and its Directors' and Officers' vulnerable. Directors and Officers can be held personally liable for their role in an organization or entity.

Who needs Coverage?

- Any charitable or not for profit entity
- Not for Profit Directors and Officers
- Board or Committee Members and Volunteers of these organizations.

Why should you have this coverage?

Being a member of a Board of Directors or an Officer for a not for profit organization can create exposure to unique risks. Directors and Officers can be subject to allegations of breach of common law duties; breach of duties owed to their stakeholders or members and statutory liabilities imposed by federal or provincial laws. They are required to act in good faith and in the best interest of the organization within the scope of the entity's by-laws and applicable regulations and statutes.

Many not for profit organizations have limited resources to indemnify Directors and Officers or respond to potential litigation, settlements or damage awards, putting the personal assets of Directors and Officers at risk, as well as the assets of the Entity.

Features

- Regulatory and criminal defence.
- Defence costs do not erode the limit of liability.
- Coverage extends to a spouse of an insured person.
- Side A – Personal Insurance Coverage:
 - Coverage provides protection to the Insured Persons if the Entity is unable to indemnify (due to statute or insolvency).
 - \$1 Million additional Side A Coverage.
- Side B – Entity Indemnification
- Side C – Entity's Coverage
- Provisions for Directors and Officers when they serve on other not for profit boards (with consent of the Insured organization/entity).
- Fiduciary Insurance (for Benefits Programs). Coverage is for allegations in administration of a benefits program an entity offers their employees.
- Derivative Demand Coverage: Provides coverage for investigation costs when members threaten to bring derivative actions on behalf of the entity.
- Statutory liabilities are explicitly covered.
- World-wide coverage.
- No Hammer Clause.
- 90 day reporting.
- Extended reporting/discovery period is available and can be purchased when the policy is not being renewed.
- Up to \$10 Million Directors' and Officers' coverage.

Potential Claims Scenarios

Not for profit organizations and their Board of Directors, Officers, and Members are all exposed to risk. The following examples present just a few of the scenarios that an individual or organization could be confronted with.

Bankruptcy

Situation: A not for profit organization takes on a significant amount of bank debt in order to fund a costly, but necessary, expansion of their facility. The Directors understand the risk involved, but have budgeted for the costs based on revenue from customers and a large annual grant from the provincial government.

Without warning the government cuts off funding to the facility based upon cutbacks imposed in a recently passed budget. With the loss of this funding and unable to increase their fees, the facility is closed and declares bankruptcy. The Executive Director and 10 employees all lose their jobs.

Potential Sources of Claims and Liability

Employees: Directors are personally liable for any unpaid wages and/or vacation pay. Depending on the situation, these amounts can be substantial.

Government: To conserve cash, the entity has fallen behind in their employee CPP and Income Tax remittances. The Directors are personally liable to the respective government entities for these amounts.

Employment

Situation: A female employee in a senior management role for a not for profit agency fails to meet the job performance expectations of her male executive director. After several warnings and a negative performance review, the senior manager is terminated with cause. The employee feels the termination was unfair and hires an employment lawyer. In addition, she files a complaint with the provincial Human Rights Commission claiming discrimination based upon her gender.

Potential Sources of Claims and Liability

Employee: The employee sues for wrongful dismissal and damage to her reputation. The employer is compelled to hire a defence attorney to plead their case.

Government: The Human Rights Commission initiates an inquiry into her allegations of gender discrimination. The organization hires a second lawyer to represent them at the inquiry, incurring further legal costs.

Donation/Donor

Situation: A wealthy individual donates \$1,000,000 to a charity, with the specific condition that the donation is intended to help expand their facilities. The Board of Directors decides to redirect some of these funds to general maintenance of the existing facility. The donor finds out about this redirection of funds and is furious.

Potential Sources of Claims and Liability

Donor: The donor commences a legal action alleging “breach of fiduciary duty” and misuse of funds by the Directors and requests a return of the donation. The donor is able to afford a highly qualified and successful litigator. The organization is compelled to hire an equally qualified defence attorney. The costs incurred for the defence of this action are substantial.

This handout is intended to provide general information only. Please refer to the policy document for complete details. The policy terms, conditions and limitations shall apply in all instances. FCC-HC 0817