

2000 edition

Volunteers



&

the Law



A guide for
volunteers,
organizations
and boards

Volunteers and the Law

Third Edition
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Acknowledgements

This project is the result of collective efforts.

The book is based on the 1988 first edition of *Volunteers and the Law* written by **Maureen Clark, Lana Li** and **Brian McRae** on behalf of the People's Law School.

Warren Dow conducted extensive research in 1999 to update legal issues and involve the volunteer community.

Maureen F. Fitzgerald applied her legal and writing expertise to new drafts, particularly chapters four and five.

Dirk Van Stralen provided illustrations and an original design.

Nadene Rehnby brought together the research, drafts, design and feedback to write and lay out the new book.

These efforts were coordinated by **Roy Crowe, Colleen Kelly, Fé Alluri** and **Jean Pastore** of Volunteer Vancouver, **Gordon Hardy** of the People's Law School and **Pat Pitsula** of the Law Foundation of BC.

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Suite 1340
605 Robson Street
Vancouver, BC V6B 5J3
Tel: (604) 688-2337
e-mail: lfbc@telus.net



Suite 150 – 900 Howe Street
Vancouver, BC V6Z 2M4
Tel: (604) 331-5400
Fax: (604) 331-5401
e-mail: staff@publiclegaled.bc.ca
www.publiclegaled.bc.ca



Suite 301 – 3102 Main Street
Vancouver, BC V5T 3G7
Tel: (604) 875-9144
Fax: (604) 875-0710
e-mail: volvan@volunteer.ca
www.vancouver.volunteer.ca

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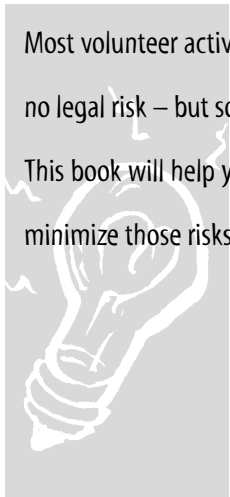
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About this book



VOLUNTEERS PLAY AN IMPORTANT ROLE IN OUR COMMUNITIES. The range of activities taken on by volunteers is endless: caring for children, providing information and support, organizing festivals, rescuing animals, participating in search and rescue missions. There are as many kinds of activities as there are volunteers who take them on.

Most volunteer activities pose no legal risk – but some do. This book will help you minimize those risks.



Most volunteer activities pose no legal risk – but some do. And some volunteer activities may hold a particular level of danger for the participants or the volunteer.

Volunteers and staff of organizations who agree to engage in these activities take on certain responsibilities. If these responsibilities are not handled with care, the volunteer and organization can be held accountable.

This book will help volunteers, staff and board members learn about how the law applies to volunteer activities and the work you do. By understanding the law, you will be able to prevent or minimize your risks. ■

How to read this book

... depending on whether you are a volunteer, staff or a board member

Up front: A caution

This book starts with a caution (also known as a *caveat* or *disclaimer*) that explains the limitations of this book, and why you should not rely on it for legal advice. Everyone should read the caveat.

Chapter 1: About the law

This chapter introduces basic legal information for and about volunteers. Readers who are new to legal issues will want to begin with the first section, *A beginner's guide to the law*. Everyone – whether you are a volunteer, staff or a board member – should read the rest of this chapter. It explains liability and negligence – which is what you want to avoid – and introduces a few of the main legal duties of volunteers.

Chapter 2: Applying the law to volunteer activities

This chapter examines the legal issues that arise when volunteers take on certain roles, like *Giving advice*. Some sections may not apply to you (for example, *Caring for children* if you're a search and rescue volunteer). Other sections, like *Safe spaces*, should be read by everyone because they likely apply to you in some way, or will some day.

Chapter 3: For organizations and staff

This chapter examines legal issues that were covered in Chapters 1 and 2, but from the perspective of organizations and staff. Volunteers who are regularly involved with the organization's activities may also want to read this chapter. Board members may also want to read it to ensure they fully understand the legal risks and responsibilities of their organization.

Chapter 4: For boards and directors

Legal issues for boards and directors are quite different from those of other volunteers, so this chapter might not be of interest to all volunteers or staff. That said, volunteers who are regularly involved in the organization, or who want to better understand the board, may choose to read this chapter. It might also be helpful to staff members whose duties include support to the board, or who want to know more about the board's role in the organization's legal responsibilities.

Chapter 5: Insurance

There's something in here for everyone, and it's organized in a way that you can easily find information specific to your role in the organization, or the types of insurance issues you want to know more about.

If you're not sure
where to find
something, try
the index at the
back of the book.



A caution

There are several reasons why you should not rely on this book for legal advice...

The information in this book is very general

This book introduces some basic legal concepts and looks at how they apply to some volunteer activities. There are lots of other legal issues that don't appear in this book. Also, many of the issues summarized here in a paragraph or two could easily take up a whole shelf in a law library. If you have a specific legal concern, you will need to examine the issue more thoroughly.

This book is mostly about prevention

By understanding some of the legal issues involved in volunteering, volunteers, staff and board members can avoid getting into trouble. But if an incident has already occurred, this book probably won't help you determine whether you are liable, or what you need to do next.

This book is not intended to provide or replace legal advice

Information in this book should not prevent you from getting legal advice. Lawyers are trained to take your unique considerations into account, something this book does not do. For a small fee, you can visit a lawyer and find out whether further legal advice is required (see *The Lawyer Referral Service* on page 67).

The law is always changing

Legal issues covered in this book will change over time. New laws will be created, some laws will be revised, and others will be struck down. The way courts interpret the law will also change. For these reasons, readers should not assume that information in this book is current.



CHAPTER

1

About the law

VOLUNTEERS ARE AN INTEGRAL PART OF OUR SOCIETY, AND CONTRIBUTE to our lives, our families and our communities in countless ways. The law, too, plays an important role in our society: it outlines our legal obligations to one another, and protects and compensates us when those obligations are not met.

And yet, there isn't a defined area of the law known as Volunteer Law, nor is there a particular Canadian or B.C. statute that outlines the roles and responsibilities of volunteers.

For this reason, this book begins with a general outline of the law and how it applies to volunteer activities.

In this chapter you will find:

- a beginner's guide to the law
- an introduction to volunteer duties, including
 - the over-arching duty known as the duty to take reasonable care, and the legal requirements for a finding of negligence
 - two other general duties that apply to most volunteers – the duty of confidentiality and the duty to not assault, and
- some defences that limit liability. ■

This book begins with a general outline of the law and how it applies to volunteer activities.



Beginner's guide to the law



GLOSSARY

Most legal terms in this book are defined the first time they are used. If you need a definition, check the glossary at the back of this book.

The law is a complex and ever-changing part of our society. It takes many different forms and applies differently to all kinds of situations.

In general, the law provides rules of conduct that apply to all people. Violation of these rules could lead to government action, like a fine or imprisonment, or private action – being sued by another party.

In Canada, the law has developed in two ways: there are written laws that have been set out by governments (statutes) and laws that have developed over time through decisions of the courts (common law). Both work together to form the law in Canada.

Written law: statutes and acts

Laws written by governments are often known as legislation, or specifically as statutes or acts. All of these terms mean the same thing: laws that have been written down.

Statutes define legal obligations and responsibilities covering almost every aspect of daily life, from harvesting crops to setting up a business to committing a crime. Statutes also define penalties for breaking the law, such as fines or imprisonment. For example, the Criminal

Code of Canada is a statute written (and amended) by the Canadian federal government.

While there is no specific statute that covers volunteers, there are many statutes that apply to the activities of volunteers or voluntary organizations in B.C. For example, the *Society Act* sets out the roles and responsibilities of volunteer directors on the boards of non-profit organizations. The *Child, Family and Community Service Act* sets out services to children and families, some of which may be provided by volunteers.

These and other statutory duties are discussed further on page 11.

The courts: common law and case law

Once laws have been set by governments, it is up to the courts to interpret them and make decisions in individual cases. This area of law, called *case law*, also draws from *common law*, a form of law that has developed over the years through past decisions of the courts.

In case law, judges look at how the law has been interpreted in the past, and use these decisions (called precedents) to make a decision in the case before them.

THE LAW IN CONTEXT

How the law might apply to you

- The B.C. government made a law requiring the use of seatbelts.
- The police can enforce the law by giving you a ticket if you or someone in your car is not wearing a seatbelt.
- If you disagree with the ticket, you could go to traffic court. A judge would interpret the law to decide whether you are guilty.
- If there was a car accident, you could go to the Supreme Court of B.C. A judge would interpret the law to decide who is liable (responsible) for injuries or damages caused by the accident, and how much an injured person would receive in compensation.

.....

Different courts deal with different kinds of legal issues. For example, in B.C. there is a provincial court with different divisions for things like traffic violations, small claims or criminal cases. The Supreme Court of B.C. hears more serious cases. Appeals to the decisions of these courts are made to the B.C. Court of Appeal and ultimately to the Supreme Court of Canada.

However, most legal issues involving volunteers do not go to court. If there is an issue between two parties – say, a dispute between a volunteer and an organization – the issue is often resolved through discussion, negotiation or mediation without ever going before a judge.

The legal status and liability of volunteers

The law defines a volunteer as a person who gives his or her services without any express or implied promise of being paid or receiving goods or services in exchange for his or her duties.

There is no one statute that sets out the legal rights, duties or liabilities of volunteers. In fact, few statutes specifically mention volunteers at all.

Instead, the law requires that everyone, including volunteers, is responsible for their own behaviour. Volunteers are personally responsible for their own acts when they are carrying out volunteer duties for an organization. Volunteers are not protected from lawsuits just because they are volunteers.

For this reason it is important for volunteers to know their legal duties and responsibilities and the situations in which they could become liable for another person's injury or loss.

That said, the relationship between the volunteer and the voluntary organization can play a role in determining liability, and in some situations organizations may be liable for the actions of volunteers. This is examined further in *Voluntary organization & volunteer: What is the relationship?* on page 35, and *Duty to those injured by volunteers*, on pages 37 to 39.

For these reasons, it is also important for organizations to understand the legal status, duties and liability of volunteers.

INTRODUCTION TO STATUTES

Human rights law

Human rights is an area of law that deals with people's right to equal treatment without discrimination. Depending on the circumstances involved, these laws may apply to volunteers, participants or staff and board members of voluntary organizations.

There are three statutes that work together to protect the human rights of people in B.C.

- The *B.C. Human Rights Code* covers areas like employment, wages, housing and services. It protects against discrimination based on race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age, or unrelated convictions or offences.
- The *Canadian Human Rights Act* is very similar. It applies on a federal level, such as government policy, a national employer, or a national volunteer organization.
- Canada's Constitution has a *Charter of Rights and Freedoms*. Its list of protected grounds of discrimination is open-ended, so judges can add to it without governments having to change the Charter. It applies to all actions of government, but has been interpreted to affect organizations outside of government. As it is the supreme law of the land, all laws in Canada must comply with it.

Human rights are discussed throughout this book, and are outlined in detail on page 41.



LIABILITY

If you do something that hurts someone or costs them money, you can be held “liable.” That means you can be asked to pay for damages or losses.

How the law might apply to volunteer activities

There are many different kinds of laws, and many different ways that they apply to volunteer activities. Here are just a few examples:

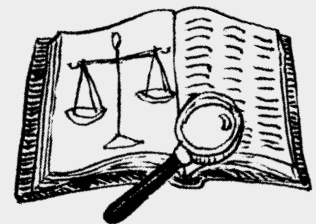
- A child is injured during a recreational activity, and a parent feels the volunteer wasn't properly supervising the child. The parent can ask the volunteer and the organization to pay damages.
- A volunteer who works on a rape crisis line can be asked to go to criminal court and answer questions about her conversations with a victim.
- A volunteer driving a small child without a car seat can get a ticket from the police.
- A volunteer brings his own piano to a function and it is damaged. The volunteer can take the organization to small claims court.
- A senior being assisted by a volunteer falls and is injured. The senior feels the volunteer didn't take reasonable care in ensuring the premises were safe and sues for damages.
- A volunteer uses excess force to control a child. The volunteer can be charged with assault in a criminal proceeding, and the volunteer and the organization can be sued for damages in a civil proceeding.

CHAPTER OVERVIEW

Putting it all together: understanding legal duties, liability and negligence

The sections of this chapter work together to provide a general introduction to the topic of volunteers and the law.

- *Beginner's guide to the law* explains how the law works in general, how volunteers are liable for their own actions, and how the law might apply to volunteer activities.
- *Introduction to volunteer duties* sets out some of the basic legal duties of volunteers, including the over-arching duty known as *the Duty to take reasonable care*. The duty to take reasonable care is essentially the duty to not be negligent.
 - *The five requirements of negligence* sets out the basic legal requirements for a finding of negligence. Negligence, and the legal liability that arises from it, is one of the major legal concerns of volunteers and voluntary organizations.
 - Two other general legal duties that apply to most volunteers are also introduced in this chapter – the *Duty of confidentiality* and the *Duty to not assault*.
- *Defences that limit liability* then describes some defences that limit the liability of volunteers and organizations. Understanding these limits can help volunteers and organizations minimize and prevent liability.



Chapter 2 takes the legal concepts introduced in this chapter and applies them to particular volunteer activities. For example, for volunteers caring for children, *The duty to take reasonable care* introduced in this chapter is expanded to include specific duties when caring for children, like the *Duty to supervise* and the *Duty to not abandon*. There is also some general information in Chapter 2 that will apply to the work of many volunteers. For example, most volunteers will benefit from reading *If an incident occurs*, *Safe spaces* or *The importance of volunteer job descriptions*.

Chapters 3 and 4 then set out how these and other duties apply to the work of staff and board members.

Introduction to volunteer legal duties

Every volunteer, like every individual, has legal responsibilities and duties. Volunteers who fail to meet these duties may be liable for injuries or damages that result.

These responsibilities or duties are primarily owed to those people, sometimes called participants or clients, with whom volunteers have direct contact. These people can include children in a daycare situation, people who are provided with advice from volunteers, or people involved in recreational activities organized by volunteers. Duties also extend to others who might be harmed by the acts of a volunteer, such as a visitor who slips and hurts themselves on a wet floor, or a homeowner whose window is broken during a baseball game.

Volunteers have a number of legal duties, depending on the type of activity in which they are involved. As explained in the *Chapter overview* at left, this chapter introduces a few general legal duties that apply to most volunteers, beginning with the duty to take reasonable care.

Duty to take reasonable care

By far, the most important duty of any volunteer is the duty to take reasonable care.

Every person has a duty to take reasonable care at all times, and in our everyday activities we are expected to do some things and refrain from others.

Some of these duties are statutory duties defined by laws. For example, we are expected to wait at a traffic light until it is green before proceeding through an intersection, and we are expected to control our dogs so that they don't injure anyone.

There are also duties not specifically set out by law, but covered by common law under a person's duty to take reasonable care. For example, we are expected to refrain from running down a crowded sidewalk in a way that might injure people, and we are expected to not leave our belongings in an area where they might cause another person to trip and fall.

Each of these expectations is a legal obligation that we owe to the people we might in-

jure if we did not take care. This means that a person cannot do anything without thinking about the consequences of their actions. If they don't take this reasonable care, they can be held liable for the damage they cause.

The definition of "reasonable care" has been widely reviewed by the courts and has evolved into the category of law called the law of negligence. If a person breaches their duty to take reasonable care, they can be held negligent.

This duty to take reasonable care applies to the actions of volunteers. For example, volunteers are negligent if they leave dangerous cleaning fluid in a children's play area, forget to use a wheelchair brake when leaving a person with a disability near a steep incline, or hold a sports activity on an inadequate or dangerous playing field or gymnasium.

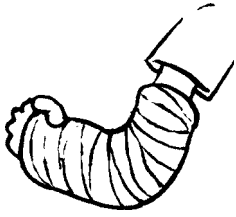
Failing to do something can also amount to negligence. For example, it is negligent to fail to properly supervise children when taking them on a hiking trip in the mountains.



DUTY

A duty is a legal obligation to other people to do certain things or act in a certain manner. Everyone has duties under the law.





NEGLIGENCE TEST

Not every accident or injury will result in damages (money payable) to the injured person. The injured person must first show the legal criteria of "negligence."

The five requirements of negligence

While every case is decided differently based on its own facts and issues, if a volunteer (or organization) is sued for negligence there are five basic requirements to be considered.

1. There must be a legal obligation to act in a certain way towards others.
2. The conduct must be below the standard a reasonable person would have shown in a similar situation.
3. Someone must be injured or suffer a loss because of the failure to act properly.
4. There must be a causal connection between the negligent act and the injury or damage.
5. The injury or damage must have been reasonably foreseeable.

1. There must be a legal obligation to act in a certain way towards others

Volunteers are not obliged to volunteer their services, but, once they do, they have an obligation to others – to both the people directly in their care, and to others who might be indirectly affected by their actions.

For example, volunteers in charge of taking a group of children to the local zoo have a duty of care towards the children in their direct care.

These are some examples of people who have a direct relationship with volunteers:

- children being supervised
- other volunteers, staff and supervisors of volunteers
- people with disabilities being transported
- people seeking advice, and

- passengers in vehicles driven by volunteers.

Volunteers may also be liable for damages suffered by someone who is not in their direct care. For example, volunteers who take teenagers from a juvenile detention home to the stables to ride horses each week may be held liable for damages caused by improper supervision. This is because the volunteers assume the responsibility of supervising the young people, and the stable owner relied upon the volunteers to do this properly. If it can be shown that the volunteers were not exercising reasonable control and supervision, they could be liable for damage to the horses or to the stable owner's premises.

These are some examples of people who could be harmed by people in a volunteer's care:

- mothers of children who are being supervised
- spectators of events run by volunteers
- pedestrians on streets where vehicles are driven by volunteers, or
- owners of locations where volunteer events are held.

2: The conduct must be below the standard a reasonable person would have shown in a similar situation

In general, volunteers must behave to the same standard of care that would be shown by a reasonable person with similar ability and experience in those particular circumstances. In other words, volunteers are negligent if their actions fall short of what the reasonable person would do (or avoid doing) in a similar situation.

For example, a reasonable person would not give kite-flying instructions next to powerlines,

or overuse an electrical outlet in a workshop setting.

If a volunteer is supervising children or people with special needs, the standard of care is higher. For example, a reasonable person would not allow children to use a wading pool without supervision because there is a well-known risk of drowning. These duties of care are explained further in Chapter 2 as they apply to specific volunteer activities.

Since the standard of care incorporates the skill and ability of the volunteer, volunteers with special skills or training will be held to a higher standard of care than unskilled volunteers. For example, a volunteer who is a nurse is expected to use his special skills if someone is injured. A board member who is a chartered accountant will be expected to apply stricter standards to her volunteer duties involving financial affairs.

On the other hand, volunteers who are not yet adults have a lower standard of care expected of them. They must behave in a reasonable manner considering their age, intelligence and experience in relation to other young people of the same age, intelligence, and experience. For example, if an average 16-year-

old with the same intelligence and experience would not be expected to know or do something, then neither would a 16-year-old volunteer.

3. Someone must be injured or suffer a loss because of the failure to act properly

Before anyone can sue a volunteer, they must suffer an injury or loss as a result of the volunteer's actions. For example, if a volunteer is teaching golf and a ball is hit into someone's yard, the person suing must prove they were injured or there was damage to their property.

That said, harm can include emotional harm as well as physical harm. For example, a volunteer could intentionally and without proof tell a parent that his child has been critically injured on a hiking trip, causing the parent to rush to the hospital. If the father suffers nervous shock as a result of this incident, the volunteer may be required to compensate him for this injury.

For emotional harm, the person must usually suffer an actual medical illness or injury, such as depression, mental anxiety, neurosis



REASONABLE PERSON TEST

Volunteers must behave to the same standard of care that would be shown by a reasonable person with similar ability and experience in those particular circumstances.

The organization may be liable

This chapter explains how volunteers are personally liable when they fail to perform a duty and cause a loss or injury. Organizations may also be liable if their actions contributed to an incident.

But organizations may be liable even if they did nothing wrong.

Under the concept of *vicarious liability*, an organization may be held liable for the actions of a volunteer if the volunteer was under the control and direction of the organization and acting within the scope of his or her responsibilities when the incident occurred.

Under the concept of *ostensible authority*, an organization may be held liable for the actions of a volunteer who orders goods or signs contracts if the volunteer appeared to have authority and the other party believed they represented the organization.

For these reasons, it is very important that volunteers and organizations clearly agree on volunteers' roles and responsibilities, and the organization's policies and procedures.

Vicarious liability and *ostensible authority* are discussed further on pages 37 and 38.





CONTRIBUTORY NEGLIGENCE

Negligence that contributed to the accident or injury, such as the injured person's own negligence.

or the worsening of an already present physical condition. As explained further below, it must also have been reasonably foreseeable that an action would have caused emotional harm to the injured person.

4. There must be a causal connection between the negligent act and the injury or damage

For a volunteer to be legally responsible, it must be shown that the damage or injury was a result of that volunteer's negligence. Volunteers may not be liable if the damage was not caused by their actions, or if the damage was caused by the injured person's own negligence.

For example, a volunteer who delivered a hot meal to a senior who developed food poisoning may not be liable if it is discovered the senior left the meal unrefrigerated for six hours before eating it.

Where injury or damage is a result of the injured person's own negligence, it is called contributory negligence, and the volunteer

cannot be held totally liable for the injury. This concept is discussed further in *Defences that limit liability* on page 17.

5. The injury or damage must have been reasonably foreseeable

A volunteer has a duty to prevent any reasonably foreseeable injuries or damages. For example, a rollerskate lying on a pathway should be picked up before someone trips on it and is injured.

But almost every activity – even just walking down the street – has some level of risk involved. It is up to the volunteer to consider the risks involved in an activity, including:

- the amount of risk involved
- the ease with which the risk can be eliminated, and
- the importance or value of a risky activity.

A court may also review whether:

- the risk had previously been the cause of an injury or a near injury
- the risk was well-known or had been pointed out previously, and
- the volunteer or organization followed usual practices in dealing with the risk.

For example, a volunteer taking adults with special needs on an overnight camping trip should consider all of the possible risks that might be involved, such as falling or getting lost. Some risks can be eliminated, such as starting early in the day to avoid travel after dark and making sure the participants have enough warm clothing. However, with a group of high-needs campers starting out late in the day, in the rain, or with a shortage of supplies, the volunteer should reconsider the usefulness of the activity given the risks involved.

OTHER DUTIES THAT MAY ARISE

Duty to not discriminate

This chapter introduces a few duties that regularly arise in the course of a volunteer's work. Many other duties arise less frequently, or only in specific situations. You will find more information about these kinds of duties in other areas of this book.

One such example is the duty to not discriminate. This duty applies to things like how volunteers and participants are selected, or how people are treated by volunteers and the organization.

Statutes that protect against discrimination were outlined in *Beginner's guide to the law* on page 8 of this chapter.

In Chapter 2, the duty to not discriminate is examined as it applies to people with disabilities.

Because it is generally organizations – not individuals – that are ultimately held liable for discrimination, the topic is then reviewed again at length in Chapter 3.

Duty of confidentiality

Volunteers have an obligation to keep information confidential. That means volunteers must be very careful about what they repeat to others, and should not repeat sensitive, private information without the permission of the person who confided in them. Private information that volunteers may discover in the course of their duties, such as information written in a file, should also be kept confidential.

This duty is more than remembering to not discuss participants when you get home – it includes taking care when repeating confidential information to co-workers, and in some cases caregivers or parents. Protecting confidentiality includes written records about clients or volunteer activities. *Keeping confidential records* is discussed further on page 39.

Confidentiality problems occur particularly in situations where a volunteer counsels people or does volunteer work in hospitals, corrections institutions, or private homes. For example, a volunteer in a legal advocacy position in the justice system must protect the confidentiality of information learned about a person's criminal record.

The importance of confidentiality increases with the kind of service a volunteer provides. For example, volunteers who help others complete their income tax forms must be particularly careful not to repeat information they learn.

Volunteers who release confidential information may be liable for any loss or injury that results. To sue a volunteer for breach of confidence, a person must first demonstrate that:

- the volunteer learned the information under an expectation of confidentiality, and
- the person suffered a loss or injury because the confidential information was revealed.

For example, a volunteer working with a person who has AIDS may assume this information is widely known and not take care in revealing it to another person. The volunteer may be liable for damages that result.

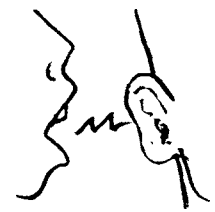
In some situations volunteers may have to break a promise of confidentiality. For example, volunteers who suspect a child is being abused have a legal duty to report this information to child protection services or the police. This duty is discussed further in *Duty to report child abuse* on page 23.

Under the criminal code, volunteers may also have a duty to report a criminal act, or a criminal act they believe will take place, if they have reasonable grounds to believe the life or well-being of another person is at risk. In this situation, it may be reasonable for the volunteer to put safety before the duty of confidentiality. If possible, this should be discussed with advisors or supervisors before action is taken.

Volunteers may also be called as witnesses in court. Usually, the interest of the court to find the truth is considered more important than the interest of confidentiality between individuals. This area of law continues to change. For example, rape crisis centres staffed by volunteers have challenged being required to reveal confidential information in court.

To protect confidentiality and prevent liability, volunteers should inform participants if they feel there is a chance they might have to reveal confidential information in the future. Participants can then make an informed choice about what to disclose.

Finally, volunteers owe a duty of confidentiality to the organization. For example, a volunteer who provides a fundraising mailing list to a competing organization may be liable for losses by the original organization.



Volunteers should not repeat sensitive, private information – even to co-workers, parents or caregivers – without the permission of the person who confided in them.

To protect confidentiality and prevent



liability, volunteers should inform participants if they feel there is a chance they might have to reveal confidential information in the future.



Duty to not assault

This chapter reviews duties that regularly arise in the course of a volunteer's work. The duty to not assault is an example of a duty that arises in rare circumstances, and should be obvious to most volunteers.

That said, knowing as much as possible about the legal aspects of assault will help a volunteer avoid liability.

An assault occurs when someone strikes another person or acts in such a way as to cause the other person to fear being struck. This means that a volunteer does not have to touch the other person to be liable for assault.

Concerns about assault can arise in a number of situations involving volunteers:

- a child being supervised may need to be held back or removed from a situation for her or his own safety
- a teenager in a volunteer's care may be approached by another teen or group of teenagers, and the volunteer may need to step in to protect the teen

- a volunteer may witness an assault between participants, or between a participant and another person, or
- a volunteer who is not provided with enough assistance, support or time off may become frustrated and act with unreasonable force.

The fear of being struck can be considered to be assault in some situations. For example, if a volunteer is a large man coaching a group of 10-year-old boys and he reprimands one of them by shaking his fist and advancing towards the boy, he may have committed an assault.

If the boy reasonably believed he was going to be hit and experienced anxiety and fear, the volunteer has technically committed an assault, even if he had no intention of hitting the child.

In this case, the volunteer must appear to be able to carry out the threat. For example, a threat by a slight man supervising ex-convicts bigger than himself would probably not be considered assault because a reasonable person would realize he is unable to carry out the physical force. If, however, he were carrying a baseball bat, he might be capable of harm, so it may be considered assault.

DUTY TO NOT ASSAULT

When a volunteer is provoked

If a volunteer is provoked into striking or threatening a person, there may be no liability for assault, provided no excessive force was used. For example, if a volunteer finds someone vandalizing his or her car and angrily hits the person, the volunteer may be liable for assault, but provocation could be used as a defence.

A volunteer should never hit a child or an adult with a disability even if there is provocation. A better course of action would be to have the child or adult removed from the activity, or arrange for additional volunteer supervisors.

In any case, concerns should be passed to someone in authority, since it is rare for a volunteer's responsibility to include use of force.

Civil vs. criminal assault

If a volunteer assaults a person, the injured person has two remedies. The injured person can sue for damages by way of a civil action and/or the government (crown prosecutors) can bring a criminal action, which can result in penalties such as imprisonment.

A civil assault action is started when the person who was assaulted claims compensation for the harm. A criminal action is begun only when the assault is fairly serious, such as when the assault results in extensive injury or a weapon has been used.

Defences that limit liability

A volunteer who causes an injury or loss to someone else is not always liable to fully compensate that person. Defences can be used to defend the actions of the volunteer or the organization to show they are not liable, or not wholly liable. Some defences discussed in this chapter include:

- the injured person contributed to the harm
- the injured person voluntarily assumed the risk
- the parent of caregiver of an injured person consented to the activity
- the injured person waived the right to sue
- the incident involved a standard practice or custom, and
- the volunteer was acting in self-defence or in defence of another.

The injured person contributed to the harm

Generally, people are expected to take care to protect themselves from danger and injury. If you are injured or your property is damaged partly as a result of someone else's negligence and partly as a result of your own negligence, you are seen to have contributed to the harm and are thus contributorily negligent.

For example, if a volunteer setting off fireworks clearly marked a "danger" area, a spectator who stood in the prohibited area and was struck and burned would be partly to blame

for his own injuries. The spectator should have realized the danger involved and avoided the area.

The age and intelligence of the injured person is a relevant factor in determining whether there is contributory negligence. The type of conduct that constitutes contributory negligence on the part of children or people with mental or physical disabilities will be different from others. For example, failure to fasten seat belts may be seen as contributory negligence for adults, but not for children or people with disabilities who were either unable to appreciate the risks, or unable to operate the seatbelt.

If the person who sues a volunteer is found contributorily negligent, the compensation awarded by the court will be reduced proportionately by the degree to which that person is at fault. For example, if a volunteer is sued for negligence and a judge decides that the other person is 25 per cent at fault, the volunteer will be responsible for 75 per cent of the damages.

Volunteers are also required to use reasonable care for their own safety. If a volunteer is injured during the course of her duties, but her own conduct was a contributing cause, the volunteer must assume responsibility for a portion of the injury.

OVERVIEW

These defences help describe the ways that volunteers and organizations can limit potential liability. Defences should not be used as excuses for doing nothing about a risky situation.

When considering these defences, it is important to remember that there may be different expectations regarding children and youth, people with mental or physical disabilities, and seniors.



CAUTIONARY NOTE

Parents cannot sign away the rights of a child

A child's rights are not affected by a consent form signed by a parent, nor can a child, being under age 19, give up rights by signing a waiver. In a case like this, the office of the Public Trustee could start an action on behalf of the minor, or a minor could begin a proceeding for an earlier incident once she or he becomes an adult.

A volunteer found to be contributorily negligent would have compensation reduced accordingly. For example, if a volunteer runs down a hallway with little regard for safety and trips over a loose doormat, the organization might be partly liable because it failed to secure the doormat properly, and the volunteer might be partly at fault for running in a reckless manner. If the compensation was \$15,000, and the judge ruled that the volunteer was 50 per cent responsible, the organization would have to pay \$7,500.

The injured person voluntarily assumed the risk

In some situations an injured person can voluntarily accept a risk and therefore accept some of the responsibility for any harm that is caused. This defence is called voluntary assumption of risk.

For inherently dangerous activities like skiing, river-rafting or mountain climbing, it is often assumed that people who participate are

aware of the risk and accept responsibility for their own safety.

For example, if a volunteer is teaching a group of people mountain climbing and someone is injured, the participant may have voluntarily assumed the risks involved in the sport. The outcome would be dependent upon the specific circumstances of the case.

A person can agree to accept risk either by implication or by directly agreeing to the risk. For example, the possibility of a player being injured during a hockey game is well known. It is assumed that players accept some level of risk of injury if they choose to participate in the sport. This is an implied assumption of risk.

People can also directly agree to the risk by signing an agreement or waiver, discussed further below.

The parent or caregiver of an injured person consented to the activity

Voluntary organizations that offer activities for children often require parents to sign consent forms. If a child is injured, this consent form may protect the volunteer from responsibility for allowing the child to participate in the activity. The parents will not be able to recover damages for negligence simply because the volunteer allowed the child to participate in that particular activity.

However, if the child's injuries were caused by the volunteer's negligence in supervising the activity, the consent form will not protect the volunteer.

For example, if a parent consents to a child with a heart ailment going on a hiking trip, the volunteer will not be responsible for any

LIMITS TO LIABILITY

When the cost of preventing the incident is too high

In some cases, courts may limit liability if the cost of eliminating the risk of an incident was too high. This defence takes financial resources into consideration, so the expectation of a large organization would be higher than that of a volunteer or a small organization with limited funding.

For example, a swimming area built with an inclined approach may create a hazard to swimmers. Given the cost and means of the organization responsible for those who visit the pool, it might be reasonable to pay \$1,000 to paint the area with a non-stick surface rather than to rebuild the area around the pool at a cost of \$10,000.

injuries that result from the overexertion of the child's heart while on the hiking trip. If, however, the child became lost from the group, fell into a ravine and suffered injuries, the volunteer could be responsible if there was a lack of supervision.

The injured person waived the right to sue

A person can waive (give up) his or her rights to sue in certain situations by signing a waiver or exclusion form. In most situations, the person who signs the waiver agrees not to sue the organization for loss, damage, injury or harm that may occur. For example, waivers may protect volunteers and organizations from claims for lost or stolen articles, incorrect advice, or injuries arising from negligence.

Waivers can be used to protect volunteers and organizations from claims by participants, and to protect organizations from claims by

volunteers. Participants or volunteers may be required to sign a waiver before they can participate in certain activities.

However, while waivers may seem like the ideal way for volunteers and organizations to eliminate the risk of liability, they are not. Waivers often do not hold up in court.

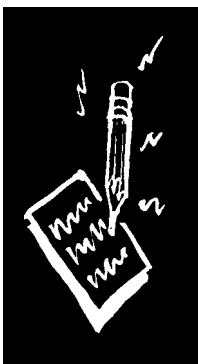
Courts will often not accept a waiver unless it is fair and the signer clearly knew the immediate and long term consequences of signing it. For example, if a volunteer signs a waiver absolving the organization from damages, and then is injured in a manner that is clearly caused by the negligence of the organization, the waiver may not protect the organization from having to pay damages.

Courts also do not consider gross or extreme negligence to be included in the term "negligence," and will reject forms that specifically exclude gross negligence. This is because it is too harsh for an injured person to allow an organization to avoid liability for this sort of negligence.



GROSS NEGLIGENCE

An act, or failure to act, in reckless disregard of the consequences to safety or property of another.



Drafting waivers

A waiver that is properly written and properly explained to the person signing it can exempt the volunteer and organization from liability for most things.

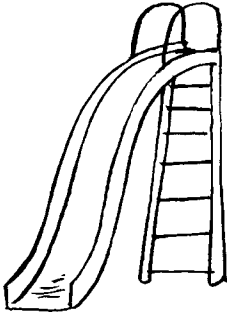
Specifically, the form should:

- expressly state what is being excluded (e.g. liability for injury or for lost or stolen items)
- be written so the meaning of the form is easily understood
- be applicable to a particular situation (e.g. a particular field trip or the duration of training that will be conducted on and off the premises)
- be clearly understood by the person before it is signed (by printing specific risks in bold type or having someone explain the form's legal significance), and
- not attempt to exclude all negligence

In some circumstances, it may also be appropriate for the form to be available in other languages.

Volunteers and organizations that depend on waivers should obtain legal advice. A lawyer will be able to determine when existing forms are adequate and offer specific advice on improving the form.





Some examples of gross negligence include leaving live wires exposed, not having fire extinguishers, or allowing stairs to deteriorate to the point where they collapse while someone is on them.

The incident involved a standard practice or custom

If a volunteer or organization follows the standard practices of other volunteers or voluntary organizations, it may not be liable for injuries that are the result of those practices. This defence may also be used to demonstrate that a volunteer was conforming to government safety standards.

For example, it may be the standard practice in a baseball league that there is one adult to supervise every six children playing in a game. A volunteer supervising an injured child may be able to argue that this was a reasonable standard practice, and that there was no failure to supervise.

It should be remembered, however, that no amount of repetition of a bad or careless cus-

tom will make it acceptable, regardless of how many organizations do the exact same thing.

The volunteer was acting in self-defence or in defence of another

Volunteers are entitled to use reasonable force necessary to defend themselves or their clients against any other person.

For example, a volunteer is supervising a group of children on a field trip when a group of older children starts harassing a member of the group. The volunteer rushes over to break it up, but by this time a fight has broken out. She accidentally injures one of these older children while trying to protect the child in her care. In this case, the volunteer may not be legally responsible to compensate the injured child because she can argue that she used reasonable force to protect someone in her care.

Any physical force used by a volunteer must be necessary and not out of proportion to the situation.

PREVENTING AND MINIMIZING LIABILITY

Disclaimers

A disclaimer is a clear statement that refuses responsibility for a claim or act. A disclaimer – sometimes called a *caveat* – can indicate that there may be some level of risk, or that information may not be complete or accurate.

For example, when food is served there may be a posted disclaimer stating the possibility that a peanut product could be used in any food being provided. This warns participants with severe peanut allergies that they may want to choose not to consume the food.

When giving information or advice, a disclaimer can state that the advice provided should not be taken as accurate, complete or up-to-date. The person giving the advice is saying in effect: “I am not positive. You should check this yourself” or “I can’t guarantee this is right.” The client has therefore been warned that it is unreasonable to rely solely upon the volunteer’s information.

As with waivers, a disclaimer is not an absolute guarantee against liability. The specific circumstances of the incident will be considered in determining whether a volunteer or organization is liable for damages.



An example of a disclaimer is provided at the opening of this book on page 6.



CHAPTER

2

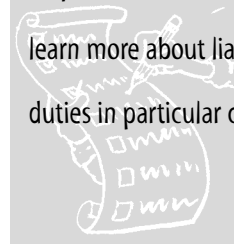
Applying the law to volunteer activities

THE PREVIOUS CHAPTER INTRODUCED A FEW GENERAL DUTIES and responsibilities that apply to most volunteers. These and other duties are different when they are applied to particular volunteer activities. For example, the duty to take reasonable care for a volunteer driver is different from that of a volunteer who gives advice. For some activities this chapter introduces new duties, such as the duty to report child abuse.

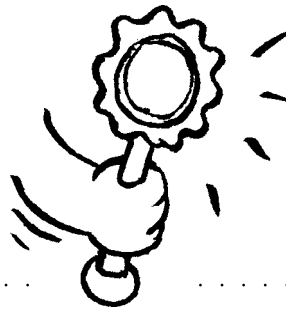
In this chapter you will find:

- information about how the law applies to particular volunteer activities, including caring for children, providing services to seniors and people with disabilities, giving advice, outdoor and adventure recreation, driving, print matters, and special events and fundraisers,
- additional information that may apply to many volunteers, including what to do if an incident occurs, providing safe spaces, and the importance of volunteer job descriptions, and
- prevention checklists for volunteers. ■

Legal issues vary greatly depending on the type of volunteer activity. This chapter will help volunteers and organizations learn more about liabilities and duties in particular circumstances.



Caring for children



PREVENTION

Prevention checklists for volunteers – including those caring for children – are provided on pages 31 and 32.

By far, the greatest legal concerns of volunteers and organizations surround the care and supervision of children.

When caring for children, the level of care required is not that of the average, reasonable person, but that of a careful parent or guardian. This is a high degree of care, since the volunteer must stand in the place of a parent who will take great care to protect a child against any foreseeable risks.

This higher duty of care is owed to both the clients (children), and to other people who rely on the volunteer to properly supervise the clients (parents). A responsibility is also owed to others who may be affected by children's activities.

This section reviews examples of duties relating to children that fall under the *Duty to take reasonable care* introduced in Chapter 1:

- duty to supervise
- duty to not abandon
- duty to rescue, and
- duty to not use excessive force.

This section also introduces a statutory duty that specifically relates to children: the duty to report child abuse.



Chapter 1 sets out how a volunteer's conduct will be held to that of a reasonable person in a similar situation. To avoid liability when caring for children, the level of care required is that of a careful parent or guardian.

Duty to supervise

Unlike other clients or participants, children are usually less able to recognize danger and protect themselves and other people. To ensure their safety, a volunteer must therefore assume a supervisory role over children.

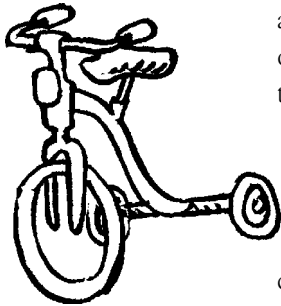
This supervisory role means that children are under the volunteers' direct care and control, and depend on them for protection.

There are numerous examples of the extra lengths to which volunteers must go in supervising children. Below are just a few examples of dangers that require extra care.

- Toxic paints, bleach or a heated iron used for a children's art class should not be left unattended. Liquids like turpentine should be stored in properly marked containers and kept out of reach.
- Trampolines are notoriously dangerous, and frequently a source of lawsuits over injuries to children. They should be used with appropriate supervision, and preferably with a parent's permission.
- Sports teams of teenagers on trips to another city should be supervised at all times, including awareness of activities planned with host billets.

However, no amount of supervision by volunteers can cover every potential danger to a child. For example, a volunteer supervisor on a hike can warn children to watch out for rocks or branches that they may trip over, but would not be expected to remove every rock or branch in every child's way. But if the path were particularly dangerous, the volunteer would be expected to take a different route.

The amount of supervision and control expected of a volunteer depends on the age and abilities of the child. For example, hazards that may affect a 15-year-old are significantly fewer than those that might affect a six-year-old. A 15-year-old will know, or should know, not to follow a lost ball out of a recreation area onto a busy street, but a six-year-old cannot be expected to know this.



Duty to not abandon

A famous Dr. Seuss character, Horton the elephant, once accepted the job of “baby-sitting” an egg. Horton sat on the egg, despite numerous natural and man-made disasters, through the fall, winter and spring.

While expectations of a volunteer would surely never go this far, having taken responsibility for the care and supervision of children, volunteers have a duty to continue caring for them until they are safely in the care of another person.

STATUTE IN ACTION

Duty to report child abuse

In B.C., any person who has reasonable grounds to believe a child has been or is being abused by a family member, employee, volunteer or other person, must report those suspicions to a child protection social worker.

The duty to report applies to everyone, even if you believe someone else is reporting the matter or a child protection social worker is already involved with the child.

If a child is in immediate danger, contact the police first, and then the child protection social worker. If the child is not in immediate danger, the child protection social worker will call the police if necessary.

A person who reports suspected abuse is not responsible for determining its validity and should not begin an investigation on his or her own.

Under the *Family and Community Service Act*, failing to report abuse carries a maximum penalty of \$10,000 and/or six months in jail. No action for damage may be brought against a person for reporting information unless the person knowingly reported false information.

It is important for volunteers to handle suspected child abuse with extreme care and protect the child and family's confidentiality. The matter should not be discussed with anyone – including teachers, parents or fellow volunteers – unless absolutely necessary, such as informing a supervisor that the suspected abuse was reported.

To report suspected child abuse, contact your local Ministry for Children and Families office, or dial O and ask for Zenith 1234.

Every voluntary organization that works with children in B.C. should have a copy of *Help Stop Child Abuse: A Handbook for Employers and Volunteer Coordinators*. It sets out how to recognize abuse and how to prevent it in volunteer situations. Copies can be obtained from the Ministry of the Attorney General through the blue pages of your local telephone directory or downloaded from www.ag.gov.bc.ca/hasca



A volunteer who takes children camping has a legal obligation to ensure they are properly supervised and cared for the entire time. If the volunteer leaves to get groceries in town and one of them is hurt, the volunteer may not only be liable for the harm, but may also be charged with a criminal offence.

For example, at the close of an organized activity at a community centre, a volunteer cannot leave until they are sure the children have all been picked up. If a parent does not show up, they must stay and help contact the parent or another caregiver.

A volunteer who takes children camping has a legal obligation to ensure they are properly supervised and cared for the entire time. If the volunteer leaves to get groceries in town and one of them is hurt, the volunteer may not only be liable for the harm, but may also be charged with abandonment.

Abandonment is the criminal offence of leaving a child under the age of 10 years alone without proper care or supervision. Criminal negligence is similar to civil negligence but it carries a possible penalty of imprisonment. Volunteers are unlikely to be charged with a criminal offence unless a serious accident occurs in their absence.

Volunteers who feel that they may have difficulty supervising children to a high level of safety should ask the voluntary organization to provide further support. For example, at a swimming pool two volunteers may be required, even with a small group, so that one

can stay at the pool while the other takes care of other issues that may arise, like helping in the change room or going with a child who needs to phone a parent.

Volunteers who do not feel they have adequate supervision for their group can and should refuse to proceed with an activity.

Duty to not use excess force

In some cases, the use of force may be required to protect the safety of a child under a volunteer's care. For example, a child who runs toward an open roadway may need to be blocked or picked up in a way that requires some force. A child who is hurting another child may need to be physically held back or removed from the area.

Force should only be used as a last resort. For example, if a group of children is at a playground with a single volunteer, and one child refuses to leave when the rest of the group is ready to go, the volunteer should make a reasonable effort to convince the child to go, or to have the group wait until the child agrees to go. Ultimately, however, to protect the child and the rest of the group, the volunteer may need to use force to get the child to leave the playground.

Force should never be used for disciplinary reasons. Parents and guardians are legally permitted to use reasonable force to discipline a child, but the force must not be excessive or out of proportion to the circumstances. However, a volunteer who uses force against a child may be liable for both civil and criminal assault. The duty to not assault anyone, including children, is discussed on page 16.

CAUTION

Attracting children towards danger

Anyone who creates a situation that is appealing and inviting to children may be responsible for injuries that result if the child is drawn into this situation and hurt. For example, a volunteer clown handing out balloons on the sidewalk of a busy street may be found liable for a child who dashes across the street to get a balloon. The volunteer should have anticipated the child's reaction and set up in a less hazardous spot.

Providing services to seniors and people with disabilities

Volunteers should take particular care when working with adults with special needs, such as seniors and people with mental or physical disabilities. The extra duty of care is similar to that set out in *Caring for children* on page 22 to 24.

Volunteers should be aware of two other duties that particularly apply to participants with special needs: the duty to accommodate and the duty of confidentiality.

First, under human rights law, volunteers and voluntary organizations have a duty to accommodate people with disabilities. That means reasonable efforts must be made to accommodate a person with a disability into a program or service normally available to the public.

For example, if a volunteer coordinates a workshop on making lanterns for an upcoming festival, reasonable efforts should be made to ensure that the service is accessible to people with disabilities. The workshop could be moved to a floor that is wheelchair accessible, or a table could be set up at a working level for people using wheelchairs.

Reasonable efforts must also be made to accommodate people with disabilities who require some additional assistance or supervision. For example, a child with a disability should not be continually excluded from outdoor activities because there are not enough volunteers to help with the child's special needs. The onus is on the volunteer organization to demonstrate reasonable efforts to find the additional assistance required to include the child.

Second, it is important to respect the rights of people with disabilities on issues of consent and confidentiality.

For example, volunteers should speak directly to people with disabilities about program arrangements. Volunteers should not simply make assumptions about a person's wants and needs, nor should they speak first with parents or caregivers.

Confidentiality should also be protected. For example, if a young person with a developmental disability wants information from a counsellor about sex, this information should not be revealed to anyone else, including the young person's parents. The only exception to the confidentiality rule is when a child is suspected of being abused (see *Duty to report* on page 23), or when the person has been asked to break confidentiality by order of the court (see *Duty of Confidentiality* on page 15).



HUMAN RIGHTS

The duty to not discriminate is explained at length on page 41.

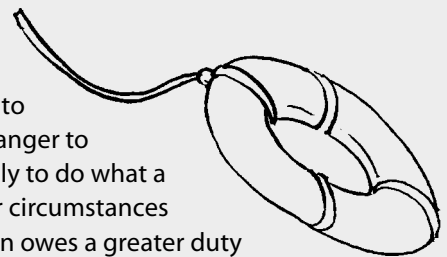
OTHER DUTIES THAT MAY ARISE

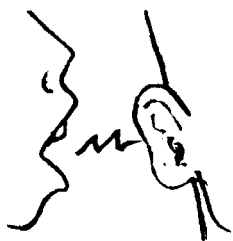
Duty to rescue

Volunteers are not required to place themselves in great danger to save another person, but only to do what a reasonable person in similar circumstances would do. However, a person owes a greater duty to rescue if he or she created the problem. Therefore, when volunteers are supervising others, they assume a responsibility to rescue those people if necessary.

Volunteers who take clients to a beach, for example, assume a duty to attempt to rescue a client having trouble. This duty might involve throwing a life buoy or other towing article, going out in a boat, or quickly getting help from others.

While there would probably not be an expectation for a volunteer to swim out to help if he or she had no water rescue training, a volunteer taking children to a beach would have the responsibility to ensure that someone at the beach – another volunteer or a lifeguard on duty – had that capacity.





If volunteers know or should know that a client will rely on their advice, they have an obligation to make sure that the information is reliable and correct.

Giving advice

There are many situations where volunteers may be called upon to give advice. Advocates, for instance, serve a primary role helping others navigate through a range of processes, from divorce mediation to welfare appeals to disputes with landlords. Other volunteers give less formal advice from time to time. This might include helping a young person make a decision about her education, or helping a parent access services in his community.

Volunteers must take particular care when giving information or advice. If they give out bad information or advice, they can be held liable for the damage that results.

For example, if a volunteer gives out financial advice, he or she may be liable for any errors or misinformation that cause an injury or loss to the client.

The four conditions for negligent statements

For a volunteer to be liable for a negligent statement or advice, an injured person must satisfy the following four conditions.

1. The volunteer must be in the business of giving advice

Voluntary organizations that act as resource centres or sources of legal advice may be considered to be “in the business” of giving advice to others. For example, trained volunteers at a family planning clinic may be held liable if they provide incorrect information. However, a volunteer driver making an offhand remark about birth control would not likely be liable.

2. The volunteer must claim to be, or have the appearance of being, skilled and able to give out advice

A volunteer who completes income tax forms or acts as a financial advisor may be said to be giving the impression to clients of being specially skilled. Law students who volunteer their services in a legal aid program are claiming they are a source of reliable legal advice.

However, a volunteer who gives advice at a picnic or dance will not likely be liable because she has made no specific claim to expertise, and is not in a business situation where that person is expected to be giving out reliable information.

3. It must be foreseeable that the other person will rely on the volunteers’ advice or statement

If volunteers know or should know that a client will rely on their advice, they have an obligation to make sure that the information is reliable and correct. If volunteers cannot ensure that the information is reliable and correct, they should tell the client this.

4. The client must rely on the information and suffer a loss or damage as a result

A volunteer cannot be held liable if a client did not follow the advice, or if no loss or damage resulted.

Take, for example, a volunteer organization that held a staged performance. A volunteer stage manager told a performer on the stage to step back, and by doing so he fell off the stage and injured himself. In this case, the volunteer may be legally responsible and required to compensate the performer for his injury because she knew the performer would rely on her advice and she should have foreseen the

danger of stepping backwards near the edge of a stage.

If the participant did not follow the volunteer stage manager's advice or there was no injury, the volunteer would not be held liable

for simply giving bad advice. However, stress and anxiety from incorrect advice may cause a client to become ill. These types of claims for negligence are discussed in *Someone must be injured or suffer a loss* on page 13.

Outdoor and adventure recreation

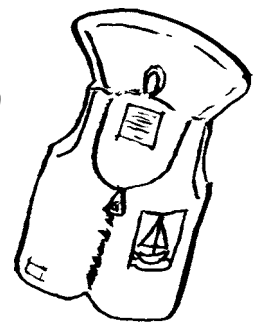
Many outdoor recreational activities involve a potential for injury. This is particularly true for adventure activities like rafting or snowboarding. Volunteer guides and organizations that coordinate these outings may be liable for injuries to participants.

As explained in Chapter 1, an injured person claiming compensation for damages must be able to prove negligence on the part of the volunteer or the organization that planned the trip. To prove negligence, it must be shown that the guide or organizers breached the standard of care owed to the participant, and that this failure resulted in an injury or loss.

In cases involving outdoor activities, a determination will need to be made as to what a reasonable outdoors person would do in similar circumstances. While it is difficult to determine what this reasonable standard might be, one can assume it would include carrying standard safety equipment and complying with known safety standards.

It is safest to assume that a reasonable outdoors person may not have as adventurous a spirit as some enthusiasts. For example, a reasonable person might turn back if the activity reached beyond their experience or weather conditions became particularly bad.

Volunteers and organizations who participate in outdoor and adventure recreation should take extra care to ensure that safety measures are in place. A prevention checklist is provided on page 31. Organizers should also ensure that insurance coverage is in place, as discussed in *Insurance options* on page 59.

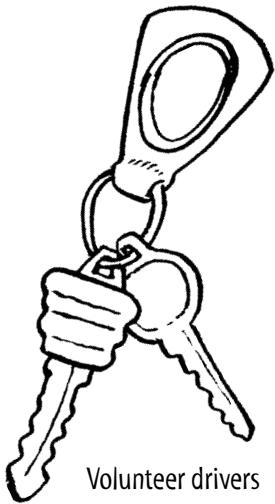


PREVENTING LIABILITY

If an incident occurs

- ✓ Make safety your immediate concern – both for the injured and others present.
- ✓ Record details of the incident as soon as possible, including, where appropriate:
 - ✓ date and time of the incident
 - ✓ who was present and witnessed the incident
 - ✓ weather conditions
 - ✓ emergency procedures or equipment that was used, and
 - ✓ a description of the area where the incident took place
- ✓ If necessary, ask other volunteers or participants to write their own accounts of the incident.
- ✓ Provide a copy of the incident report to the organization, and keep a copy for yourself.





Driving

As part of their responsibilities, volunteers often drive clients to activities or on personal trips such as to the supermarket or to a doctor's appointment. In other cases, being a driver is a volunteer's central function.

Whether driving is occasional or frequent, each volunteer driver owes a duty to take reasonable care and drive in a safe and careful manner. This duty extends to:

- safety of the vehicle itself (such as tires and windshield wipers being in good working order)
- safety within the vehicle (such as the use of seatbelts or child car seats, or stopping a passenger who extends an arm out the window)
- safety driving the vehicle (such as adhering to speed limits or making safe turns), and
- safety entering and exiting the vehicle (such as assisting small children or people with disabilities, or ensuring that it is safe to open a door and exit the vehicle).

Failure to take care could result in the volunteer driver being liable for negligence. For

example, if a volunteer fails to properly clear windows of ice and this causes an accident, the failure to take reasonable care could result in damages paid to those who are injured or suffer losses.

Volunteer drivers should ensure they have adequate insurance coverage. This is discussed in *Volunteers' own auto insurance*, on page 60.

Print matters

Materials, reports and newsletters

Volunteers and voluntary organizations often use printed documents in the course of their work, such as publishing reports or newsletters, or hosting a website on the Internet. Volunteers may also provide printed materials as resources for activities.

Although legal concerns around printed or published materials are very rare, it is important to note three possible legal considerations: copyright, libel and slander, and confidentiality and privacy.

Volunteer drivers should ensure they have adequate insurance coverage. This is discussed in Insurance options, beginning on page 59.

DUTY TO TAKE REASONABLE CARE

Higher standard of care required when driving children, seniors and people with disabilities

Volunteers owe a higher standard of care to passengers with special needs, such as children, seniors, or people with disabilities.

For example, a volunteer driver must ensure that passengers with special needs are using appropriate safety devices, including seatbelts and infant car seats, because these passengers may be physically unable to fasten the seatbelt themselves or to recognize the need for wearing one.

Volunteer drivers also owe a higher duty of care for actions within the vehicle, and for passenger's safety when they are entering and leaving the vehicle.



Copyright

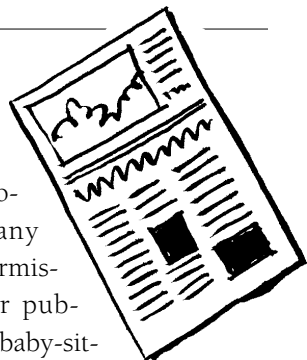
First, volunteers and voluntary organizations should not reproduce materials of any kind without the permission of an author or publisher. For example, baby-sitting guides published by another organization should not be photocopied and used when a volunteer is teaching a group of teenagers. Those materials may be provided by the originating organization for a fee, which is how they recover the cost of producing the original materials. Users have an obligation to pay the fee, or to obtain permission to use the materials free of charge.

Copyright extends to all matter of published materials, from news articles to photographs and illustrations, to material published on a website. It is common for individuals and organizations to allow nonprofit organizations to use materials free of charge, but permission should first be obtained.

Libel and slander

Libel and slander are untrue defamatory statements that lower a person in the esteem of right-thinking members of society. If the statement is made in a permanent form, such as being printed in a newspaper or letter, or aired on TV or radio, it is libel. Slander generally refers to defamatory statements that are spoken. A person does not have to prove they suffered a financial loss to receive compensation for libel or slander.

While it is very rare for libel cases to result in the payment of damages, publications do occasionally receive complaints. These matters



can often be resolved with the printing of a correction or retraction.

Confidentiality and privacy

The duty of confidentiality, discussed at length on page 15, includes the protection of a person's privacy in published materials.

For example, if a volunteer writes a letter to the editor of a newspaper about a government policy and reveals confidential information about a participant, he may be liable for this breach of privacy.

Volunteers and organizations that regularly publish materials may want to review the information on disclaimers provided on page 20.

FOR ALL VOLUNTEER ACTIVITIES

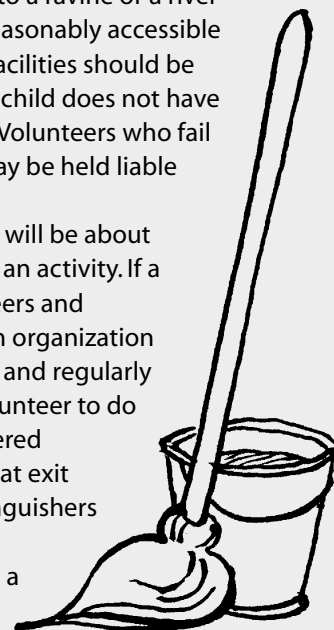
Safe spaces

Whether a volunteer activity is held inside or outdoors, at a voluntary organization's own premises or at a local community centre, volunteers have a duty to ensure that the space being used is safe.

For example, a campsite selected to accommodate young children should not be next to a ravine or a river with strong currents. It should be reasonably accessible to help in the case of an accident. Facilities should be near enough so that, for example, a child does not have to go far on their own to get water. Volunteers who fail to ensure the safety of the space may be held liable for injuries that result.

More often, volunteers' concerns will be about the safety of a building that houses an activity. If a space is commonly used by volunteers and participants, it may be helpful for an organization to create a building safety checklist and regularly check the building, or appoint a volunteer to do so. For example, it would be considered reasonable to occasionally check that exit doors are not blocked and fire extinguishers are available.

A prevention checklist, including a sample building safety check, is provided on page 32.





Special events and fundraisers

INSURANCE

For large events, organizers may need to consider whether additional insurance coverage is required. Insurance is discussed in Chapter 5.

Legal issues can arise when special events or fundraisers are held. Volunteers and organizations owe a duty of care to participants at these events – failure of this duty may result in liability. Organizers may also have specific duties set out by provincial or municipal statutes – failure to comply with these laws could result in fines or other penalties.

For example, if alcohol will be served, organizers will need a liquor license and training for those who prepare and serve beverages (in B.C., the Serving it Right program). Those serving alcohol may owe a duty of reasonable care requiring them to make reasonable attempts to stop a person who has been drinking from driving a car. Care should also be taken to ensure that food being served has been handled and stored properly.

For large events, such as a carnival or festi-

val, or a large public gathering such as a march or protest, organizers should check city by-laws. For example, organizers who fail to obtain a permit for a demonstration in the City of Vancouver may be held liable for the costs of policing the event. Other bylaws can include noise or parking restrictions.

If childcare or a children’s play area is to be provided, organizers should ensure that reasonable efforts are made to ensure children are safe, waivers are signed, and laws governing childcare are obeyed.

Depending on the type of event, other legal issues many arise, such as the safety needs of volunteers and participants who must leave late at night. Coordinators of an event may wish to form a committee to identify these kinds of risks and ensure that appropriate precautions are made.

PREVENTION



The importance of volunteer job descriptions

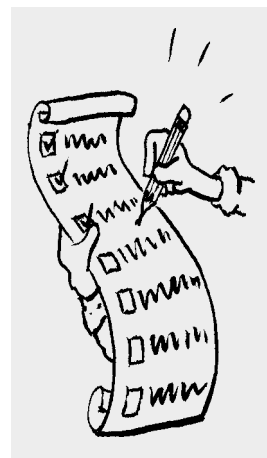
It is important for volunteers to have detailed job descriptions that clearly state rights, responsibilities, and the limits of authority as a volunteer. Although not a “contract,” a job description (or “placement agreement”) can help avoid problems and clarify liability issues.

Components of a good job description might include:

- a job or position title that clearly reflects the role the volunteer will play
- a list of qualifications the volunteer must have or maintain
- the volunteer’s functions and duties, and limits to the volunteer’s authority
- a clear statement of the time commitment required of the volunteer
- a summary of the training and supervision the volunteer can expect
- the names and positions of immediate supervisors and the line of authority above the supervisor, and
- a clear statement that the volunteer can and should refuse any activity they feel is unsafe or for which they feel there may be inadequate supervision.

If necessary, volunteers can write their own job descriptions and submit them to the organization for approval.

Prevention checklists for volunteers



KNOW YOUR DUTIES

To act within the law and avoid liability, volunteers must have a basic understanding of their legal duties. Understanding some basic duties – such as the duty to take reasonable care – is crucial for every volunteer. If necessary, ask your supervisor for help understanding the duties described in this book, or where you can get more information.

Know your job

- ✓ You should have a written description of your volunteer roles and responsibilities, and the organization's policies and procedures. If necessary, you can write one yourself and ask that it be approved.
- ✓ Record any changes to your duties.
- ✓ Know your direct supervisor and who to approach if you have a concern.
- ✓ If you are asked to do something outside of your agreed responsibilities, be sure the request is from a person in authority.
- ✓ Ask for help if you are not sure of a policy or procedure.
- ✓ If using your own materials, agree in advance who will pay for loss or damage.
- ✓ Do not proceed with an activity you feel may be unsafe.

Anticipate and prevent accidents

- ✓ Obtain safety procedures for your volunteer activity, and follow them carefully.
- ✓ Advise your supervisor if you feel you are not properly trained or experienced to proceed with an activity.
- ✓ Avoid supervising large groups of clients without sufficient assistance.
- ✓ Identify and eliminate risks before starting an activity.
- ✓ For potentially risky activities, consider the amount of risk involved and the ease with which risk can be eliminated. Obtain waivers. If necessary, reconsider whether the activity is important enough to proceed.
- ✓ Learn the safe practices of voluntary organizations doing similar activities.

Protect confidentiality

- ✓ Do not discuss clients outside of your job as a volunteer.
- ✓ Do not repeat information provided to you in confidence unless you are legally required to do so. Inform clients in advance.

Caring for children

- ✓ Know your additional duties to children:
 - ✓ duty to supervise
 - ✓ duty to not abandon
 - ✓ duty to report child abuse
 - ✓ duty to not use excess force.
- ✓ Take extra care to ensure that spaces are safe and hazards have been removed.

Providing services to seniors and people with disabilities

- ✓ Consider the higher standards of care for children, as outlined above.
- ✓ Make reasonable attempts to accommodate people with disabilities in activities or services available to the public.
- ✓ Respect the rights of youth and people with disabilities as independent people.
- ✓ Protect confidentiality.

Giving advice

- ✓ Foresee how clients might use your advice now or in the future.
- ✓ Provide a disclaimer clearly stating the limits of your knowledge or experience.



If an incident occurs,
make safety your
immediate concern –
both for the injured and
others present.

Outdoor and adventure recreation

- ✓ Clearly describe risks and required skills to participants.
- ✓ Screen participants to ensure they are able to safely participate in the sport.
- ✓ Ensure that leaders have safety training, equipment in good working order, and familiarity with the area to be visited.
- ✓ Review waivers with a lawyer. Ensure they are understood and signed by all participants.
- ✓ Do not proceed with an activity you feel may be unsafe.
- ✓ Ensure that adequate insurance is in place.

Driving

- ✓ Conduct a safety check of the vehicle.
- ✓ Ensure all passengers use seatbelts.
- ✓ Drive safely.
- ✓ Ensure safe entry and exit of the vehicle.
- ✓ If you have safety concerns, do not proceed.
- ✓ Take extra care for passengers with special needs, such as children, seniors or passengers with disabilities.

Print matters

- ✓ Get permission before reproducing published materials.
- ✓ Do not publish confidential information.
- ✓ Do not print libellous comments.
- ✓ Consider printing a disclaimer.

Special events and fundraisers

- ✓ If alcohol is served, ensure the appropriate license has been obtained and, in B.C. that servers have Serving it Right training.

- ✓ Take reasonable care with the handling and storage of food.
- ✓ Take extra care when providing childcare.
- ✓ For evening events, ensure that volunteers and participants can return home safely.
- ✓ For large events, check local bylaws.
- ✓ Consider special events insurance.

Safe spaces

- ✓ Check for potential hazards, particularly if there are children in your care.
- ✓ Ensure that facilities like playing fields or gymnasiums are adequate for the activity and do not contain hazards. When outdoors, check the surrounding area.
- ✓ Conduct regular building safety checks.

A building safety check might ensure that:

- ✓ first aid supplies are adequate and easily located
- ✓ fire extinguishers are visible and tested regularly
- ✓ exit doors are not blocked
- ✓ adequate lighting exists in all areas, including stairways
- ✓ electrical circuits are not overloaded
- ✓ extension cords are removed or taped down
- ✓ carpets, treads and tiles are secure
- ✓ handrails and exterior guardrails are in good repair, and
- ✓ water leaks are quickly fixed.

Check your insurance coverage

- ✓ Ensure that you (or the organization) obtain and maintain appropriate insurance.

This is discussed further in *Chapter 5 – Insurance*, beginning on page 57.



CHAPTER

3

For organizations and staff

VOLUNTARY ORGANIZATIONS OWE LEGAL OBLIGATIONS TO VOLUNTEERS and participants, but also to anyone who may be harmed through the negligence of the organization or its volunteers.

Some of these duties – for example, the duty to maintain a safe building – are owed not only to participants and volunteers, but to anyone who enters the building.

Organizations, like individuals, must fulfill their legal duties or they may be held liable for harm that results.

By being aware of its legal responsibilities and ensuring they are fulfilled, a voluntary organization can significantly reduce its risk of liability.

In this chapter you will find:

- an introduction to the liability of organizations
- an overview of some basic legal duties of organizations, including the duty to take reasonable care, duty to those injured by volunteers, duty to volunteers, duty to provide safe premises and duty to not discriminate, and
- prevention checklists for organizations. ■

By being aware of their legal responsibilities, voluntary organizations can significantly reduce their risk of liability.



Liability of organizations



The liability of an organization depends on whether it is incorporated or not incorporated.

This chapter is for voluntary organizations – that is, organizations that rely on volunteers to offer services to the community. For some organizations, coordinating volunteer activities makes up almost all of the work they do. Other organizations rely on volunteers only occasionally.

In general, many volunteer organizations can be seen to be made up of:

- *participants* or *clients* who take part in services of the organization
- unpaid *volunteers* who assist in delivering services to participants
- paid *staff* who coordinate or supervise volunteers, or deliver programs and services themselves
- *board members* (*officers* or *directors*) who are responsible for directing the organization, and
- *members* of an organization, to whom board members are usually accountable.

Organizations may be liable for the acts of its volunteers, staff or board members. Organizations also have specific legal duties, such as the duty to provide safe premises. If an organization fails to comply with its legal duties, it can be held liable for any damages that result.

An organization's legal status determines its liability. An organization can have two types of legal status: unincorporated or incorporated.

Unincorporated organizations

An unincorporated organization is informal and has no legal status – in the eyes of the law it simply does not exist. It cannot own land, sue people or be sued. Nor can it enter into contracts, such as rental agreements or purchase orders.

For example, if the president and vice-president of an unincorporated organization sign an agreement to rent a building on behalf of the organization, they are personally responsible for paying for it. If they do not pay they can be sued as individuals. The organization cannot be sued because it has no legal identity.

Members of an unincorporated organization can be responsible for paying the legal obligations of organization. In general, members who are most closely associated with the unincorporated association are most likely to attract personal liability. For example, if an organization defaults on a bank loan, the bank can personally sue the members who requested the



Nonprofits in B.C.

An organization is nonprofit if it is organized for an educational, charitable, cultural, religious, social or athletic purpose. In B.C., nonprofits can include co-ops, such as housing co-ops. A nonprofit organization can “be in business” and make money, but any profits must be used for the objectives of the organization and not for distribution to members.

In B.C., a nonprofit organization can:

- be incorporated under the provincial *Society Act*
- be incorporated under the federal *Canada Corporations Act, Part II*, or
- remain unincorporated.

Some nonprofits are incorporated under their own statute, such as the College of Midwives, under the *Health Professions Act*.

loan, and even each member of the organization who voted in favour of the loan. However, a member who did not know about the loan or who voted against it would probably not be found liable for payment.

Incorporated organizations

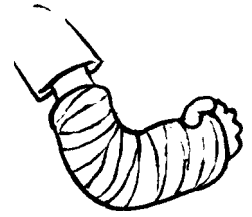
An incorporated organization is formal and has legal status – it can sue and be sued, it can own property in its own name, and it can enter into contracts.

While members of an unincorporated organization can be held personally liable as individuals, once an organization has become incorporated the organization takes on liability. This protection from personal liability is one of the most common reasons for organizations to become incorporated.

Under some circumstances, directors of organizations can be held personally liable (for example, for wages owed to employees). But a director of an organization will generally not be liable for the negligence of the organization as a whole, unless the director personally authorized the act that led to the liability, or acted outside of their role as a director of the organization. This is discussed further in Chapter 4.

Members of a society will normally only be liable for the amount they have contributed (through membership fees, for example.)

Finally, incorporated organizations are regulated by government and subject to strict obligations, such as annual reporting requirements. This may provide an expectation of trustworthiness, which can be important for nonprofit organizations that raise funds from sources other than membership fees and activities.



For general information about legal liability, negligence, and defences that limit liability, see Chapter 1.

LEGAL OBLIGATIONS

Voluntary organization & volunteer: What is the relationship?

No legal definition of the relationship between voluntary organizations and volunteers applies in all circumstances. Instead, several potential relationships may be applied by the courts in certain situations. Voluntary organizations should be aware of these potential responsibilities and the corresponding liability for the acts of their volunteers.

Employer & employee?

Because volunteers are not paid, they are outside the jurisdiction of employment law and are not treated as employees under statutes like the *Employment Standards Act*. However, a volunteer may be treated in a similar way to an employee in some circumstances. For example, a volunteer injured doing her duties may receive compensation similar to what an employee would have received under the *Workers Compensation Act*.

Master & servant?

These archaic terms refer to the legal relationship a person may have when they control or direct another person. As masters, volunteer organizations are responsible for adequately supervising volunteers and protecting them from unreasonable risks. As servants, volunteers can make their masters liable in law for injury caused to third parties.

Principal & agent?

In the eyes of the community, a volunteer can be seen as acting on behalf of an organization. In law, this relationship may be seen as a volunteer acting as an “agent” of the voluntary organization, making the organization – the “principal” – liable for the acts of its agent. For example, an organization may be held liable for a contract signed by a volunteer. This is discussed further under *Liability for unauthorized acts of volunteers* on page 38.

Duties of organizations



Staff members will not normally be personally liable for damages to other people, as long as they were acting within the scope of their job. However, organizations may be liable for the acts of their employees.

As explained earlier, a duty is a legal obligation to other people to do certain things or to act in a certain manner. Every person has duties under the law.

Voluntary organizations – including the staff members who operate them – owe legal duties to participants and volunteers, to each other as staff, to directors and members of their organizations, and to anyone who may be affected by the acts of the organization. Failure to comply with these duties can make the organization liable for damages.

As explained in *A beginner's guide to the law* on page 8, some of these duties – such as the duty to take reasonable care – have evolved through the courts over time. Other duties are specifically set out in written law, known as statutes. For example, the duty to maintain the organization's legal status is a specific duty under B.C.'s *Society Act*.

Some important legal duties of organizations are discussed in this chapter:

- duty to take reasonable care (negligence)
- duty to those injured by volunteers
- duty to volunteers
- duty to provide safe premises
- duty to not discriminate



Information provided to organizations in this chapter should be read *in addition* to the information provided in Chapter 1.

For example, the *Duty to take reasonable care* for volunteers is described at length on pages 11 to 14. *Defences that limit liability* are outlined on pages 17 to 20.

Information in this chapter will help organizations *add* to their understanding of liability and duties, now from the specific perspective of organizations.

Duty to take reasonable care

The most important duty of an organization is one that voluntary organizations share with every person: the duty to take reasonable care. Specifically, this means that voluntary organizations have a duty to avoid injuring or otherwise harming anyone that the organization can foresee might be affected by its actions.

The duty to take reasonable care is discussed at length for volunteers in Chapter 1 on pages 11 to 14. Information in this chapter will help organizations add to their understanding of liability and duties from the specific perspective of organizations.

In general, while a volunteer has a duty to take reasonable care during a particular activity, the organization has a broader duty to ensure that all activities it organizes are safe. This duty will change depending on the types of activities in which the organization is engaged.

For example, a volunteer conducting a workshop where tools are used may be expected to take reasonable care by ensuring that the tools are used properly and those requiring assistance are properly supervised. The organization, however, would be further expected to ensure that the activity is appropriate for the group, the equipment is not faulty, volunteers are properly trained, and safety guidelines are known and followed.

The standard of care expected of a voluntary organization is the same as any other type of organization. In other words, organizations cannot expect to have a reduced duty to take reasonable care just because they are nonprofit or based on volunteers rather than paid staff.

The most prudent course for a voluntary organization is to take every precaution to reduce the risk of liability by placing a premium



Organizations are expected to take only reasonable measures to avoid a loss or injury. For example, if a volunteer talking on the phone is injured when the phone line is struck by lightning, the organization would probably not be liable because it is highly unlikely a person would be injured in this way and there is nothing the organization could reasonably have done to prevent the injury.

on safety and prevention. By identifying and eliminating possible risks, the organization will greatly reduce its risk of liability.

Duty to those injured by volunteers

An organization may be liable for the acts of its volunteers. This liability can extend to the negligent acts of its volunteers (vicarious liability) and also some unauthorized acts of volunteers (ostensible authority).

Liability for acts of volunteers (vicarious liability)

If a volunteer is sued for harm caused by his or her actions, the organization may become liable through the legal principle of *vicarious liability*.

Vicarious liability is when the law holds one person or organization responsible for the misconduct of another because of the relationship between them, even if the person held liable did not participate in or agree to the wrongful act.

This principle is used most frequently in cases where an employee causes injury to someone while on the job. Usually the employer is held vicariously liable for the employee's wrongful act, which means that both the employer and the employee may have to compensate the injured person. This principle may also be applied to volunteers.

For example, a volunteer who teaches carpentry skills to youths may carelessly leave a power saw turned on while she goes to help someone in the group. If a participant tries to use the saw without supervision and is hurt,

the organization may be held legally responsible to compensate the youth for injuries caused by the negligence of its volunteer.

An organization may be held vicariously liable for the actions of its volunteers only if the following two conditions are met:

- the volunteer was under the control and direction of the organization, and
- the volunteer was acting within the scope of his or her responsibilities when the incident occurred.

These concepts are discussed below.

The volunteer was under the control and direction of the organization

In simple terms, volunteers will be seen to be under the control and direction of the organization when the organization directs them as to what should be done, or when, where, and how their responsibilities should be fulfilled.

For example, a volunteer officer assistant who is supervised by a paid staff person may be seen to be under the control and direction of the organization. If the volunteer caused

STATUTES IN ACTION

Duty to report child abuse

In B.C., any person who has reasonable grounds to believe a child has been or is being abused by a family member, employee, volunteer or other person, must report those suspicions to a child protection social worker. This duty is discussed on page 23.

Every organization that works with children in B.C. should have a copy of *Help Stop Child Abuse: A Handbook for Employers and Volunteer Coordinators*. It sets out how to recognize abuse and how to prevent it in volunteer situations. Copies can be obtained from the Ministry of the Attorney General through the blue pages of your telephone directory or downloaded from www.ag.gov.bc.ca/hasca



Legal issues like vicarious liability are always changing. Organizations facing serious threat of a lawsuit should always consult a lawyer.

harm or loss of property to another person in the course of her duties, the organization could be sued. The organization could also be found to be vicariously liable for the negligence of the volunteer.

The volunteer was acting within the scope of his or her responsibilities when the incident occurred

Volunteers are considered to be acting within the scope of their responsibilities when they are taking part in a program approved or directed by the organization. A volunteer's actions are within the scope of the organization's responsibility even if a volunteer did not carry out instructions correctly.

For example, consider the case of a volunteer swimming instructor who follows an organization's instructions and takes beginners to the deep end of a pool to teach them to tread water. If an injury occurs, the organization may be liable because the instructor is acting within the scope of his or her responsibilities.

The organization will not usually be vicariously liable if volunteers do something outside the scope of their volunteer activities. For example, a volunteer driver is not acting within the scope of her responsibilities if she drives the organization's van across town to run an errand of her own. In this situation the organization would not be liable because it did not approve this type of activity.



PREVENTION

From screening to termination: policies that prevent liability

It is important for organizations to have policies covering all aspects of their volunteers activities. For example, organizations may have policies for:

- **screening** volunteers, including application forms, checking references, and conducting police checks
- **job descriptions**, including the roles and responsibilities of volunteers, and between volunteers and organizations
- **orientation**, including organizational policies that affect volunteer activities
- **training**, including any safety training
- **supervision**, including ensuring that volunteers understand their duties and follow safe practices
- **follow-up**, including assessing progress and addressing outstanding concerns.

Many resources are now available to help voluntary organizations develop policies.

Liability for unauthorized acts of volunteers (ostensible authority)

An organization may be liable for the acts of its volunteers even when a volunteer acts without authority from the organization.

For example, an organization can be held liable for a volunteer who orders goods, signs a c.o.d. order, or enters contracts for the rental or purchase of land or goods.

The law was developed in this way to protect businesses that enter into contracts with people who hold themselves out to be representatives of an organization, but later try to back out of responsibility.

In order for the organization to be liable the following two conditions must be met:

- the volunteer reasonably appeared to have the authority to do the act (e.g. sign contracts), and
- the other party did not know that the volunteer lacked the authority to do business on behalf of the organization.

For example, if a volunteer signs an agreement to rent space for a program or activity,



OSTENSIBLE AUTHORITY

Apparent authority to do something or represent an organization or another person.

For volunteers under 19, consider using a consent form that sets out activities and duties. Have it signed by the volunteer, the organization and a parent or guardian.

the organization may be held to the rental agreement even if it did not authorize the volunteer to sign it. The organization would be liable because, to a reasonable person, it appeared the volunteer had the authority of the organization, and the landlord did not know the volunteer was acting without authority.

Duty to volunteers

Organizations that benefit from the contributions of volunteers are expected to protect them from unreasonable risk of injury or loss due to their volunteer activities.

For example, an organization has a duty to select competent and qualified staff to oversee volunteer activities. In some cases the organi-

zation may also have a duty to select competent and qualified volunteers, and to ensure there are enough staff or volunteers to carry out activities safely.

Other reasonable expectations of organizations include ensuring that facilities are adequate, necessary training or safety equipment is provided, and screening is conducted to ensure that participants and volunteers do not put others at risk.

For example, an organization that hosts a week-long children's summer camp would be expected to make reasonable efforts to ensure that those volunteering at the camp can do so without risking their own safety. This might include providing a trained lifeguard, ensuring there is adequate safety equipment, or screening other volunteers to ensure they are appropriate for working with children.

DUTY OF CONFIDENTIALITY

Keeping confidential records

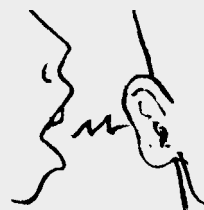
Volunteers and voluntary organizations each owe a duty of confidentiality to the participants they serve. This duty is discussed at length on page 15.

Organizations owe a particular duty to ensure that records about participants are kept confidential. There are three main concerns in keeping records.

First, it is important to protect the confidentiality of clients. Volunteers or staff who have access to files with confidential information should be made aware of policies regarding confidentiality. Information of an extremely private nature should not be kept in a file that can be easily accessed by others.

Second, it is important to note that there are some occasions when, under the law, files can be opened. For example, records made by a rape crisis counsellor can be subpoenaed by the defence in a criminal trial. While this area of law continues to undergo change, a counsellor in this situation should inform a client that the file could be subpoenaed, or may alternatively choose not to record certain information.

Finally, it is important to make every effort to ensure that records do not contain false, or unsubstantiated derogatory or demeaning comments. Under *B.C.'s Freedom of Information and Protection of Privacy Act*, records kept by any government agency must be provided to a client who requests to see his or her own records. There may also be circumstances, now or in future, where non-governmental agencies are called upon to reveal certain records to a client who asks to see them.

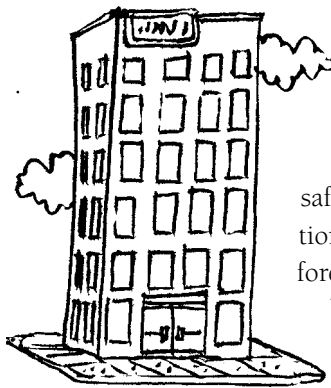


Offenders as volunteers

Organizations approached by an offender who wants to volunteer as part of his or her sentence should:

- speak to the probation officer or person in charge
- be aware of the nature of the offence
- consider the suitability of the volunteer
- make a written agreement, and
- conduct regular follow-up.

Duty to provide safe premises



Voluntary organizations have an obligation to provide safe premises to everyone who enters an area under its control, including buildings or land owned or rented by the organization and other spaces used for its activities, such as a park or a room at a community centre.

The duty to provide safe premises was introduced for volunteers on page 29. For organizations, the duty to provide safe premises extends further than that of a volunteer. For example, a volunteer might be expected to clean up water spilled during an activity, while an organization would be responsible for things like providing fire extinguishers, repairing a loose railing, or following provincial safety regulations for elevator maintenance. Many of these duties fall under B.C.'s *Occupier's Liability Act*, which sets out the legal duties owed to those who come onto an occupier's property, including trespassers. The duty to provide safe premises also falls under the general duty to take reasonable care.

In general, the duty to provide safe premises compels organizations to act reasonably to prevent foreseeable harm, and extends to both people and their property.

For example, if an organization agrees to bring a volunteer's computer onto the premises for the organization's purposes, but cables are not secured and someone trips over them, the organization may be responsible for damages.

The organization will have a greater obligation if the people who use the building have special safety needs because they are children, seniors or people with disabilities. For example, if part of the building is used as a daycare and the play area is near a furnace or hazardous machinery, the organization must take reasonable care to ensure the safety of the children. It can do this by putting physical barriers around a furnace or by moving a machine to another location.

Organizations may wish to create a building safety checklist and ensure that inspections are regularly conducted, either by staff or volunteers. A prevention checklist, including a sample building safety check, is provided on page 32.

Can volunteers and organizations sue each other for failure to meet promises?

Voluntary organizations normally do not have a duty to volunteers in the same way they do for employees. Organizations have a consensual, rather than contractual, relationship with their volunteers as there is no consideration (like payment) to make the relationship binding upon each other.

For that reason, volunteers would not normally be able to sue an organization for failing to provide them with opportunities to volunteer, nor would an organization normally be able to sue a volunteer who did not fulfill a commitment.



Duty to not discriminate

In general, Canadian law protects all people from discrimination. This area of law, known as human rights law, deals with people's right to equal treatment without discrimination.

As mentioned briefly in *Beginner's guide to the law* on page 9, three statutes apply to the human rights of people in B.C. Each statute affords protection to individuals somewhat differently. For example, under the *B.C. Human Rights Code* it is against the law to discriminate against a person in the area of employment (which may include volunteers in some cases) because of their race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or because of unrelated convictions or offences. Other statutes cover different categories of people in different situations.

Nonprofit organizations may be exempt from some human rights provisions. For example, B.C. nonprofits that serve and promote the interests of people on the basis of physical or mental disability, race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, may be exempt when it comes to granting a preference to those they serve. For example, a nonprofit organization that serves the Italian community could decide to accept only Italian volunteers and to limit its services to that community. The same applies to other groups, such as women's or men's organizations, political parties, religious institutions, or minority organizations.

That said, it is generally prudent for organizations to act without discrimination in all activities, and to assume that protection from discrimination could extend to any activities or

services it would normally make available to the general public.

For example, an organization's duty to not discriminate might apply in:

- selecting participants
- selecting volunteers
- protecting volunteers and participants from discrimination once they have been selected, and
- taking reasonable steps to prevent or stop discrimination when it occurs, such as between a participant and volunteer, or between two volunteers.

Organizations also have a legal obligation, called *reasonable accommodation*, to change activities and policies that are discriminatory. For example, to avoid discriminating on religious grounds, a policy about hats in a workshop would need to be changed to accommodate participants who cover their heads for religious reasons. The arrangement of an activity in a gymnasium may need to be changed so that a person who uses a wheelchair can participate. This duty is further discussed in *Providing services to seniors and people with disabilities* on page 25.

The onus is on the organization to make reasonable attempts to correct a discriminatory policy or activity. It may need to show that reasonable efforts were made to accommodate the person, to the point where financial hardship or some other serious issue prevented the accommodation from going further.

An organization that fails to address and resolve discrimination may face a human rights complaint. A human rights tribunal may then direct the organization to compensate the person and change its practices.

CAUTIONARY NOTE

Who can volunteer?

Organizations may need to consider whether the law permits certain people to volunteer.

For example, visitors or newcomers to Canada may not be able to work as volunteers unless they have a working visa. Programs like Employment Insurance and social assistance may also limit the volunteer activities of recipients.

Prevention checklists for organizations and staff

KNOW YOUR DUTIES

This book introduces general legal issues and some basic duties of organizations. Staff of voluntary organizations may need further legal information about liabilities and duties that arise from their organization's particular activities.

Know your legal duties

Organizations and staff should fully understand the legal duties outlined in this chapter, including:

- ✓ duty to take reasonable care (negligence)
- ✓ duty to those injured by volunteers
- ✓ duty to volunteers
- ✓ duty to provide safe premises, and
- ✓ duty to not discriminate.

In addition, organizations and staff should be aware of general duties introduced at the beginning of this book, including:

- ✓ duty of confidentiality, and
- ✓ duty to not assault.

Finally, an organization may want to:

- ✓ Create a liability team or appoint someone to be responsible for working through legal duties and considering ways to ensure each duty is fulfilled.



It is important that organizations and staff consider these prevention measures in addition to those set out for volunteers on pages 31 to 32.

Make sure you know your responsibilities as staff

- ✓ Obtain a written understanding of your duties.
- ✓ Record any changes to your duties.
- ✓ Be aware of policies and procedures regarding your duties.
- ✓ Know your direct supervisor and be aware of the person with authority you can go to if you have a concern.
- ✓ If you are asked to do any tasks outside of your list of responsibilities, be certain that the request is coming from the person in authority.
- ✓ Ask for assistance if you are not sure of a policy or procedure.
- ✓ Refuse to proceed with an activity that you feel may be unsafe or for which you feel there may be insufficient supervision.
- ✓ Act upon requests from the board to fulfill the organization's duty to maintain its legal status, or advise the board if you are unable to do so.
- ✓ Be aware of your rights and responsibilities as an employee under the *Employment Standards Act*, or your collective agreement.

Make sure volunteers know their responsibilities

- ✓ Provide volunteers with documents outlining their roles and responsibilities.
- ✓ Provide volunteers with documents about the organization's policies and procedures.
- ✓ Record any changes to a volunteer's duties.
- ✓ Ensure that volunteers know their direct supervisor and are aware of the person with authority they can go to if they have a concern.
- ✓ Ensure that volunteers are given instructions by those with appropriate authority.
- ✓ Advise volunteers to ask for assistance if they are not sure of a policy or procedure.
- ✓ Advise volunteers to refuse to proceed with an activity they feel may be unsafe or for which they feel there may be insufficient supervision.
- ✓ Make sure volunteers know the limits of their authority, such as signing purchase orders, spending money they expect to be reimbursed, or entering into agreements (verbal or written) on behalf of the organization.

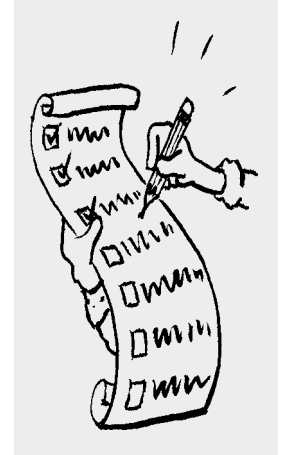
SAFE SPACES

In addition to the safe spaces checklist outlined for volunteers on page 32, organizations should:

- ✓ Assign a person or committee to conduct regular building safety checks.
- ✓ Prepare and distribute safe spaces guidelines to volunteers.
- ✓ Ensure that adequate insurance is in place.

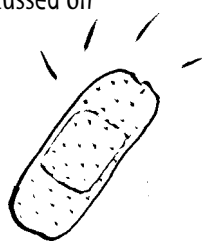
Properly screen and train volunteers

- ✓ Create volunteer enrolment or application forms that clearly ask about skills and abilities that may be required.
- ✓ Create a volunteer interview form for enquiring about specific areas of concern and recording the responses.
- ✓ Ask for references, and follow them up.
- ✓ If necessary, conduct criminal records checks or driving record checks.
- ✓ Provide new volunteers with documentation that relates to their roles and responsibilities, the organization's policies and procedures, and any specific safety instructions for equipment or activities they may be supervising.
- ✓ Train volunteers for activities with which they have limited experience, and supervise the activity as long as necessary.
- ✓ Regularly check-in with volunteers about their activities.
- ✓ Occasionally check-in with participants to ensure there are no problems.



If an incident occurs, immediate safety should be the primary concern. Volunteers should also be instructed to record as many details as possible.

This is discussed on page 27.



Volunteers' legal concerns

surrounding special events and fundraisers is just one topic in Chapter 2 that applies equally to organizations. Review the volunteer checklists on pages 31 and 32.

Anticipate and prevent accidents before they occur

- ✓ Obtain safety procedures for volunteer activities, and ensure they are followed carefully.
- ✓ Ensure that volunteers are properly trained or experienced to proceed with an activity you ask them to do.
- ✓ Ensure there are sufficient numbers of volunteers to supervise activities.
- ✓ Before proceeding with an activity, consider the amount of risk involved, the ease with which the risk can be eliminated, and the importance or value of a risky activity.
- ✓ Obtain waivers for potentially risky activities.
- ✓ Learn the safe practices of voluntary organizations doing the same activity.

Act without discrimination

- ✓ Ensure the organization has an anti-discrimination policy, and that it is posted or provided to volunteers and staff members.
- ✓ Make efforts to reasonably accommodate volunteers or participants with special needs based on issues such as disability or religion.
- ✓ Ensure the organization has processes to deal with discrimination concerns.
- ✓ Create other policies, as necessary, such as harassment policies and processes for dealing with them.

Keep records confidential

- ✓ Protect confidentiality by keeping sensitive files safe.
- ✓ Remember that files may be opened by the client or requested by the courts.
- ✓ Ensure that records do not contain false, unsubstantiated or derogatory comments.

Check organizational responsibilities with the board

- ✓ Communicate with the board about legal obligations, such as reporting requirements, that may be delegated to staff.

Check insurance coverage

- ✓ Ensure that appropriate insurance covering all activities is obtained and maintained.
- ✓ Check that volunteers obtain and maintain appropriate insurance for their activities (for example, car insurance).

Supervise volunteers involved in specific activities

Organizations hold the ultimate responsibility to orient, coordinate, train and supervise volunteers involved in special activities, such as those introduced in Chapter 2. Checklists for these activities are provided on pages 31 and 32.

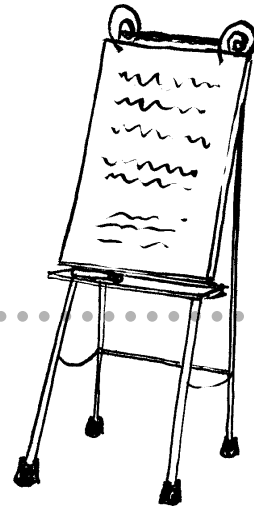
- ✓ Caring for children
- ✓ Providing services to seniors and people with disabilities
- ✓ Giving advice
- ✓ Outdoor and adventure recreation
- ✓ Driving
- ✓ Print matters (materials, reports and newsletters)
- ✓ Special events and fundraisers



CHAPTER

4

For boards and directors



ONCE ELECTED, A BOARD OF DIRECTORS ASSUMES RESPONSIBILITY for the affairs of the organization and owes a duty of trust to participants and volunteers, to each other as board members, to the organization's staff, to members of the organization, and to anyone who may be affected by the acts of the board. Directors also have a duty to comply with the law under a variety of statutes.

Directors must use skill and care in managing the organization, be honest, and work in the organization's best interests. Failure to comply with these duties can make the organization or the board liable for damages, and can sometimes result in the personal liability of individual directors.

In this chapter you will find:

- an introduction to the liability of boards and directors
- an overview of some basic legal duties of boards and directors, and
- prevention checklists for boards and directors. ■

Case law has evolved so that directors can be held personally liable in many situations.



Liability of boards and directors



The liability of directors depends, in part, on the organization's status. This is discussed at length in the introduction to the liability of organizations on page 34.

Directors' liability is becoming more and more of a threat to organizations. Historically, the directors of incorporated organizations were shielded against certain liability. Indeed, that is often the main reason why organizations incorporate: to avoid personal liability for those running the organization. Corporate laws are structured so that a company is liable for certain things, but the staff, volunteers and directors are not (in most situations) personally liable. There are exceptions to this rule.

Over the last 15 years or so, this corporate shield has been eroded or pierced by the courts. Case law has evolved so that directors can be held personally liable in a good number of situ-

ations (which are described below). At the same time, more lawsuits have been brought against directors, officers, employees and volunteers of corporations. In addition, new statutes have been created that impose personal liability on directors and officers.

As a result, organizations have been forced to think about ways to manage risk – both in terms of prevention and cure. Although claims against nonprofit board members are rare, the fear of potential liability grows. The important thing is to understand the duties of directors and officers, assess potential liability, try to prevent the liability as much as possible, and obtain insurance if needed.

Personal liability for the organization's financial obligations

In some circumstances, directors of nonprofit organizations may be personally liable for the organization's financial obligations.

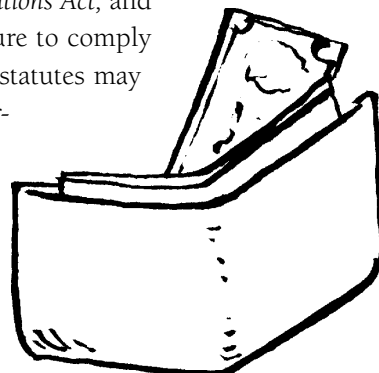
For example, directors of unincorporated organizations will almost certainly be held personally liable for the organization's debts.

Directors of incorporated nonprofit organizations receive protection from liability under statutes like the *Canada Corporations Act*, and B.C.'s *Society Act*. However, failure to comply with the requirements of these statutes may result in directors being held personally liable. For example, under the *Society Act* directors may become personally liable if the society has fewer than three members for more than six months. Directors may

also be personally liable if they cause (or allow) a society to act beyond the scope of its authority, as defined by the act and the organization's stated purposes in its constitution and bylaws.

Directors can also be held personally liable if they have breached their duties, for example if they have misused funds, made improper loans, or made unlawful personal profit in the course of their duties as directors.

In addition to these obligations, directors may be personally liable for financial obligations imposed by specific statutes, such as the *Employment Standards Act*, or the *Income Tax Act*.



Duties of boards and directors

As explained earlier, a duty is a legal obligation to do certain things or to act in a certain manner. Every person has duties under the law.

Volunteer directors of boards owe legal duties to the organization, its participants and volunteers, each other as board members, the organization's staff, members of the organization, and anyone who may be affected by the acts of the board. Failure to comply with these duties can make the organization or the board liable for damages, and can sometimes result in the personal liability of individual directors.

As explained in Chapter 1, some legal duties have evolved through the courts over time. Other duties are specifically set out in written law, known as statutes. Boards of directors of nonprofit organizations have specific duties under the law once they become incorporated as societies under statutes like B.C.'s *Society Act*, or Part II of the *Canada Corporations Act*. These statutes impose strict duties onto boards and individual directors.

Some important legal duties of boards and directors are discussed in this chapter:

- Fiduciary duties, including:
 - duty to perform with diligence, care and skill
 - duty to act with prudence
 - duty to avoid a conflict of interest
- Duty to maintain the organization's legal status
- Duty to employees, and
- Duty to act within scope of authority.

Fiduciary duties

Volunteer directors of nonprofit organizations owe a duty to act in good faith and in the best interests of the organization. These duties are known as directors' *fiduciary duties*.

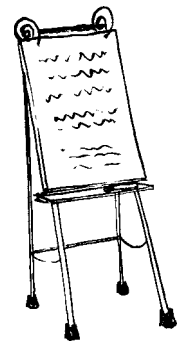
Fiduciary duties have evolved through both common law and legislation. Under B.C.'s *Society Act*, for example, these duties are defined as follows.

A director of a society must:

- a) act honestly and in good faith and in the best interests of the society, and
- b) exercise the care, diligence and skill of a reasonably prudent person in exercising the powers and performing the functions as a director.

For example, in most cases directors would be found to have failed in their fiduciary duty if they used their position on the board to:

- create profit for their own business
- use the organization's funds for their own purposes
- accept a fee from a company for help to win a contract from the organization



FIDUCIARY

From the Latin *fiducia*, meaning "trust," a fiduciary is a person (or entity) that has the power and obligation to act for another under circumstances that require total trust, good faith and honesty. Fiduciaries can include people like guardians or administrators of estates – anyone who agrees to assist someone who has put total faith in them. Fiduciaries must not in any way put their own interests before the interests of those who have entrusted them and must exercise a high standard of care in protecting or promoting the interests of the beneficiary.





Directors should help find qualified people to sit on the board. Those people may help avoid board mistakes.

- compete with the organization (even after they have left the board), or
- fail to disclose conflicts of interest (for example, that a recipient of funds was a good friend).

Directors' broad fiduciary duties include many specific duties. Three are examined here:

- Duty to perform with diligence, care and skill
- Duty to act with prudence, and
- Duty to avoid a conflict of interest.

Duty to perform with diligence, care and skill

Fiduciary duties require each director to act with the diligence, care and skill of a reasonably prudent person.

In the past, directors might have been seen to have occasional duties performed at peri-

odic board meetings. Modern courts have imposed a higher duty of care. Directors are expected to attend meetings and be prepared for the business at hand. They are expected to make reasonable inquiries into the day-to-day management of the organization, and participate in decision making. They should not rely on the opinions of others, but ask questions and be certain they are making appropriate decisions. They should play an active role in overseeing the day-to-day affairs of the organization and ensure they have selected responsible managers.

Directors who have special skills or expertise, such as lawyers or accountants, have a further duty to practice a standard of care equal to their professional abilities. For example, a director of a society who is also a chartered accountant will be expected to apply his or her expertise when reviewing financial statements. A director who is a small business owner would apply her own experience to reviewing the financial statements and ask for clarifications if necessary.

However, if a director is unable to understand the financial statements of the organization, it is not appropriate to remain in ignorance and rely on the lack of skill for protection. It is a director's duty to ensure that the statements are understood by asking questions and insisting on full explanations.

A board member who reasonably believed he understood the financial statements, or who relied on false explanations from other directors, would probably not be liable for the other people's fraud or negligence, provided they had no reason to suspect the explanations were false and were otherwise doing their job conscientiously.

BOARD DUTIES DELEGATED TO STAFF

Duty to operate the organization

Although staff may carry out activities, manage programs or administer the organization on a daily basis, ultimately it is the board of directors that owes the duty to operate the organization. The board is responsible for overseeing the day-to-day operations of the organization, and is also responsible for setting and implementing policies, and ensuring that the objectives of the organization are met.

The board is also responsible for ensuring that specific statutory duties are met, such as holding annual general meetings or filing returns with Revenue Canada.

The board may ask staff to help with these duties.

Duty to act with prudence

Fiduciary duties require each director to act prudently when managing the organization. Prudent directors are cautious and careful, and try to foresee the consequences of a course of action before taking it. This duty imposes a legal obligation on directors to avoid taking unreasonable risks.

For example, directors may be found to have failed to act with prudence if they engaged in risk-taking such as:

- approving expenditures when the organization lacks the funds to cover them (deficit spending)
- approving the purchase of property for the organization's use when there is an inadequate income to cover the monthly mortgage payments
- investing the organization's funds in risky investments, such as stocks, rather than in secure investments like term deposits, or
- deferring management to the president of the board without the reasonable supervision of the board.

Directors of a profit-making corporation can and must take business risks with company funds in order to make a profit and they will not be liable for any financial losses that result merely from an error in judgment. The directors of a nonprofit organization, however, have no reason to take any risks with the organization's funds because their task is not to make profits but to manage the organization's funds carefully and wisely. Taking financial risks would generally not be prudent management of a nonprofit organization.

A director who is careful and cautious and who avoids financial risks will probably meet the duty of prudence.

Duty to avoid a conflict of interest

Fiduciary duties require directors to avoid being conflicted between the interests of the organization and their own personal interests.

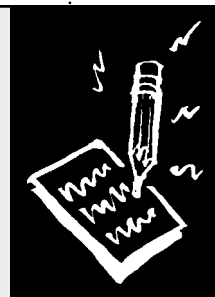
Whenever a director has a personal interest in the same subject matter as the organization, a conflict of interests arises. Directors have a duty to report the conflict of interest and take

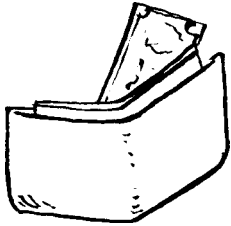
Directors who object to a board action should make their objection known – silence may otherwise be viewed as agreement. If necessary, directors can have their disagreement recorded in the minutes, or submit a separate letter of dissent.

What if a decision is made while a director is absent from a meeting?

Individual directors may not be liable for decisions made while they were absent from a board meeting. However, if a director knew that a decision was being made, but chose to stay away so as not to be part of the decision, then it might be argued that the director has given unspoken consent to the action.

In a situation like this, a prudent director will have his or her dissent recorded. For example, a director can attend the next meeting and, when a motion is put forward to adopt the previous meeting's minutes, ask that his or her dissent be added to the record.





Directors may be liable for any profit they make because of their position as director, even if the society does not actually suffer a loss, or would not have been in a position to realize the profit itself.

action to avoid using their position on the board to serve their personal interests.

For example, directors would be in a conflict of interest if they:

- sold personal services or skills to the board of directors or the organization (such as computer services to set up a system for the organization)
- used the organization's funds for personal purposes (such as taking their own clients or families to dinner, or charging the organization for taxi rides used for personal business)
- obtained a mortgage or loan for themselves, or a friend or family member, or

- stole the business opportunities of the organization (such as taking membership lists and using them for personal business).

A conflict may also arise when a person is a director of two organizations involved in the same transaction; the conflict occurs because the director owes a fiduciary duty to both organizations.

There is nothing inherently wrong with having a conflict of interest, or even from making a personal profit by providing goods or services to the organization. The problem is when a director fails to put the interests of the organization first. Therefore, a prudent direc-

CASE STUDY

Conflict of interest at heritage site

A director on the board of a heritage village organization personally donated land for the village and also provided start-up money through mortgages to the organization.

After several successful years, the organization developed financial problems because it was no longer able to obtain funding from the federal government. The director negotiated a deal with the provincial government to have it buy the village and operate it as a heritage site. Part of the deal was that she would receive a sum of money from the sale to pay out the mortgages she held against the organization.

When the board met to discuss the sale, the director informed them that she would receive a cash settlement from the sale and then did not vote.

Three other directors who were absent from this board meeting sued her for breach of fiduciary duty and asked the court to declare the sale invalid and have her return the money she was paid. The judge dismissed the lawsuit against the director because she had disclosed her interest and the money she received from the sale compensated her for legitimate debts owing to her by the organization.

If the director had received the money as a commission for arranging the sale, however, the result would probably have been different. She would then have used her position as a director to make a personal profit, and the court might have ruled that she had breached her fiduciary duty. The director would then have been ordered by the court to pay to the organization the money she had received as a commission.





Directors have a duty to tell the board members of any potential conflict of interest and then not vote on the issue or be counted as part of the quorum. Failure to avoid a conflict of interest may result in a director being required to repay any profits they made or any losses suffered by the organization.

tor who faces a conflict of interest will immediately report the conflict to the board and take action to avoid using their position on the board to serve their personal interests.

In reporting the conflict of interest to the board, the director's disclosure must:

- be full and honest
- be made promptly to each director
- include the specific form of the interest, and
- include the benefit that would be received.

For example, a nonprofit organization can buy property from a company owned or directed by one of its board members. Because the director can personally profit from the transaction, she is in a conflict of interest position. She has a duty to tell the board of her conflict of interest and then not vote on the issue or be counted as part of the quorum.

Failure to disclose and take measures to avoid a conflict of interest may result in a director being required to repay any profits he or she made or any losses suffered by the organization.

A detailed example of a conflict of interest is provided in *Conflict of interest at heritage site*.

Duty to maintain the organization's legal status

Once an organization is incorporated, there are a number of things it must do each year to maintain its incorporated status. If they are not done, the government may cancel the organization's registration, which has the effect of unincorporating it.

As outlined on page 34, a nonprofit organization that operates in British Columbia can incorporate either provincially, under B.C.'s *Society Act*, or federally under Part II of the *Canada Corporations Act*. Some of the duties listed in these two statutes include the responsibility to:

- keep an up-to-date list of all members (which may also include addresses, occupations, class of membership, membership expiry dates and a list of former members)

Duty to not engage in criminal activities

If an organization commits any criminal activity, the directors may also be guilty of the same offence. For example, an organization can be convicted of fraud for juggling the accounts to avoid paying creditors, destroying or falsifying documents, or failing to keep proper particular financial accounts.

A director who suspects that an activity of an organization or the board of directors may be illegal should make their objection known, and have the objection recorded in writing in the minutes. Directors may wish to seek legal advice regarding the possibility of any criminal activities.



It is the responsibility of the board of directors to ensure that statutory requirements are met, even if the organization has delegated the task to employees or outside parties, such as accountants.

- maintain bank accounts and banking records
- keep financial records, including the amount and source of all income and every expenditure, the assets and liabilities of the society, and any other transaction that affects the financial position of the society
- hold annual general meetings (AGMs) and file an annual statement and report with the Registrar of Companies, if you are a registered society in B.C.
- present information to members at AGMs, including directors' reports, financial statements and an auditor's report
- hold a special general meeting on request of the members
- make changes to the constitution or by-laws, as necessary, and file the information with the appropriate registrar, and
- keep minutes of directors and members meetings.

Again, these are just some of the duties listed under B.C.'s *Society Act* and the *Canada Corporations Act*. Directors should consult a copy of the appropriate statute to ensure that these and other obligations are properly met. Failure to follow requirements of these statutes may lead to personal liability of directors, fines and, in some cases, imprisonment. Directors may also find themselves personally liable for failing to meet requirements under other statutes, such as the *Income Tax Act*. It is the responsibility of the board of directors to ensure that these requirements are met, even if the organization has delegated the task to employees or outside parties, such as accountants.



Directors should obtain a copy of relevant statutes

Directors should make sure they read all statutes related to the activities of the organization, including the statutes under which the organization is incorporated.

Here are just a few examples of B.C. statutes that directors may wish to obtain:

- the *Society Act*, which sets out the roles and responsibilities of nonprofit organizations and boards
- the *Employment Standards Act*, which sets out who is considered to be an employee and how they must be treated
- the *Cooperative Association Act*, which includes housing cooperatives
- the *Food Donor Encouragement Act*, which sets out how food can be collected and redistributed through charitable programs, or
- the *Child, Family and Community Service Act*, which sets out services provided to children and families, including things like reporting suspected abuse, and protecting children's privacy.

Contact information for provincial government offices is provided on page 67. Statutes can also be downloaded from the Internet. Start your search at www.crownpub.bc.ca Federal statutes can also be downloaded from the Internet.

Duty to employees

Boards of directors have a duty to ensure that the organization meets its responsibilities as an employer. Employer responsibilities are set out in many federal and provincial statutes – such as B.C.’s *Employment Standards Act* – and, where applicable, the employees’ collective agreement.

For example, some employer duties include:

- duty to pay full wages, including overtime and vacation pay
- duty to provide paid days off for statutory holidays
- duty to make employee deductions (CPP, EI and Income Tax)
- duty to provide a safe workplace, and
- duty to protect employees from discrimination.

Directors should ensure that appropriate measures are made to comply with employer

responsibilities – this duty cannot simply be delegated to administrators.

In some cases failure to meet statutory duties can result in penalties and fines, as well as risking the personal liability of individual directors.

In some cases, directors may also be held personally liable for the organization’s failure to meet its obligations to employees. For example, if a board is having funding difficulties and decides to find a way to avoid paying wages owed for overtime, the employees may sue the organization and its board of directors. Similarly, an employee who has been mistreated or wrongfully dismissed may sue the organization and, in some situations, directors may be personally liable. If an organization becomes insolvent, directors may become personally liable for the unpaid wages of employees.

Finally, directors may also be personally liable if they act in a negligent manner toward an employee. For example, a director who personally interferes with an inquiry into workplace safety may be held personally liable.



Be sure that self-employed contract workers would not be considered employees under Revenue Canada guidelines.

STATUTORY DUTIES

Duties of charitable organizations

Legal obligations may arise if an organization is registered as a charity under the federal *Income Tax Act*. Charitable status is limited to those organizations that meet criteria as to their purposes and activities. Duties under the act are quite strict.

For example, there are clear guidelines and responsibilities when tax receipts are issued to donors. Organizations can find themselves in serious difficulties with Revenue Canada if they issue large income tax receipts to donors without fully understanding the implications of issuing the receipt.

Also, an organization’s charitable status should be considered before its constitution is altered to reflect a change in the organization’s direction or activities. A tax specialist may need to be consulted.





The authority of a director is limited to those activities defined by the constitution and bylaws of the organization. Acting beyond that mandate may make a director personally liable.

Duty to act within scope of authority

A final caution for directors involves the importance of understanding the limits of their authority. Directors who act outside of their own scope of authority, or allow the organization to act outside of its permitted activities, may find themselves personally liable.

Consider, for example, two directors who obtain a bank loan to enable their organization to buy a van. If the loan does not have the formal approval of the board, or if the loan is made in the names of the directors and not in the name of the organization, the two directors who obtained the loan may be personally liable for its repayment.

If the purchase turns out to be a good idea and the other board members agree, the board can take over responsibility for the loan. How-

ever, in this case the two directors should not vote on the ratification of the loan, as doing so would likely be a conflict of interest.

In a similar way, directors may be personally liable if they allow the organization to act outside the scope of its permitted activities. Statutes governing nonprofits, such as B.C.'s *Society Act*, place requirements on organizations to act within the stated purpose of the organization.

It is not difficult for a voluntary organization to mistakenly move away from its legal purpose. Over time an organization's direction may change, but if the constitution is not formally changed to meet these new purposes, actions of directors may be outside of their authority. Directors may be personally liable for losses to the society, no matter how well-intentioned their decisions may have been.

An example of the duty to act within scope of authority is examined in *When missionary work becomes a summer camp* below.

DUTY TO ACT WITHIN THE SCOPE OF AUTHORITY

When missionary work becomes a summer camp

A church group was incorporated for the purpose of carrying on specific missionary work. One of the church members donated some land for a summer camp that over the years became highly successful. Gradually, the focus of the organization turned to the running of the camp, which became quite large and successful, generating considerable income.

The camp itself would have made an excellent charitable organization, but it was not within the purpose as stated by the organization's constitution. The directors, with the best of motives, had unintentionally gone outside of their authority as directors and would have been personally liable for any losses to the church group. For example, if a child had been badly injured by the negligence of a camp counsellor, the directors could become personally liable.

The risk is even greater because insurance contracts often state that claims are only insured if they arise from the lawful activities of the organization. Most directors would have thought the camp was a lawful activity, but because it did not conform to the lawful purposes of the organization, the insurance company could refuse to pay the claim. Without insurance coverage, the directors would be personally liable.

If the organization changed its constitution to reflect the purpose of the summer camp, the directors would once again be acting within their authority and would not be risking personal liability.



Prevention checklists for boards and directors

Before you become a director

- ✓ Learn about the organization's goals, objectives and programs.
- ✓ Enquire about the community and professional image of the organization.
- ✓ Gather as much information about the organization as possible, including policies, finances and staff.
- ✓ Read and understand the constitution and bylaws.

Know your legal liability and duties

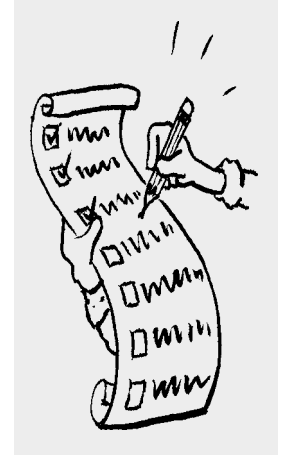
- ✓ Know the legal liability of the board and your personal liability as a director. Understand the limits of indemnification and insurance.
- ✓ Know your legal duties. Those introduced in this book include:
 - ✓ Fiduciary duties, including:
 - ✓ duty to perform with diligence, care and skill
 - ✓ duty to act with prudence
 - ✓ duty to avoid a conflict of interest
 - ✓ Duty to maintain the organization's legal status
 - ✓ Duty to employees, and
 - ✓ Duty to act within scope of authority.
- ✓ Ensure the board has appropriate policies, such as a policy about board liability or a conflict of interest policy.

Be an active participant

- ✓ Attend all meetings of the board, or as many as possible.
- ✓ Read minutes and reports in advance of meetings.
- ✓ Promptly complete any tasks you agreed to do.
- ✓ Make inquiries about the management and operation of the organization when necessary.
- ✓ Insist that all committee meetings are reported at board meetings, either in oral or written form.
- ✓ Obtain and read copies of minutes for any meetings you miss.
- ✓ If you disagree with decisions made in your absence, have your dissent recorded at the next meeting.
- ✓ Keep a copy of all minutes and other important documents.
- ✓ Ask questions until you are sure you understand a board decision.

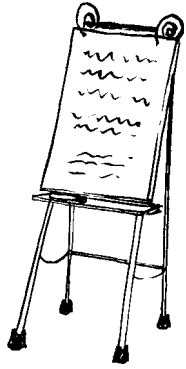
Take care when voting

- ✓ Fully understand an issue and its consequences before voting on it.
- ✓ Vote against spending money or incurring debts if you believe the organization will not be able to pay.
- ✓ If you dissent to a motion, be sure it is recorded in the minutes.
- ✓ If necessary, keep your own notes.



KNOW YOUR DUTIES

This book introduces general legal issues and some basic duties of directors. Directors will need further information about the specific liabilities and duties that arise from their organization's activities.



In addition to the board obtaining expert opinions, directors should ensure that administrators get the help they need, such as providing access or funding to accountants, harassment specialists or legal counsel.

Be loyal to the organization

- ✓ Always put the interests of the organization before your own.
- ✓ Don't gain personal advantage from your position.
- ✓ Avoid and disclose all conflicts of interest.

Act prudently

- ✓ Don't allow the organization to take unreasonable risks.
- ✓ Be certain that the organization's records are audited by a reputable firm of chartered accountants.
- ✓ Be certain that the organization will be able to pay for expenses it incurs or money it borrows.
- ✓ Obtain outside expert advice when necessary – for example, lawyers, engineers or accountants. If acting on it, get it recorded or submitted in writing.
- ✓ Review the CEO's performance and board's performance periodically.
- ✓ Do not act illegally or let staff act illegally.

Protect the organization's legal status

- ✓ Read the statute under which the organization is incorporated.
- ✓ Ensure the organization fulfils all aspects of its nonprofit and tax exempt status.
- ✓ Ensure legal obligations delegated to staff are completed.

For example:

- ✓ membership lists are up to date
- ✓ bank accounts and records are maintained
- ✓ annual general meetings are held and obligations met, and that a report is filed

- ✓ special general meetings are held if requested by the members
- ✓ constitution and bylaws are up to date, and changes are filed

Meet duties as an employer

- ✓ Be clear that the board has overall responsibility for employment practices of the organization.
- ✓ Ensure that employment policies are in place and reviewed periodically, particularly termination policies.
- ✓ Insist that there is a well-established personnel program with a competent person in charge of staff.
- ✓ Be sure that payroll deductions for income tax, EI and CPP are being made and remitted.
- ✓ Be sure that self-employed contract workers would not be considered employees under Revenue Canada guidelines.

Act within your scope of authority

- ✓ Do not act on the board's behalf without prior approval.
- ✓ Avoid obligations made in your own name.
- ✓ Ensure that the organization and board's activities are within the scope of their mandates.

Check insurance coverage

- ✓ Ensure that appropriate insurance covering all activities is obtained and maintained.
- ✓ Consider board insurance.

5 Insurance



EVERYONE CONNECTED TO A VOLUNTARY ORGANIZATION – be they volunteers, staff or board members – will need to consider how to pay for any claims that might arise, including the cost of paying for a legal defence.

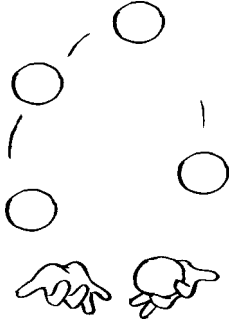
Most organizations adopt a plan to deal with these risks. These plans typically include preventing and minimizing liability, determining whether claims can be paid out of assets, and purchasing insurance.

This chapter reviews the insurance considerations of voluntary organizations, including:

- managing risk
- insurance options for volunteers
- insurance options for organizations, and
- insurance options for boards and directors. ■

Organizations must consider how to pay for any damages arising out of their own liability. Insurance is an important option.

Managing risk



Insurance should be considered in the context of a comprehensive risk management strategy. Risk management is a specialized area that is not examined at length in this book. For information, contact the resource centre at Volunteer Vancouver.

Insurance is only one form of risk management. While it can go a long way in protecting volunteers, organizations and board members, there are limits to what insurance policies can and will cover. It is important that volunteers and organizations avoid a false sense of security simply because they are insured.

There are many limits to all insurance policies. Insurance companies may refuse to pay for claims, or sue to recover losses, from those that demonstrate disregard for avoiding risk. Before granting or renewing a policy, insurers may also investigate an organization's claims history and ensure it has a risk management strategy in place.

It is important, therefore, that insurance be considered in the context of a comprehensive risk management strategy.

Five steps to managing risk

In managing risk, volunteers, organizations and board members may wish to work through the following five steps:

- identify and weigh risks
- decide how to prevent risk
- decide whether you need insurance
- balance the cost of insurance against the risk, and

- monitor and periodically evaluate insurance coverage.

Earlier sections of this book introduced ways to identify and prevent risk. Steps related to insurance are examined in this chapter.

Types of risk to insure against

Before calling an insurance agent, it is helpful to determine the kinds of risks that might require insurance. Although organizations encounter very different types of risk, the following gives a sense of the types of risk that could be encountered:

- risks associated with the premises, such as fire or theft
- risks to those involved in activities, such as volunteers and participants
- risks to those working on the premises, such as staff coverage for workplace injuries
- risks related to activities away from the premises, such as sports or special events
- risks related to advice that employees or volunteers give to clients or participants
- risks related to the functioning of the organization, such as firing employees, and
- risks related to the work of the board of directors.

In most of these situations the organization may be liable and should consider insurance to cover the risks.

In some of these situations individuals may be personally liable. Those at risk should consider purchasing their own insurance or ensuring the organization can and will reimburse them for liability costs they incur.

The types of insurance available for these situations is discussed in this chapter.



INDEMNIFICATION

In general terms, indemnification is a guarantee from one party to another that, should liability arise, they will cover the costs. Insurance, for example, is an indemnification from an insurance company to cover losses in the circumstances set out by the policy. Director indemnification is reviewed on page 63.

Insurance options

The needs of each volunteer, organization and director are unique. So too are the insurance options available. This section introduces some general insurance options that are available.

Options for volunteers:

- homeowner insurance, and
- auto insurance.

Options for organizations:

- comprehensive general liability insurance
- auto insurance
- professional liability or malpractice insurance, and
- insurance for those injured on the job.

Options for boards and directors:

- director indemnification, and
- director and officer insurance.

Put it in writing

If you are not sure about your policy, or you feel you may be receiving inadequate or conflicting advice from an insurance agent, you may want to get it in writing.

If the agent cannot provide clarification to you in writing, you may want to follow it up in writing yourself.

“This note is to confirm our discussion of today’s date confirming that volunteer’s computers used away from their home on volunteer business for less than 30 days are covered under our comprehensive insurance policy.”

You can then give your understanding to the agent for confirmation.



Options for volunteers

Volunteers will have different options available to them, depending on the type of activities and the insurance options available to the organizations they serve. Two insurance options available directly to the volunteer are introduced here: homeowner (or contents) insurance and personal auto insurance.

Volunteer’s own personal or home insurance

Volunteers’ own insurance coverage, such as homeowner or contents insurance, may protect against some of the risks involved in volunteer activities. For example, casualty coverage (for damage or loss caused by things like vandalism or fire), may cover personal losses that occur as a result of volunteer activities. Liability coverage may insure against lawsuits from third parties, such as a participant who becomes injured.

Volunteers may also have access to comprehensive insurance covering a number of potential risks, or have particular coverage added to their insurance policy. An insurance agent will be able to suggest insurance options.

It is important for volunteers to carefully check the policy to ensure they have understood it correctly and that they fulfill any conditions. Where necessary, clarifications should be obtained in writing.



Comprehensive or general insurance policies protect against theft. But insurance should be only one part of an anti-theft plan that includes strategies like proper lighting, securely locked doors and windows, engraving computer equipment or regularly conducting security checks.



Organizations may also wish to consider special excess third party liability insurance, which protects drivers against claims that exceed the limit of their own auto insurance.

Volunteers' own auto insurance

Volunteers who drive during the course of their duties should ensure that their automobile insurance coverage offers full protection for their activities. Because different activities require different kinds of auto insurance, it is important that volunteer drivers check for coverage in their particular circumstances.

For example, most volunteer drivers operating their own vehicles will be covered for their volunteer activities under B.C.'s Autoplan standard insurance packages. However, volunteers who drive full time may not be covered under a "pleasure only" policy, even though they are not being paid for their work. On the other hand, a volunteer who is a senior citizen may be covered under pleasure driving, even if they are driving more frequently.

Volunteers may also not be covered under pleasure driving if they receive payment. For example, a volunteer may be covered if she is reimbursed for minor expenses, such as gasoline or wear and tear, but not for larger ex-

penses such as depreciation of her car.

Volunteers may want to increase the limit of their third-party liability insurance, especially if they have only the basic \$200,000 limit. This insurance covers any claims made by passengers, other drivers, cyclists, or pedestrians for injuries caused by the volunteer. Without the added protection, volunteers might have to pay any claims in excess of the \$200,000 limit out of their own pocket.

In some cases, the organization may supplement volunteers auto insurance. This is discussed further below.

Options for organizations

Insurance options for organizations will vary according to the types of activities in which the organization is engaged. This section introduces four general types of insurance:

- comprehensive general liability insurance
- auto insurance
- professional liability or malpractice insurance, and
- insurance for those injured on the job.

READING THE FINE PRINT

Limits to automobile insurance

In some cases, even though volunteers have insurance, an insurance company may deny the claim. This can occur if a person breaks a term of the insurance policy.

For example, if a volunteer has an accident while impaired, ICBC will pay compensation to the injured people, but will then sue the volunteer to recover that money because Autoplan does not cover situations where the driver is impaired.

Volunteers should read personal insurance policies carefully to see what conduct is considered a violation of the policy. Volunteers who do not understand their policy should ask their insurance agent for a complete explanation. If you feel you are receiving unclear or conflicting advice, ask the agent to put it in writing, or write out your understanding and give it to the agent for confirmation.

Comprehensive general liability insurance

Basic insurance packages like *comprehensive general liability insurance* protect organizations from losses and from claims made against them by third parties for injury or damage to property. These packages, the most common and most inclusive forms of insurance, come in several varieties and are alternatively known

as *comprehensive insurance*, *general insurance*, or *general liability insurance*.

This type of insurance is generally designed to cover claims arising from bodily injuries, property damage, lost wages and other losses suffered because of the negligence of the nonprofit organization or its employees.

Volunteers may also be included in the policy, or added by special agreement. However, this type of insurance usually protects volunteers only in the case of accidents. If a volunteer deliberately hurts someone or damages his or her property, general liability insurance policies will probably not pay for the claim.

These types of policies, particularly those “off the shelf” and not specifically built around an organization’s needs, are usually very limited. It is very important that the policy is understood and clarifications are made in writing. Risks that are not included in the policy may be added or covered in separate policies.

Auto insurance

Organizations that possess their own vehicles must have basic auto insurance. They should also consider extensions to a basic policy to cover the special circumstances in which the vehicles are used.

Organizations may also choose to supplement the insurance of those who drive on its behalf, such as volunteers, staff, officers, or directors. In this case, two types of insurance apply: *non-owned liability insurance for vehicles* and *special excess third party liability insurance*.

Voluntary organizations that use the cars of volunteers to transport others should consider *non-owned liability insurance for vehicles*. This insurance covers claims arising out of the use of a vehicle not owned by the organization, but which is used for the organization’s activities. It protects the organization when it is sued by other people for loss or injury to person or

property. It does not protect the volunteer as a car driver if he or she is the only one being sued by the injured party. Therefore, even if the organization has this insurance, the volunteer should still maintain adequate vehicle insurance to cover claims arising out of the use of the volunteer’s car.

Organizations may also wish to consider *special excess third party liability insurance*, which protects drivers against claims that exceed the limit of their auto insurance. For example, if a driver’s insurance limit is \$200,000 and the organization’s special excess third party liability insurance is \$1,000,000, it covers claims up to \$1,000,000 in excess of \$200,000.

Voluntary organizations can purchase this type of insurance for their volunteer drivers and others in the organization – such as staff, officers or directors – who use their own cars for the organization’s activities. However, the insurance would apply only if the driver was performing an activity on behalf of the organization at the time of the accident.

Professional liability or malpractice insurance

Organizations that coordinate the volunteer services of professionals – such as lawyers, doctors or accountants – should ensure that the professionals’ existing liability insurance will cover their volunteer activities.

Organizations may need to purchase additional professional liability insurance – or similar types of insurance such as *malpractice insurance* or *errors and omissions insurance* – for professionals who are not covered, or for other services offered by the organization – such as counselling services – where no professional liability insurance is in place.

Regular insurance policies may not cover special events like fundraisers, musical festivals, or summer camping trips. Risky activities like hiking, snow boarding or paint ball may also not be covered. Consider adding special insurance to your existing policy, or purchasing separate insurance to cover the event.

Remember that insurance companies will normally try to avoid paying for claims if they can. Be aware of conditions that may limit your insurance.



People who are in Canada illegally have no legal status, and will therefore normally not be considered volunteers for insurance purposes.

The insurance should cover situations where a volunteer gives improper or incorrect advice that causes harm to the person who receives it and both the volunteer and the organization are sued. Some examples of this type of liability are introduced in *Giving advice* on page 26.

Insurance for those injured on the job

In B.C., most regular employees are insured against workplace injury by the Workers' Compensation Board. Organizations and boards should ensure their employees are covered, and that they have met their employer obligations under the *Workers' Compensation Act*, such as submitting employer dues and complying with WCB safety standards.

In some specific circumstances, voluntary organizations may apply to the Workers' Compensation Board to have volunteers included as workers for the purposes of on-the-job injuries. Some volunteer fire fighters, for example, have received coverage in this manner. If the application is accepted, volunteers will receive the same coverage as an employee. Applications may also be made to provide protection for volunteers who attend training programs or a work study program. For more information on whether your organization can protect its volunteers, contact the Workers' Compensation Board.

Organizations that are unable to obtain WCB coverage for on-the-job injuries of employees or volunteers may be able to obtain coverage through the organization's general insurance policy or by purchasing additional insurance coverage.

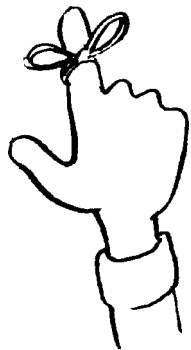


Not sure where to start?

Talk to nonprofit organizations that are a similar size or engage in similar activities.

Insurance buying tips

- Solicit bids every three to five years. Allow sufficient time for insurance companies to do a risk assessment of your organization.
- Find an insurance advisor with expertise in working with nonprofit organizations.
- Ensure that all of your activities are covered, such as claims by volunteers or participants, or coverage for off-site activities.
- If legal defence costs are to be covered, determine whether you can use your own legal counsel and whether costs will be paid at the time they are incurred.
- Be extremely careful to provide accurate information on the application form.
- Fully disclose the organization's prior losses and provide details on ways the organization can avoid future losses.
- Report prior incidents that might give rise to a claim in the future.
- Ask each insurer to provide information on the insurance carriers' financial strength.
- Keep in mind that many insurance agents operate on commission and may benefit from selling higher packages.
- Negotiate for coverage and pricing.



Be aware of time periods covered by insurance policies. Do they cover liability at the time of incidents, or at the time legal claims are made? These may be years apart. Organizations should, therefore, check time periods before changing insurers or cancelling coverage for discontinued activities.

Options for boards and directors

Director's liability is an increasing concern for organizations. As explained on page 46, the personal liability of directors has increased as historical shields have eroded, lawsuits naming directors have increased, and new statutes have imposed personal liability on directors and officers. These issues have made limiting personal liability an increasing concern.

This section introduces two ways to limit the personal liability of directors:

- directors indemnification, and
- directors and officers liability insurance.

Directors indemnification

Nonprofit organizations are permitted to indemnify (pay back) board members if they are sued. In fact, most organizations' bylaws explicitly state that it will indemnify directors in most situations.

Indemnification covers the expenses a director incurs to defend a lawsuit or the cost of a settlement while the board member served on the board. This can include legal fees, the cost of fines from criminal convictions or a violation of a statutory requirement, and payment ordered by a court following a civil suit.

However, there are certain situations that may not be indemnified.

First, some statutes limit organizations from providing indemnity. This can protect some of the organization's funds from being used for purposes other than those for which they were intended.

Indemnification may also require board approval. For organizations covered by the *Canada Corporations Act*, for example, the directors may be indemnified if the members vote in favour of such indemnification. Some directors may choose to not indemnify an individual, particularly if the cost of litigation could sink the organization. The current board may also not agree with the position of the director being sued and may not authorize indemnification.

In some cases, court approval may be required. For organizations covered by B.C.'s *Society Act*, for example, directors may be indemnified *only* with the approval of the court and only if they were acting honestly and in the best interests of the society. Directors can be indemnified for costs related to criminal convictions, provided they had reasonable grounds to believe their conduct was lawful.

In any case, an agreement to indemnify a director is only as good as the financial resources available. An organization could be insolvent and indemnity may not be sufficient.

Finally, indemnification may not be provided in cases where directors failed in their fiduciary duties. This is discussed further below.

For all of these reasons, a board may choose not only to have indemnity provisions, but to also consider insurance.

Directors and officers liability insurance

Directors and officers liability insurance protects from personal liability in most cases of directors acting within their board capacity. For example, D&O insurance would normally



D&O insurance may be less costly if purchased together with the organization's general insurance policy.

cover such acts as an error in granting money for a purpose other than was intended or employer responsibilities such as wrongful dismissal or non-payment of wages for which directors may be personally liable.

D&O insurance provides coverage for directors and officers who are sued for negligently managing the company's affairs. It covers the organization for its responsibility to reimburse directors and officers for their liabilities and may also extend to directors being sued by the organization itself. Coverage includes the costs that directors incur to defend a lawsuit and pay an awarded settlement.

In determining whether D&O insurance is the best option for an organization, the board should consider:

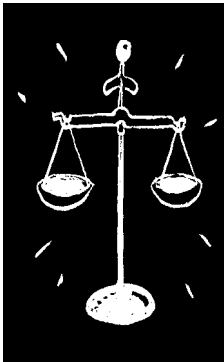
- potential liability risks and the extent to which they can be avoided

- the anticipated cost of defending and paying a potential claim
- the willingness of directors (and potential directors) to risk personal liability
- the organization's ability to indemnify directors, including its financial resources
- costs of the insurance coverage

Organizations may find that this insurance is less costly if purchased together with the organization's general insurance policy.

D&O insurance should not be confused with the organization's general liability insurance. For example, D&O insurance would not usually cover injury or property damage claims normally covered by the organization's general liability insurance, even if the director caused the harm.

Finally, D&O insurance may not cover cases where directors failed in their fiduciary duties. This is discussed below.



LIMITS TO INDEMNIFICATION AND INSURANCE

Directors may not avoid liability for breach of duty

Indemnification and insurance will not normally protect a director for a breach of fiduciary duty, such as profiting from a conflict of interest. Simply put, directors who act against the interest of the organization, or betray their duties to the organization, cannot reasonably expect to have their legal costs or losses covered. A director cannot be indemnified for this, and a society cannot lawfully purchase insurance for directors against such liability.

For example, consider a director of a community art council who is a part owner in the only art gallery in town. The director uses her influence to convince the board to be community-minded and make the purchases through the gallery, but does not disclose her personal interest. If the organization discovered the conflict of interest and decided to sue the gallery owner and have her repay the profits she made, the director could not expect indemnification from the organization or the board's D&O insurance to cover her legal costs or any settlement that is reached.

A director who is sued by the organization or the other board members for a breach of another duty is also unlikely to be indemnified. In the case of organizations covered by the *Canada Corporations Act*, for example, the act states that directors can be reimbursed for financial loss suffered in the course of their duties, provided the director's loss did not result from neglect or breach of duty. In these cases, however, D&O insurance may apply.

Finally, directors should keep in mind that neither indemnification nor D&O insurance would apply in a situation where a director acted beyond the scope of their authority. This is discussed on page 54.

Glossary of legal terms



Most legal terms used in this book were defined when they were first used. This glossary will help supplement those definitions.

act – a law written and approved by a government, such as the government of Canada or the government of B.C. The term “act” is often synonymous to “statute” or “legislation.” B.C.’s *Society Act* is one example.

action – (also called civil action or law suit) a court proceeding in which one person (the plaintiff) sues another person (the defendant) for compensation for injuries or losses caused by the defendant.

breach – a failure to meet an obligation imposed by law, either by the act of doing something or not doing something. For example, if you breach a contract, you are failing to do something that you had agreed to do.

case law – reported decisions of the courts. Judges look at how the law has been interpreted in the past, and use these decisions (called precedents) to make a decision in the case before them. These accumulated cases are called “common law.”

civil action – a proceeding or lawsuit relating to civil matters (issues between people or organizations), as opposed to criminal actions, which are called “prosecutions.”

clients – the people who use a volunteer organization’s services, or who benefit from the organization’s activities.

common law – a form of law that has developed over the years through decisions made by the courts, as opposed to written law found in statutes.

contributory negligence – when an injured person has contributed to the accident or to his or her injuries. The damages the court will award must be paid for by all

persons who are partly responsible for the injuries. If a person is partly responsible for the damages suffered, she will pay for part of the award in proportion to the amount for which she is at fault.

criminal proceeding – a formal court proceeding between the state (representing society) and an individual. This is in contrast to a civil action, which is a legal proceeding between two individuals.

damages – monetary compensation awarded by a court to a person for personal injury, financial loss, or loss or harm to property caused by another person. The person who did the wrongful act must pay the compensation.

defamation – any communication (words or pictures) which is false and injures the reputation of another person. Defamation can be written, in which case it is called libel, or spoken, in which case it is called slander.

director – an individual who is a member of the governing board of an organization, also known as a board member or a trustee. A volunteer director is not paid (directly or otherwise) for giving their services to the board.

disclaimer – a document in which one party renounces future legal responsibility for certain acts or incidents that might happen.

discrimination – practices that exclude or promote a bias against a person or group of people.

duty – a legal obligation that one person owes to another to do (or not do) something. For instance, all drivers have the legal duty to drive carefully and follow the rules of the road when they are driving. They owe this duty to anyone who might be injured by their careless driving.



fiduciary duty – the duty owed by directors to the organization to which they belong to act with diligence, care and skill, to be honest, to act prudently, and to put the interests of the organization before their own.

gross negligence – an act, or failure to act, in reckless disregard of the consequences to safety or property of another.

indemnification – a guarantee from one party to another that, should legal liability arise, they will cover the costs.

lawsuit – see *action*.

liability – legal responsibility for a particular act or event and all the consequences that flow from it. If a person is liable, he or she must usually pay financial compensation to anyone who is injured or suffers a loss because of the act or event.

negligence – carelessness by someone causing injury or damages to someone else. Wrongdoers are responsible for damages to anyone they should reasonably have foreseen would be affected by their actions.

nonprofit – an organization is nonprofit if it is organized for an educational, charitable, cultural, religious, social or athletic purpose. In B.C., nonprofits can include co-ops, such as housing co-ops. A nonprofit organization can “be in business” and make money, but any profits must be used for the objectives of the organization and not for distribution to members.

offence – a person commits an offence when he or she breaks a law for which a penalty is prescribed.

officer – an official of the organization, elected by the membership (or board), or hired by the board. Officer liabilities and duties are similar to those for directors.

ostensible authority – apparent authority to do something or represent an organization or another person.

vicarious liability – when the law holds one person or organization responsible for the misconduct of another because of the relationship between them, even if the person held liable did not participate in or agree to the wrongful act.

volunteer – a person who gives services without promise of being paid or receiving goods or services in exchange for their duties.

voluntary assumption of risk – a defence used in court that injured persons knew the risks of the particular activity and decided to do it anyway, and so they are responsible for their own injuries. This argument is often used when a person is hurt while engaged in a dangerous sport, such as ski racing, or ice hockey.

waiver – a document in which one person gives up the right to sue another person.

wrongdoer – a person who causes injury or harm to another person or to someone else’s property.

Contacts



Dial-a-Law

Provides prerecorded information about the law in B.C.

Tel: 687-4680 (Lower Mainland)

Tel: 1-800-565-5297 (Toll free across B.C.)

Web: www.bccba.org

Lawyer Referral Service

Provides a referral to a lawyer in your area. The lawyer will give you an initial half-hour interview for a \$10 fee.

A service of the Canadian Bar Association, B.C. Branch.

Tel: 687-3221 (Lower Mainland)

Tel: 1-800-663-1919 (Toll free across B.C.)

Law Line

You can obtain general legal information from a law librarian over the telephone.

Tel: 601-6100 (Lower Mainland)

The Legal Resource Centre

Visit the centre at the Legal Services Society for general legal information and educational materials.

Suite 200 – 1140 West Pender Street

Vancouver, B.C. V6E 4G1

The People's Law School

A non-governmental organization that helps people learn about the law. It offers a speakers bureau about legal issues, provides books and other materials, and makes presentations about the law.

Tel: 331-5400 (Lower Mainland)

www.publiclegaled.bc.ca

Law Students Legal Advice Clinics

Free legal advice by law students at 20 clinics in the Lower Mainland.

Tel: 822-5791 (Lower Mainland)

Legal Services Society of B.C.

Operates the Law Line and the Legal Resource Centre, and arranges legal aid (see *Legal Aid Offices* on page 68). Also provides resource materials about the law.

Find the contact in your area from *Legal Aid Offices* on page 68, or visit the LSS website at www.vcn.bc.ca/lssbc/

B.C. government listings

If you want to call a government office, but aren't sure where to call, try starting with Enquiry B.C.

Operators at Enquiry B.C. can help you get the numbers you need, and can transfer you to government numbers across B.C. without long distance charges.

Enquiry B.C.

Lower Mainland: 660-2421

Outside Lower Mainland: 1-800-663-7867

TTY (Lower Mainland): 775-0303

Outside Lower Mainland: 1-800-661-8773

Or you can look in the blue pages at the back of your telephone book. If the number is long distance, Enquiry B.C. can transfer your call without long distance charges.

The Internet also provides government information and resources. For example, you can download a copy of the *Society Act*, *The Human Rights Code*, or employer responsibilities under the *Employment Standards Act*. Start your search at www.gov.bc.ca



Legal aid offices



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 This is a list of the offices in British Columbia that can take applications for legal aid.
 Call the office nearest you for more information and office hours.

Abbotsford	(604) 859-2755	Nelson	(250) 352-3147
Burnaby	(604) 451-8944	New Aiyansh	(250) 633-2614
Burns Lake	(250) 692-7534	New Westminster	(604) 524-0381
Campbell River	(250) 287-9521	North Vancouver	(604) 980-7000
Chetwynd	(250) 788-3113	Parksville	(250) 954-0140
Chilliwack	(604) 795-2275	Penticton	(250) 493-0210
Courtenay	(250) 897-1400	Port Alberni	(250) 724-5137
Cranbrook	(250) 489-3375	and	(250) 723-8281
Dawson Creek	(250) 782-7366	Port Coquitlam	(604) 944-8841
Duncan	(250) 715-1855	Powell River	(604) 485-9871
Fernie	(250) 423-9241	Prince George	(250) 564-9717
Fort Nelson	(250) 774-6707	and	(250) 562-3591
Fort St. James	(250) 996-7700	Prince Rupert	(250) 627-1364
Fort St. John	(250) 785-1788	Quesnel	(250) 992-8391
and	(250) 785-6509	Revelstoke	(250) 837-5196
Golden	(250) 344-5258	Richmond	(604) 273-9311
Grand Forks	(250) 442-8360	Salmon Arm	(250) 832-9611
Hazelton	(250) 842-5218	Sechelt	(604) 885-5509
Invermere	(250) 342-4447	Skidegate	(250) 559-8811
Kamloops	(250) 314-1900	Smithers	(250) 847-1595
Kaslo	(250) 353-2292	Squamish	(604) 892-5114
Kelowna	(250) 763-8613	Surrey	(604) 585-6595
Ladysmith	(250) 245-7141	Terrace	(250) 635-2133
Langley	(604) 530-5811	Ucluelet	(250) 726-4307
Lilloet	(250) 256-0094	Vancouver	(604) 601-6300
Lytton	(250) 455-6637	(Vancouver Aboriginal Law Centre)	(604) 601-6440
Maple Ridge/Pitt Meadows	(604) 467-3011	Vernon	(250) 545-3666
Masset	(250) 626-3925	Victoria	(250) 388-4516
Merritt	(250) 378-6112	Williams Lake	(250) 392-2941
Nanaimo	(250) 741-0242		

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Volunteer Vancouver Publications

With over 7,000 publications in our library, Volunteer Vancouver is Canada's most comprehensive resource centre for nonprofit management and volunteerism.

For a complete list of publications, contact us at the number below.

Vantage Point - Quarterly Newsletter. \$15

A must have. A valuable resource for information on the ideas and issues shaping the voluntary sector.

The Complete Guide to Assessing and Improving Your Volunteer Program. \$10

Here's the book you've been waiting for - a comprehensive assessment and planning tool for your volunteer program. The workbook can be used to examine your programs, and adapt strategies in light of the changing volunteer environment.

The Creative Volunteer Community. \$10

A collection of writings by one of North America's most influential thinkers on volunteerism. Included are papers on utilizing the force of change, reaching out to new boards and making meetings work.

Financial Management for Community Groups. \$12

A guide to the system used by nonprofit organizations to ensure that finances are managed effectively.

Motivating Volunteers: How the Rewards of Unpaid Work Can Meet People's Needs. \$13

Analyses of the most common motivators for volunteers and some ways an agency can unblock volunteer energy.

Multicultural Volunteer Programs (a Self-Assessment Tool). \$8

This tool provides the framework for an agency to examine its volunteer structure and programs in relation to volunteer needs in a multicultural community.

Nonprofit Boards: A Selected Bibliography. \$12

This is one of the world's most comprehensive bibliographies on Nonprofit Boards. Most of the entries have annotations or abstracts.

Resource Kit for Board Action - 1998. \$10

Great as a source of handout for orientation of board members or as a base for a board manual.

Resource Kit for Interviewing Volunteers. \$8

Discusses how to plan an interview, overview of interpersonal communication techniques, key questions to ask and how to train interviewers.

Resource Kit on Volunteering (Includes a video "Volunteers are People Like You" and a Guide). \$39

This kit is created to promote volunteering to youth aged 12 to 19 years. The video is an upbeat introduction to volunteering featuring local celebrities who talk about their volunteer experiences.

Salaries and Benefits Survey - 1998. \$29

Provides a comprehensive documentation on annual salaries and benefits for both executive and program staff of nonprofit/charitable organization throughout BC.

The Voluntary Sector: Trends, Challenges and Opportunities. \$6

An extensive review of the latest issues, trends and challenges that confronts the nonprofit sector.

Volunteers: How to Find Them, How to Keep Them. \$10

An easy-to-read workbook, full of ideas on how, when, and where to recruit volunteers.

Volunteer Vancouver

Volunteer Vancouver was established in 1943 to promote volunteer participation and strengthen the voluntary sector. Each year, Volunteer Vancouver serves tens of thousands of individuals, providing information on volunteer opportunities in over 460 voluntary agencies throughout the Vancouver area. Volunteer Vancouver also provides support to about 500 voluntary organizations in the areas of training and development, nonprofit and volunteer resources management. Specific services include:

- computerized information and referral service for prospective volunteers
- professional training for managers of volunteer resources
- consultation services for volunteer programs
- leadership development workshops for boards of directors
- consultation services for agency staff and boards of directors
- a large resource library on nonprofit management and the voluntary sector
- sale of a variety of publications, and
- varied promotional and volunteer recognition events.



The People's Law School

We are a non-profit society dedicated to teaching the people of BC about the laws affecting their lives. Founded in 1972, the People's Law School was the first of its kind in Canada, pioneering many of the public legal education practices currently used in Canada.

We offer a variety of free public legal education services, each tailored to meet the specific needs of BC's diverse communities. Where possible, we offer these services in English, Chinese, Punjabi, Spanish, Persian and other immigrant languages.

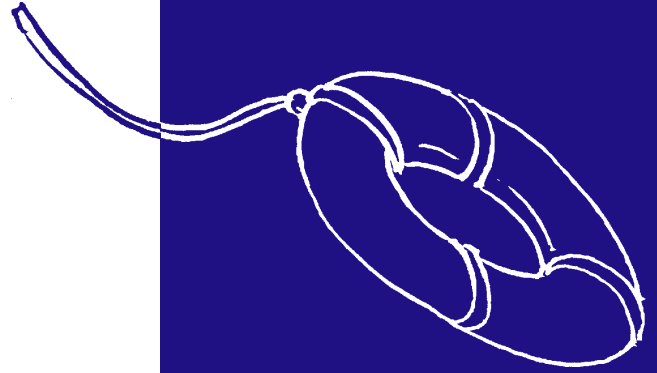
Here's what we do:

- print and distribute free booklets on popular, law-related topics, ranging from *Caring for Children* to *Representation Agreements* (available on our website, too)
- provide qualified speakers on legal topics to community groups, such as women's, seniors, parents and youth groups
- offer training workshops for the staff of community organizations on legal topics of importance to their clients, and
- stage Justice Theatre performances in elementary and secondary schools throughout the province on a cost-recovery basis.

We are funded by the Law Foundation of BC, the Notary Foundation of BC, the Government of Canada, the Government of BC, the City of Vancouver, the Legal Services Society, and private donors.

Most volunteer activities pose no legal risk – but some do.

This book will help minimize those risks.



A handy guide for volunteers, organizations and boards

There are as many kinds of volunteer activities as there are volunteers to take them on. All of these activities involve legal liabilities and duties of which volunteers, organizations and boards should be aware.

This book introduces these basic legal issues in an easy-to-read format, and provides helpful checklists for minimizing and preventing legal liability.