



Legal & Insurance Overview

Incorporation

Incorporation is a legal process whereby an organization is recognized as a corporate individual, having many of the same legal rights and obligations as a person. An incorporated organization may enter into contracts, own land in its own name, sue and be sued in courts. The main advantage is limited liability, meaning that no individual member is generally responsible for the debts, other obligations or any action of the organization. The organization and its officers, however, can still be prosecuted for contravening or failing to observe the provisions of its statute of incorporation.

Not all liability with respect to finances is removed from the individual directors (e.g. joint liability for financial obligations to employees up to six months' wages). Certain procedures are more rigid for corporate bodies (e.g. formal notice for meetings, audited accounts presented at annual general meetings, compulsory membership list, etc.).

P.S. Corporate returns must be filed each year. There are costs for incorporating, including registration fees and charges for a name search.

Directors' Duties and Liabilities

A director's duties and liabilities are found in common law and in the legislation that governs corporations and not-for-profit organizations in Canada. They are also in the bylaws and other agreements. All members of the board should be aware of these obligations to minimize potential liability.

All members of the board have three basic duties:

Duty of care. Act reasonably, in good faith, in the organization's best interest; carry out due diligence.

Duty of loyalty. Place the interests of the organization before their own; act honestly and in good faith.

Obedience. 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.

Directors are required to keep records of any business and to file annual statements where appropriate. They are also responsible for ensuring that annual tax returns are filed and proper records kept of employees' work hours and wages. (The Unemployment Insurance Act and Income Tax Act make directors responsible for the organization's withholding of income tax, unemployment insurance and Canada Pension payments from salaries, to remit to the government.)

A director can avoid liability by dissenting to a resolution if the proposed act of the organization is unlawful (ensuring that a notation is made in the minutes). He/she should be aware of all the affairs and business of the league, should examine the financial statements regularly and should not misuse the information available to him or her. Directors should read the exemptions on liability insurance carefully and get riders for potential problems. (This information should be reviewed annually.)

P.S. Recommendation:

- A turnover checklist should be used when directors turn over duties.
- Written legal opinions and disclosures must be sought as appropriate.

Insurance and a Board Member's Personal Liability

Depending on the risks and liabilities connected to your league's operations, various types of insurance may be required. Board members should be aware of the types and amount of insurance coverage in place.

There are two different liability policies that address board members' personal liability:

1. Directors' and Officers' (D&O) liability policies that deal with alleged "wrongful acts" that result in financial loss to the claimant.

This coverage typically protects against risks that are not included under general liability coverage, such as claims arising out of board decisions or omissions, or out of actions or activities performed directly under the auspices of the board or directors. D&O insurance is available for as little as \$200/year.

Directors and officers of non-profit organizations owe a number of duties to a variety of stakeholders. The duties are varied depending upon the type of organization and include fiduciary, employment and other duties. Examples of stakeholders include the organization itself, members, former directors, employees, suppliers, donors, government agencies and the public.

Types of non-profit D&O claims include:

- mismanagement of funds,
- failure to fulfill fiduciary duties,
- misrepresentation of reports, financial statements,
- conflict of interest/self-dealing,
- non-third-party transactions such as awarding contracts to parties related to directors,
- membership complaints and discrimination, and
- failure to detect/stop embezzlement of funds.

Directors and executive may be held personally responsible for wages, debts and/or claims against the D&Os.

2. Commercial general liability policies that deal with alleged "wrongful acts" that result in bodily injury or property damage loss to the claimant.

General liability coverage protects your league against third party legal liability related to property damage or bodily harm, such as injuries sustained during your league's programs or damage to property that the league does not own or rent. **It automatically covers directors and employees while they are acting in the scope of their duties.**

P.S. EFCL recommends Foster Park Baskett Insurance Ltd. for all league insurance requirements. Contact them at 780-489-4961

Bylaws and the Protection They Offer

By "indemnifying" its board members in its bylaws, a league agrees to pay the costs associated with a claim related to a director's service on the board.

While indemnification helps protect board members, many leagues do not have the money in reserve to pay the costs associated with a claim. D&O insurance covers the financial requirements of indemnification.

For more information on board liability and insurance coverage, contact:

Foster Park Baskett Insurance Brokers
Phone: 780-489-4961

Also, check out these resources:

- www.volunteer.ca "Directors' Liability: A Discussion Paper on Legal Liability, Risk Management and the Role of Directors in Non-Profit Organizations." Volunteer Canada
- <http://strategis.ic.gc.ca/epic/internet/incilp-pdci.nsf/en/c100689e.html> "Primer for Directors of Not-for-Profit Corporations." Industry Canada.
- www.ibc.ca (Insurance Bureau of Canada online risk management tips for boards)

Hall Insurance

The following notes concerning insurance and indemnity are taken from the Tripartite Licence Agreement. Please refer to your lease for information specific to your league.

The Community League shall maintain:

- Comprehensive General Liability insurance for \$2,000,000, per occurrence for bodily injury, including death, personal injury and/or property damage, with specified endorsements.
- “All Risk” property insurance. The insurance policy, if written in the name of the League, should specify that losses are payable to the EFCL (in trust).
- Endorsements to provide the City with 30 days’ written notice of cancellation or material change. Evidence of renewal shall be provided to the City and the EFCL.
- If requested by the City’s Director, Risk Management & Corporate Security, or designate, the League shall provide additional insurance.
- Limits do not define or limit the League’s liability to indemnify the City in the event of bodily injury and/or property damage.

A league’s hall presents one of the primary sources of risk within your league, especially when rented by outside users (third parties).

The league’s insurance policy protects the league, executive, employees and volunteers should they be sued by a third party for injury, property damage or a financial claim. Any activity, program, event or function organized and operated by the league is covered under the league’s insurance policy. This includes community league events where alcohol is served and the league is operating the bar services.

Third Party Hall Use

League insurance is not intended to provide coverage for third party user groups renting or using your hall for their own purposes.

It is recommended that any individual (whether a community league member or not) or organization renting the hall for private functions where alcohol will be served provide the league with an insurance certificate.

If the function involves alcohol, the renter should confirm minimum \$2 million comprehensive general liability coverage, including host liquor liability coverage and name the community league as an additional insured.

Organizations typically have insurance and requesting a certificate confirming host liquor liability insurance should not be a problem. If food and beverage service is being provided by a catering company, the caterer should provide proof of insurance.

Where the renter is an individual and providing his or her own bar service, the prudent course of action is to require host liquor liability insurance because:

- if there is a claim due to the activities of the renters, the individual renting the facility may be personally named in a lawsuit. Insurance coverage will protect the individual from exposing his or her personal assets in this event;
- the community league will limit its exposure in the event of a lawsuit due to the renter’s activities.

The renter may be able to provide insurance confirmation through his or her homeowner’s policy. Where this option is not available, it is strongly suggested the renter secure this important coverage through the Edmonton Community League Short Term Hall Rental Program. This program offers renters \$2 million comprehensive general liability coverage, including host liquor coverage and names the community league as an additional insured. This coverage is available at very economical rates.

Have your renters contact Foster Park Baskett Insurance Ltd. at 780-489-4961, by e-mail at fpb@fpb.ca or visit the website www.fpb.ca.

Insurance for Sports Activities

Any individual or organization renting your hall or other facility to conduct a sport-related activity should provide the league with proof of minimum \$2 million liability insurance, including injury to participants, and name the community league as an additional insured. This relieves the league from insurance responsibilities for the sport activity.

Occupier's Liability Act

The *Occupier's Liability Act* legislates community league responsibilities when renting facilities. The community league must:

- practise a common duty of care when providing activities and in relation to facility maintenance,
- establish reasonable policies and be sure renters understand them,
- be aware that trespassers are not owed a duty of care unless they are children.

Personal Information Protection Act (PIPA)

EFCL and its member community leagues are governed by the Personal Information Protection Act (PIPA). While PIPA focuses on private sector privacy matters, it also applies to other agencies, including not-for-profit organizations, that fall outside the definition of public sector organizations.

Following are PIPA requirements for EFCL and community leagues:

- Obtain consent for collecting, using and disclosing personal information, except when inappropriate (for example, in an emergency or when consent would compromise the availability or accuracy of the information) in a form appropriate to the kind of information concerned. If an individual modifies or withdraws his or her consent, respect the changes.
- Collect personal information only for reasonable purposes and only as much as is reasonable for those purposes. Generally, collect personal information directly from the individual concerned and inform the individual of how you will use and disclose the information.
- Use and disclose personal information only for the purposes for which it was collected.
- On request, provide an individual with information about the existence, use and disclosure of the individual's personal information and provide access to that information, if reasonable. On request, correct information that is inaccurate.
- Ensure any personal information is as accurate as necessary for the collection purposes; ensure personal information is secure; and keep the information only as long as reasonable for business and legal reasons.

P.S. To comply with PIPA, follow reasonable business practices and be diligent about protecting personal information.

For example:

- **ensure members know why you are collecting their names and contact information at a meeting,**
- **when photographing individuals at social events, remember to tell them their photo may be used on the league website or in the newsletter,**
- **develop a league policy regarding the length of time you should retain computer or paper files, then ensure computer files are deleted after that time and paper records (particularly those containing financial or personal information) are shredded after the identified timeframe.**

For more information about PIPA, Office of the Information and Privacy Commissioner, generalinfo@oipc.ab.ca

Workers' Compensation Board

Community leagues are strongly advised to contact the Workers' Compensation Board (WCB) to discuss your league's specific circumstances relating to any permanent or semi-permanent relationships your board may have – with contractors, staff, contract employees or volunteers.

Visit the WCB website at www.wcb.ab.ca or call 780-498-3999 to discuss your WCB requirements.

Vicarious (No Fault) Liability

Printing permission from Michael Pucylo & Miller Thomson LLP
Barristers & Solicitors provided the following information.

Vicarious Liability Imposed on Non-Profit Organizations and Charities

Non-profit and charitable organizations must now take greater caution in screening their employees and volunteers as a result of two decisions of the Supreme Court of Canada. Prior to June 17, 1999, non-profit organizations, (and charities), could operate with some degree of confidence that liability for sexual abuse would only be imposed on them if there was negligence in their operations. These same organizations also knew that their liability insurance policies would cover any loss occasioned by negligence on the part of the organization.

All of that changed with the Supreme Court of Canada decisions in *Children's Foundation v. Bazley*, (also known as *Bazley v. Curry*), and *Jacobi v. Griffiths* (also known as *Boys' and Girls' Club of Vernon*). These cases are landmark decisions for non-profit and charitable organizations because for the first time vicarious liability was imposed by the Courts on non-profit organizations for the actions of its employees. Vicarious liability is strict liability, (no fault liability), and is imposed regardless of the fault of the employer. As such, the non-profit organization does not have to have done anything wrong for it to be found responsible for the actions of its employee.

The Supreme Court of Canada set out the principles for no-fault liability to be imposed on non-profit organizations, specifically in the case of sexual assault in *Children's Foundation*. The Court then applied these principles in *Jacobi*.

Madam Justice McLachlin, who wrote the reasons for the decision in *Children's Foundation*, set out two policy considerations in establishing vicarious liability:

- Adequate and just compensation to the victim; and
- Deterrence of future harm. By holding the employer liable for the wrongs of its employee, the employer is encouraged to take such steps to reduce the risk that it will hire future employees that will cause harm to the community.

Madam Justice McLachlin held that there must be a sufficiently related connection between the wrongful act and the harm occasioned by that act to justify imposing no-fault liability. In determining the sufficiency of the connection between the employer's creation or enhancement of the risk and the wrong complained of, a Court may consider such factors as:

- The opportunity that the enterprise gave the employee to abuse his or her power, (i.e. supervision);
- The extent to which the wrongful act may have furthered the employer's aims, (and hence be more likely to have been committed by the employee);
- The extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer's enterprise, (i.e. operations);
- The extent of power conferred on the employee in relation to the victim, (i.e. relationship);
- The vulnerability of potential victims to wrongful exercise of the employee's power.

Consideration of the above five factors were critical in the *Children's Foundation* case where the employee was required to bath and tuck the children into bed as part of his authorized duties. The Foundation provided residential care to emotionally troubled children. The Foundation stood in the place of the parent. Although the sexual assault, which occurred during these activities, was not approved of by the Foundation, the Court found that the activities of bathing and tucking in the children were required duties. As such, the Court found the *Children's Foundation* liable for the conduct of its employee, even though the employer would never have approved of such conduct and had policies against it.

The facts in *Children's Foundation* differ from those in *Jacobi* where the *Boys' and Girls' Club of Vernon* operated a recreational facility for children. The Club's employee committed sexual assaults in the privacy of his own home or, in one instance, in the Club's van. But in all of these cases of assault, the employee had to isolate the victim from the public activities that were the Boy's and Girl's Club's mandate.

The Court found in *Jacobi* that the mere opportunity to commit an assault is not a sufficient reason to impose no-fault liability. Even where the job-created opportunity is accompanied by privileged access to the victim, the Court held that there is not necessarily a sufficiently strong connection between the type of risk created and the actual assault that occurred. To have a strong connection between the employment and the assault, there must be a combination of job-power and job-created intimacy.

The difference between the employees in *Children's Foundation* and *Jacobi* was that the employee in *Children's Foundation* exhibited a parental role towards the child, whereas there was a supervisory role for the employee with the *Boys' and Girls' Club*.

After determining whether there was a sufficiently strong connection, the Court in *Children's Foundation* was required to determine whether not-for-profit organizations and charities should be exempted from liability. The Court held that not-for-profit organizations should not be exempted from vicarious liability. This is also true where the organization employs volunteers.

The Court rejected the Foundation's arguments that organizations that use volunteers have a lower duty than other organizations that employ personnel.

The Court also rejected the argument that imposing vicarious liability on non-profit organizations could put the organization out of business. The Foundation argued that it would be difficult for non-profits to obtain insurance coverage for sexual assaults. Madam Justice McLachlin rejected this argument indicating that it was not fair for the victim to bear the cost of the harm that has been done to him so that others in society may benefit from the good work of non-profit organizations. It is fairer to place the loss on the party that introduced the risk and had the better opportunity to control it.

P.S. What should charities and not-for-profits do?

As a result of these decisions, the risk management task for non-profits is clear:

1. It is necessary to determine the scope and nature of the authority granted to employees, volunteers and anyone whom the organization authorizes to do work on its behalf.
2. Then, the organization must judge whether any likely harm is so closely connected to the exercise and nature of the authority, which the organization has granted to its employees, that heightened standards are required. Pay particular attention to those situations, which the Court describes as having job-intimacy; the kind of personal relationship, which a child might find at home, characterized by attentive care, dependency and reliance on adults.
3. Non-profit organizations have a duty to screen and supervise employees and volunteers. These should include written applications, reference checks, criminal record background checks and ongoing performance appraisals.
4. A non-profit organization should also undertake education and training on an ongoing basis.
5. A non-profit organization should maintain adequate records on an ongoing basis.
6. Finally, the non-profit organization should ensure that it has the appropriate liability insurance coverage in place. This is important insofar as most Comprehensive General Liability Insurance policies exempt out vicarious liability from coverage. As such, an organization that is sued for the actions of its employee, under vicarious liability, may not have insurance coverage to respond to such a loss.

Societies Act Information

Membership in the Edmonton Federation of Community Leagues (EFCL) is open to any community league incorporated under the *Societies Act*, (Alberta Consumer and Corporate Affairs), upon receipt of:

- a) annual dues, as recommended by the board of directors and ratified by the membership at an annual general meeting;
- b) a current executive list, and
- c) a copy of bylaws and amendments thereto.

(ARTICLE 4: EFCL BYLAWS, March 28, 2000)

Information on how to form a Society and the obligations of a registered Society may be obtained from:

Corporate Registry, Mezzanine, J.E. Brownlee Building,
10365 - 97 Street, Edmonton, Alberta, T5J 3W7
Phone: 780-427-2311 Fax: 780-422-1091

The following items are required under the *Societies Act*. Review your bylaws with this checklist to make sure all items are included. Send two copies of the bylaws to Corporate Registry along with a special resolution of the members.

Membership

Terms of admission of members. Who is qualified to be a member of your society? What must they do to join?

Rights and responsibilities of members. What rights and responsibilities do your members have? Do they have the right to attend meetings? Are they responsible for behaving in accordance with the bylaws and objectives of the society?

Resignation/expulsion of members. How does a member resign? In writing? By telephone? Can a member be expelled? What are the grounds for expulsion?

Voting rights. What are the members' voting rights? Can they vote only in person? Can they vote by proxy?

Meetings

Calling annual/general meetings. How will members be notified of annual/general meetings? By letter? By telephone? How many days' notice will they be given?

Calling special meetings. How will members be notified of special meetings? By letter? By telephone? How many days' notice will they be given?

Quorums at general meetings. What is the minimum number of people (quorum) who need to be present to carry on business at a general meeting?

Quorums at special meetings. What is the minimum number of people (quorum) needed to carry on business at a special meeting?

Directors/Officers

Appointment/removal of directors. How will directors or officers be appointed? How will they be removed from office if they don't do the job they've been appointed to do? Will all your members be directors or officers? You must indicate if this is the case.

Duties of directors. What are the duties of the directors or officers?

Powers of directors. What are the powers of the directors or officers? Example: Can the directors manage the affairs of the league?

Financial Affairs

Auditing the books. The society books must be audited once a year (your bylaws must say this). You also may wish to say when the audit will be done and who will do it.

Please note: It is common practice for leagues to have two of their members (other than the treasurer) conduct the review of the books. Their job is threefold. First, they must make sure the financial entries are clear – that anyone looking at the books could determine what the entries mean. Second, do the entries make sense? In other words, are these revenues and expenses related to league business; are they revenues and expenses they would expect the league to have? (Please be aware it is not their job to determine whether the expenditures are worthwhile; that is the job of the board.) Third, do all the numbers add up properly? If the reviewers can answer “Yes” to all three of these questions, the board can approve the review of the books.

The league may also choose to hire an accounting firm to do a formal audit. This can be quite expensive but may be necessary if the league is having problems with its books or if a granting agency requires a formal audit as part of the league’s grant application.

Borrowing money. Will the society be able to borrow money? Your bylaws must address this issue.

Minutes / Books / Records

Preparing and keeping the minutes of the society meetings. Who is responsible for taking minutes at society meetings? Who is responsible for keeping these minutes?

Preparing and keeping the minutes of the directors’ meetings. Who is responsible for taking minutes at directors’ meetings? Who is responsible for keeping these minutes?

Preparing and keeping other books and records. Who is responsible for preparing other books and records? Who is responsible for keeping these items?

Inspecting books and records. Do the society’s members have the right to inspect the books/ records? When and where?

Other

Keeping and using the society’s seal. Who is responsible for keeping the seal? Who has permission to use the seal?

Changing the bylaws. Does a change of bylaws require a Special Resolution of the Members? Special resolution is defined in Section 1(d) of the Societies Act. The definition cannot be changed.

P.S. Registered, not-for-profit or volunteer organizations, such as Homeowners’ Associations, are not eligible for membership in the Edmonton Federation of Community Leagues.

Acts Affecting Community Leagues

The following Government of Alberta acts may affect community leagues. Copies are available from:

Queen’s Printer Bookstore
11510- Kingsway Avenue
Edmonton, Alberta
780-427-4952

- *Occupier’s Liability Act* (relating to hall rentals)
- *Societies Act* (relating to incorporation and registration of community leagues)
- *Municipal Government Act* (local legislation, includes Municipal Reserve Policy)
- *Landlord and Tenant Act*, (relating to facility rental)

As well, various City of Edmonton bylaws affect the operation and activities of community leagues. Visit www.edmonton.ca and search “bylaws.”