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# Mind Your Business

sharing risk solutions for Canadian non-profits

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## Responsible Management

It is ironic (and unfortunate) that as an insurance brokerage firm specializing in helping non-profit organizations with the arranging of their insurance, especially the directors' & officers' liability coverage that protects against allegations of mismanagement, that organizations sometimes demonstrate acts of poor management during this process. Of course, such doesn't bode well for the organization in it's effort to obtain insurance.

In addition to reviewing the nature of an organization, its involvements and pursuits, its financial position and other matters towards evaluating the risk of a 'mismanagement' suit, insurance companies considering to provide directors' & officers' liability will also significantly look at the management style and attitude. As such, it should be obvious that an organization needs to show that they can demonstrate competence, focus, concern, attention and diligence to all their matters of business, however it is even somewhat of extra-special importance when the organization is trying to arrange the very insurance that will protect its executive team against potential cases alleging mismanagement. Failing to do so is comparable to drunkenly driving up to your automobile insurance brokers office in hopes of arranging your car insurance!

## Share Your Good Ideas?

Do you have an interesting and original idea to share? Let us know what your organization does to minimize its risk concerns in 300 words or less.

Those submitting the best suggestions receive fame and accolades via an article with your name highlighted to be published in a future issue. Send your ideas to:

[info@cap-insurance.com](mailto:info@cap-insurance.com)

## Dining Dancing Drinking Driving

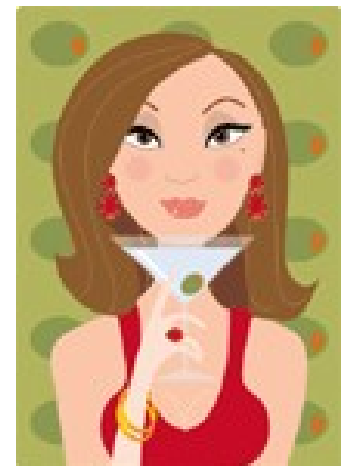
Fundraisers such as a dinner banquet are often very successful events in terms of highlighting an important cause to local dignitaries and persons of influence as well as for the monies raised. Of course an inherent liability risk associated with such events involves the consumption of alcohol by guests.

The effects of alcohol consumption and resulting concerns are well known. Risks of self-injury such as falls, violence towards others, lessened inhibitions and poor judgments are significantly increased, as is the well-publicized issue of drinking related automobile accidents.

It is important for organizations to recognize that regardless of whether or not the event takes place in a licensed, staffed venue or a rented hall with serving by the organization's own people, the organization can and likely will be subjected to a liability allegation should an incident result in injury to an intoxicated individual or innocent third parties. Despite the fact that in cases where events are hosted by a hired facility and liability findings are likely to be minimal against the sponsoring organization as it was not doing the serving, there do remain many nuances that leave possibility for some percentage of blame and responsibility do still exist.

There is much information publicly available regarding methods to minimize alcohol related risks. Of these, undoubtedly the most effective strategy is abstinence. Of course, this is not a practicality at most social events. For those organizations with activities where alcohol is to be served, we suggest that you work to understand the risks and implement solutions via the following:

- Do not make assumptions or have an attitude of ignorance or indifference – the results could be something you never forget!
- Appoint a committee or individual to review many of the cases and examples that can be found on the Internet to ensure full appreciation for the broad scope of circumstances that can lead to liability suits.
- Use common sense by enforcing restrictions on over consumption, plan a designated driver program or budget for and be willing to provide cab fare or keys-to-us service.
- Don't let someone 'bully' you into letting him or her to drive – they just may still be around the next morning to thank you!



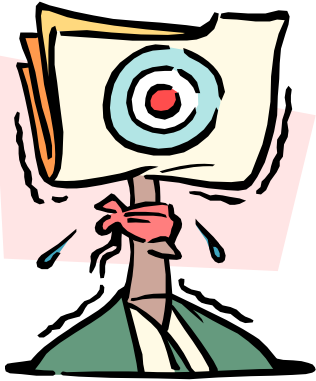
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### Executive Hunting – Open Season!

Most directors & officers are aware (or becoming aware) of the significant personal risk that service as a director or officer brings. Common law, statutes and regulations impose many onerous duties and responsibilities on non-profit directors and officers, even as volunteers. Directors and officers are expected to balance the interests of an increasingly broad spectrum of 'stakeholders' in the non-profit organization, such as members, donors, employees, government agencies, the local community, and others.

Non-profit organizations should seek to protect its valued directors and officers via liability insurance to protect against mismanagement allegations suggesting 'wrongful acts' such as errors & omissions (non-professional), misrepresentation, breach of contract, breach of fiduciary duty, wrongful dismissal of employees and a variety of others concerns. Remember, the above only need to be alleged for legal and other costs to be incurred in defending the director.

### Maintenance Services (Managing The Completed Operations Risk)

By: Scott McEachern

As the springtime approaches, so does a potentially serious risk concern that likely remains unknown to many non-profit organizations.

Many non-profit groups receive great pleasure in gathering their volunteers together to donate their time in the maintenance of parks and wetlands such as a litter clean up or other light maintenance. Of course, this 'work' is very important and beneficial to their local communities, however it brings with it a risk that should be recognized and managed as best possible. The risk is referred to within the insurance industry as the 'completed operations exposure'.

Most persons can immediately recognize risks from an 'operations' standpoint. As a simple example, during the 'operations' of pounding down the nails in a marshland boardwalk that heaved due to frost over the winter, a volunteer may accidentally strike and injure someone with a hammer. Such an incident is known as an 'operations exposure' as it happened while the work was being performed. Using the same example, consider the completed operations risk. In doing so we must consider the potential harm that may arise not during the 'work' but as a result of the 'work'. In the case of pounding down frost heaved nails in a marshland boardwalk, the completed operations risk is that some nails may have been missed and left protruding or perhaps it should have been noticed that a board was rotten and should be replaced. Should these 'workmanship flaws' later result in injury and lawsuit, this would trigger a 'completed operations' claim under the organizations general liability insurance.

To defend against a 'completed operations' claim, organizations need to show the court that they acted in a reasonably diligent manner. Our laws and our courts expectations are not such that people and organizations are to be held fully responsible by guaranteeing workmanship will be completely free from flaw. We are to be held accountable only to the degree of what is reasonable based on the particular case. Of course, by basic definition the context of the phrase 'what is reasonable' can be quite arbitrary. As such, to defend your actions as having been as 'reasonable' as possible, it will be necessary to demonstrate concern, attention and diligence. It is not necessary to demonstrate perfection. The demonstration of 'reasonable' action most effectively comes in the form of record keeping. To this effect, it is important for organizations to recognize that if a lawsuit arises at a future date in which the allegation suggests flawed 'workmanship', the defence of such will require evidence that the organization acted reasonably in doing its 'work'. In the example of the maintenance of the marshland boardwalk discussed above, the organization doing this work would be prudent to provide written procedures to its volunteers with a sketch map and page for notes. The volunteers while making repairs can then exercise attention to the established procedures. It would be wise for these procedures to include noting rotten boards that should be replaced. It would also be prudent to keep an eye out for other hazards that should be attended to. Are there trees which overhang the trail that have not survived the winter and thus more prone to fall and potential injury of a marshland visitor? Are there rocks on a hillside which have become unstable due to frost heaving? Is there a secluded area frequented by drug users where discarded needles are left behind that if found by children could lead to injury or disease? Informing volunteers of concerns warranting attention and keeping notes on the effort to resolve such problems is the best way to prepare your organization for the potential of having to defend a future claim.

### Organization of the Month

This month we take our hats off to the **Canadian Association of Food Banks** for its national effort in serving the many local food bank services across Canada to provide assistance to those who struggle in making their ends meet with life's required necessities.



Canadian Association of  
**FOOD BANKS**  
Association canadienne des  
**BANQUES ALIMENTAIRES**

The Canadian Association of Food Banks serves its members and subsequently the food bank beneficiary by working with various corporate partners to develop assistance programs that ensure goods can be delivered to the needy. This includes special arrangements with food distributors, manufacturers of personal care products as well as transportation suppliers and many others who assist in getting help to where it is needed. Of course, the organization is also very involved in promoting hunger awareness and advocacy via its study and documentation of hunger as a societal problem in Canada.

Finally, we are proud to announce that our firm has chosen to champion the cause of the Canadian Association of Food Banks by holding food drives among our employees and other contact networks as well as providing a substantial corporate donation.