

DIRECTORS' AND OFFICERS' LIABILITY INSURANCE
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WHY DO WE NEED DIRECTORS & OFFICERS LIABILITY INSURANCE?

It is a frequent misconception that directors and officers of non-profit organizations do not face significant exposure to personal liability from the services they perform as directors and officers of those organizations. The Board of Directors is given the responsibility to manage the affairs of the corporation under the terms of the general by-laws and therefore, the Directors and Officers have a responsibility to their membership.

DUTIES OF DIRECTORS & OFFICERS

Directors and Officers have three principal legal duties:

- Duty of Diligence: to act reasonably, prudently, in good faith and with a view to the best interests of the organizations and its members;
- Duty of Loyalty: to place the interests of the organization first, and to not use one's position as a director to further private interests;
- Duty of Obedience: to act within the scope of the governing policies of the organization and within the scope of other laws, rules and regulations that apply to the organization.

WHEN CAN A DIRECTOR BE HELD LIABLE?

Non-profit organizations can be unincorporated (no legal status) or incorporated. Incorporated bodies can be sued as an entity, where an unincorporated entity cannot. Regardless of how the organization is structured, individual directors can be held liable for their actions. Allegations which are most commonly made and which have to be defended by directors include:

- Acting beyond the scope of their authority
- Giving wrong advice
- Breach of fiduciary duties
- Authorizing excessive spending
- Failure to supervise subordinates or affairs properly

WHAT IS DIRECTORS & OFFICERS LIABILITY INSURANCE?

Directors & Officers liability insurance offers peace of mind to your volunteer directors. This policy pays on behalf of individual directors, officers, trustees, employees, volunteers and members of any duly constituted committee in the event they are sued in conjunction with the performance of their duties. Coverage is provided for "Wrongful Acts" or alleged Wrongful Acts. Wrongful Acts can be defined as any alleged act, error or omission, misstatement, misleading statement, neglect or breach of duty.

CLAIMS MADE POLICIES

Directors and Officers liability insurance programs are provided on a claims made policy form. **This means the claims must not only be made against you, but also must be reported during the policy period.** This means your association/club must pay close attention to how and when claims are reported. In the unfortunate circumstance of a claim, reporting is critical. In some cases, the timeliness of reporting could make the difference between coverage being accepted or denied. You **must** also advise of any known circumstance which may give rise to a loss prior to the expiry date of your policy, or upon application for a new policy.

CLAIMS EXAMPLES

Suspension of Membership

The Plaintiffs were members of an athletic club who were suspended for inappropriate conduct. They brought a claim against the association and its president for an injunction barring the suspension and for damages alleging that their memberships were suspended without just cause. Damages were paid to the Plaintiffs and they were subsequently reinstated as members of the club.

Defence Costs: \$35,000
Settlement: \$16,000

Misrepresentation, Breach of Fiduciary Duty

A foundation was established for the purpose of organizing and managing an international event. The foundation received a grant from the federal government to help finance the event. Subsequent to the event, it was discovered that the foundation had incurred expenses well in excess of revenues. The government investigated and concluded that the grant monies had been used for purposes other than which had been initially represented. The government brought a claim against the directors and officers for damages arising as a result of the misrepresentations made regarding the use of the funds and for breach of fiduciary duty.

Defence Costs: \$ 35,000
Settlement: \$120,000

The Canadian Cycling Association has arranged a National Directors & Officers Liability Insurance Program through Jones Brown Inc. for members of the Canadian Cycling Association. This program is underwritten by Trisura Guarantee Insurance Company. Please refer to your Provincial Association for further details.