

Insurance Coverages Nonprofits and Charities Need to Understand

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Disclaimer: The information in this section is intended only as a reference. You should always seek advice from a licensed broker or agent when making decisions about insurance. The Insurance & Liability Resource Centre for Nonprofits, Imagine Canada, its affiliates, partners and employees are not licensed to make recommendations about insurance coverage.

Nonprofit Insurance Coverage

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He continues to be available for questions regardless of whether you are his client or not: derek.grieve@scfg.ca

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Commercial General Liability (“the CGL policy”)

C

Commercial as this is commercial lines insurance rather than personal lines. Commercial policies cover organizations, not individuals. Personal liability comes automatically with your home or car insurance. Commercial lines liability is purchased separately.

G

General as the CGL covers a broad spectrum of common liability claims. While every insurance company can sell different versions of CGL coverage, they are always *all-peril policies*, meaning they cover everything unless it is specifically excluded in the policy wordings. Always check your policy wordings for the list of specific exclusions.

L

Liability is a legally enforceable obligation. Liability insurance pays for the damage or losses suffered by others for which the insured organization or business is legally responsible. Who decides that? The courts. If a judge or jury decides the insured is legally responsible, they are then liable. In practical terms, when you see the insurance term “liability” think “law suit”.

The “CGL” or the “GL”

The CGL can also be called the **General Liability (GL) policy**. Into the 1980s, it was also called the comprehensive general liability policy. Insurers, however, realized that this terminology led some clients to think that they didn’t need any other liability coverage so they dropped it.

There are several other important liability coverages available, either as an endorsement to the CGL or as a separate policy. We’ll look at those later.

What is a CGL?

It is the major liability policy for Canadian businesses and nonprofit organizations. It is a broad policy, which means that it covers many types of common liability claims. Because of this, the CGL is typically the first insurance policy a nonprofit or for-profit purchases.

Depending on the extent of the coverage purchased, CGL insurance provides coverage for a wide range of *negligent* acts that result in bodily injury, property damage and personal injury. We’ll look at what these each mean.

What is a “negligent act”?

The insurance definition of negligence is “to fail to do what a reasonable and prudent person would do (or to do what such a person would not do); this can result in property damage, injury or death.”

It means that you’re at fault, at least partially – just like an at-fault car accident. Negligence means the organization or person(s) insured by the policy is at-fault and therefore liable (responsible) to pay for damages or harm done to the third party. If there is no negligence, then there is no liability. If there is no liability, the court will not require any responsibility.

If there is negligence, the next question is whether the negligence was accidental or not. Liability insurance for the most part only covers accidental negligence. For example, a man digs a hole to plant a tree, leaves the uncovered hole overnight, and a third party falls in and breaks a leg. This was not smart, but hopefully it was accidental. If it occurred in a non-fenced public area, a court would almost certainly rule that there was negligence.

Amazingly, the CGL even has coverage for purposeful negligence (see Section B of coverage).

Standardized CGL and variations on it

Different insurers have different CGL policies, but there are generally common elements found in them all. Beyond the common elements, a policy may include endorsements or exclusions that broaden or narrow coverage, depending on the organization’s needs and wants and what the insurer is willing to provide.

The IBC created the most recent standardized CGL in March 2005. Creating one CGL that all Canadian insurers could work with makes it possible to actually compare wordings to see how they differ. Some insurers use all the IBC’s standard CGL; others use parts of it; some don’t use any of it. It is their decision. Every three to five years IBC updates its standardized wordings because lawyers find gaps that were not intended, or because changes are required to stay competitive with insurers who are improving coverage, or simply because changes are needed to keep up in our fast-changing society.

Some insurance companies have also developed enhanced CGL policies for nonprofits.

What does a CGL cover?

Let’s think about a third party lawsuit. It all starts the day a *statement of claim* arrives in the broker or agent’s office. Your nonprofit organization is threatened with legal action. Your brokerage or agent’s office is always named as well as a defendant.

General liability automatically covers directors and employees while they are acting in the scope of their duties; however, always check to ensure volunteers are covered on the policy or by an extension of the policy.

CGL policies respond to claims (lawsuits) covering four main areas:

1. Bodily injury (BI)
2. Property damage (PD)
3. Personal injury
4. Tenant's legal liability

All of these coverages come as part of the policy. They are divided into 3 sections.

Coverage A: General liability coverages

Keys to CGL Coverage A:

- Third party is physically injured or has property damage.
- First party (insured) was negligent.
- It was accidental.

Coverage A is a common coverage that covers a claim/lawsuit arising out of either bodily injury or property damage to a third party.

Bodily injury (BI)

Bodily injury is physical injury, sickness or disease, or death of a third party. A major reason for this type of claim is injuries sustained at your premises or off-site during fundraising or program activities.

Example #1: The most common claim filed under a nonprofit CGL policy is a “slip and fall” claim filed by a participant, visitor or guest attending an event or just on the organization’s premises.

Example #2: There was a \$13 million judgment awarded to the family of a two-year-old who fell through a broken window screen at an aunt’s apartment and became permanently brain damaged. After a 12-week first trial and an appeal, the aunt was found to be 10% liable and the building owner, who had not responded to repeated requests to fix the screen, was found to be 90% liable.

Property damage (PD)

Property damage is damage to tangible property of a third party (not property the organization or any insured owns or rents).

Example #1: Your nonprofit rents space for your office or activities and one of your staff or a volunteer (make sure the CGL covers volunteers) accidentally starts a fire that spreads beyond your unit to a convenience store or bank next door. They sue your organization for beginning the fire. If your nonprofit has a CGL, it would likely respond to cover the third party damage (up

to the limits of the policy). It would not, however, cover the damage to your unit. That would be covered by your tenant's legal liability policy (discussed below).

Example #2: A staff member or volunteer leaves the water running accidentally in your premises. The water floods into the printing business on the floor below, destroying their printing machines and stored paper. They have an insurance policy that pays for new machines and paper, but then their insurance company sues your organization for starting the flood (insurers suing to get back money they have lost is called *subrogation*). If your nonprofit has a CGL, it would likely respond to pay the other insurance company back (up to the limits of your policy).

Exclusions for Coverage A. There are many. Here are some examples:

- ❖ Where the insured intentionally damages the property of third party.
- ❖ Where the insured intentionally injures a third party.
- ❖ Bodily injury (BI) or property damage (PD) to insureds (e.g., employees, board members, volunteers). With Coverage A “insureds can't sue insureds” and get coverage.
- ❖ BI or PD to a third party caused by pollution (this is covered by an environmental policy, which is expensive and underwritten separately).
- ❖ BI or PD resulting from use of a vehicle (this is covered by auto insurance).
- ❖ BI or PD resulting from the organization serving liquor (this covered by a liquor liability policy, which some insurers offer).

CGL claims are often for quite ordinary circumstances

Melanie Herman, executive director of the Nonprofit Risk Management Centre, states that “contrary to common perception, the kinds of claims filed against nonprofits often involve ordinary events and circumstances.”

Here are examples of CGL claims:

Trip & Fall. An elderly guest at a social gathering badly broke an arm in a fall caused by a poorly placed extension cord.

Chair Collapse. A neighbourhood association held a party to celebrate a park opening. Rented tables and chairs were set up on paved areas in view of the podium where the mayor would be speaking. When speeches began, guests towards the back stood on chairs for a better view. When one of the chairs collapsed, this set off a domino effect of tumbling people resulting in numerous but relatively minor injuries.

Food Poisoning. A nonprofit fundraiser “turned sour” when food served at the event was alleged to have made visitors sick. One person became so ill they decided to initiate a lawsuit.

Note: Most discussions of a CGL end with bodily injury and property damage. Brokers and agents do not want overwhelm their clients until questions arise. However, the CGL has more coverage available. Since this is a resource binder for reference let's go further.

Coverage B: Personal injury to a third party

Keys to CGL Coverage B:

- Third party has injury that is *not* bodily.
- First party (insured) was negligent.
- It is *not* accidental.

Coverage B is very different from Coverage A. Claims under Coverage B do *not* involve bodily injury or property damage. The only similarity between Coverage A and Coverage B is that both involve a lawsuit from a third party. Coverage B was first added in the late 1980s and soon virtually all CGL policies were offering a version of it.

What is personal injury? Bernard Robertson, a commercial broker in North Bay, Ontario who trains other brokers on CGL from the IBAO, describes Personal Injury coverage as coverage for “any injury not covered by bodily injury.” This is truly an “all perils” definition where you are covered for everything, except of course the list of exclusions. There are *always* exclusions.

Examples of actions by an insured against a third party covered here:

- ❖ libel (a written statement about someone that is personally injurious to that individual)
- ❖ slander (spoken word)
- ❖ wrongful entry
- ❖ violation of privacy
- ❖ infringement of copyright or trademark or unauthorized use of an idea in advertising (these are examples of “advertising injury,” an important CGL coverage for many nonprofit organizations)

According to one broker, the most common Personal Injury claim is for defamation of character (libel or slander).

Coverage C: Medical payments

This coverage is *not* actually liability coverage. It is accident coverage. It covers accidents at your premises, or at activities you sponsor off-site, regardless of whether or not you were negligent /responsible/liable.

It allows the insured to promptly compensate a third party for minor injuries on a no-fault basis. Other than helping the third party, it also hopefully discourages a lawsuit if the third party was contemplating one.

Coverage A and B have large liability limits (often \$1 million or more). This section has smaller limits (e.g., \$2,500 or \$10,000).

In addition to liability that can arise through advertising, publication of news articles and other information can cause harm. Issues of libel, slander, defamation of character and errors or omissions may give rise to litigation. Non-profits need to be very careful in the dissemination of 'facts' to ensure against under zealousness or over zealousness.

One example: how soon should a community group announce that a soon to be released dangerous criminal is thinking about moving into their area? Such a circumstance falls into the realm of the proverbial 'rock and a hard place'. Imagine that you are homeowner trying to get top dollar in the sale of your property when this information is publicized. Now imagine the other side of this situation. You have just bought a home in this neighbourhood and had values subsequently drop after your purchase. You then find out that the community group had this information two months ago when you were selecting a new home and hadn't reported it publicly. When should the community group announce this concern of public interest? Not easy to answer these complex questions. Sometimes with the best intentions nonprofits open themselves up to claims.

This article from the CAP Insurance online newsletter

Coverage D: Tenant's legal liability

One broker who specializes in nonprofit business estimated that only 5% of small and medium NPOs in Ontario own their own buildings. For the other 95% that rent or lease, this coverage is crucial.

Coverage A provides coverage if you damage or injury a third party. So it would cover water flooding the business beneath your unit, but it would not cover the water damage done to your rented or leased unit.

Coverage D provides coverage when the insured is legally liable as a result of use or occupancy of the non-owned premises. TLL will cover you if, for example, the landlord sues your organization for damages to his building or contents due to an insured peril for which you are liable (like leaving the water on accidentally).

Again this section has a separate limit. Imagine Canada's policy has a limit of \$100,000 tenant's legal liability. More than one broker and agent has suggested we consider a higher amount.

Product and completed operations (PCO) liability

This coverage is not included in every insurer's CGL policy. Ask your agent or broker if PCO coverage is included with your CGL policy.

Product liability is liability that occurs because of products that the insured sells, distributes or manufactures. It includes the product, the containers or packaging, and any warranties. Here are some responses to product liability claims:

- ❖ Tylenol and other over-the-counter drugs are now sealed to protect them from tampering.
- ❖ McDonalds and others restaurants now print “hot” warnings on their coffee cups.
- ❖ Lysol was originally said to kill 100% of germs. Someone tested this and found it wasn't exactly true, sued them and won. Lysol is now said to kill 99.9% of germs.
- ❖ Detailed instructions in owner’s manuals on things like how to use the product, clean it, etc.

Completed operations liability is liability that occurs because of work the insured has completed. This applies mainly to contractors, plumbers, carpenters, electricians, etc. However it is also useful for nonprofits.

How would PCO ever be useful to a nonprofit?

Although many nonprofits would not need PCO coverage, some should seriously consider it. Here are two examples.

Products: Many nonprofits produce products (e.g., software, a directory, a manual). If there were ever to be anything wrong with the product or it caused inadvertent injury, then what could happen?

Completed operations: If an organization does any type of clean up or maintenance of lands (e.g., parks, river systems, and even larger eco-systems such as the Bruce Trail), there is a possibility that something it does (e.g., remove a dam, build a retaining wall, or replace a culvert) could cause damage (e.g., a flood) that that leads to a lawsuit.

Examples of claims

Here are four examples of how the CGL is used.

1. The Adult Better Life Society was a nonprofit organization whose mandate was to provide employment placement of adults with mental and/or physical disabilities. ABL arranged for an individual to be placed at a local department store. The individual’s job entailed general clean up of the store and collecting carts that were left around the store and returning them to the designated receptacles. On one shift, the individual was pushing a cart around the store and struck a patron causing her to fall. ABL was named in a lawsuit brought against the store for bodily injury. The Bodily Injury portion of the CGL policy (Coverage A) responded and the parties were able to resolve the issue out of court.
2. The Johnstown Business Association was a nonprofit organization formed to help renew the downtown area by attracting more business and tourism. As part of their revitalization project, JBA contracted with a company to build an ice rink in a downtown park. The contract stated that the company was responsible for the maintenance of the ice rink and that the rink would have a large JBA sign. While flooding the rink, the company accidentally let the water flood onto the sidewalk. A pedestrian fell on this frozen section of the sidewalk and fractured his wrist. JBA was named in a lawsuit brought by the pedestrian. The Bodily Injury portion of the CGL policy (Coverage A) responded. With the case about to go to trial, and the severity of the injury, the absence of a CGL policy would surely have crippled the association.

3. A Chamber of Commerce in Alberta had numerous members from the local business community on its board of directors. The purpose of the COC was to provide support for local businesses and networking for its members. At their Annual General Meeting, two members of the board of directors disagreed over some missing money. One accused the other of fraudulent activities and went so far as to post the details of the suspected fraudulent activities on the accuser's website. The person accused of the fraudulent activities found this out and sued the organization and the member for defamation of character and other personal injuries. The Personal Injury portion (Coverage B) of the CGL policy responded to the claim and the claim was eventually settled out of court. Without a CGL, both the individual and the organization would have been open to expensive litigation.
4. As part of its SummerJam Festival each year, the SummerJam Organization holds an outdoor concert featuring a prominent upcoming artist. The concert is a ticketed event with patrons entering and exiting through one area of the park. While attempting to sneak into the concert, a teenager attempted to jump over a temporary fence erected by SummerJam volunteers and fractured her ankle. The teenager sued SummerJam for not properly securing the fence. Despite the fact that the teenage was injured while attempting to sneak into the concert, the Bodily Injury portion of the CGL policy responded to cover defence costs, which were substantial even though the case never went to trial.

Should every nonprofit have a CGL policy?

The first two questions that you need to ask are:

1. Could the actions of this organization hurt anyone?
2. Could the actions of this organization damage anything?

According to Bernard Robertson, the following organizations need a CGL: "any organization that provides a product, service or advice." In his opinion, therefore, that it is very difficult to find *any* organization that should not purchase a CGL.

The CoOperators has just launched a product for the nonprofit sector making the CGL policy the centre of all available insurance coverage. They will not sell any coverage unless the CGL is purchased first and make it clear that they believe every nonprofit should purchase a CGL as the central piece of insurance protection.

Whether or not this is true for your nonprofit specifically is a question for you and your agent or broker. Let's now look at important questions to ask.

Questions to ask your insurance professional

1. The first question to ask regarding any insurance policy is exactly *who* and *who is not* covered as an insured on the policy. Your organization and its employees will be covered, but who else is covered? If you involve volunteers in your activities, are they covered by the CGL you currently carry or the CGL you are receiving a quote on? Never make assumptions about who is covered – ask! If there is any uncertainty, ask your broker or agent to show you

in the policy wordings where this is described. This is one issue you want to make sure you understand.

Some CGLs do not cover volunteers without an endorsement. As of March 2005, the standardized CGL from IBC that many insurers use *does* include coverage for volunteers. It states “volunteer workers” are named insureds but “only while performing duties related to the conduct or your business.” Remember, however, that not all insurers use this standardized wording.

The CAP policy wording (one of the nonprofit packages) adds volunteers on through an endorsement and states they are named insureds “but only for acts within the scope of their duties performed on behalf of the Named Insured...”

The idea is the same. They are only covered while doing nonprofit activity.

One broker we spoke to indicated that, in his opinion, one the biggest concerns for nonprofits “is volunteers acting outside the scope of their duties. I have found that volunteers tend to try to take ownership of a task, but end up exposing themselves personally to retribution by a third party. In many cases, the volunteers do not take the time to educate themselves on the corporate bylaws, and in many cases, step outside their mandates.”

One strong volunteer

A volunteer canvasser was attempting to knock on a door and accidentally pulled it off its hinges. The homeowner sued the organization that had sent the volunteer to the door. The CGL responded and paid for property damage (settled out of court) because volunteer was “acting within the scope of his duties.”

One brochure advertising insurance for nonprofits states the following about its CGL: “Additional Named Insureds includes All Board Members, Trustees, Employees and Volunteers.” This is very clear. Remember, however, that a brochure is not a legal document – your policy is. Yes, read your policy! Your broker or agent can help you understand it, but it is your responsibility to ask. Once you’ve read your policy, file it away in a safe place. You will need it if a claim occurs and there is any disagreement on the wording of your policy.

2. Who pays the defence costs up front? Some CGL policies require the defendant to pay all the defence costs (e.g., lawyers fees) until the conclusion of the lawsuit and then ask the insurer for reimbursement. This could be devastating for many nonprofits. Make sure the CGL you purchase does not require this.
3. Are defence costs (e.g., lawyer’s fees) paid for by the insurer on top of the limit? If the CGL is a “defence within limits” policy, defence costs allow can exhaust policy limits! If you have a policy like this, you may want to consider a higher limit of liability.
4. What are the limits on each section of the policy (e.g., Section A may have a limit of \$1 million per occurrence). This is the maximum amount of money the insurer will pay for one claim. Is this sufficient? Depending on your activities and financial exposure a broker or agent may suggest an increase to \$2 million or more.

Note, however, a commercial lines brokerage wrote this in a mailing to clients: “For significant claims occurring this year, the final settlement will likely not be known for 8 – 10 years or more. So the question is ‘how will serious injuries be evaluated in the courts a decade from today?’ Increasingly, Canadian courts are assessing higher monetary settlements to individuals who are permanently and seriously injured.”

People generally assume that increasing liability coverage significantly (e.g., by an additional million dollars) will be extremely expensive, but this is not always the case. If you think you may need a higher limit, talk to your broker or agent.

5. What is the total liability limit available for one year in the event you have more than one liability claim (unlikely but possible)? This is called the aggregate limit.
6. Does the CGL meet or exceed your legal obligations? Nonprofits have many different legal obligations and it is important to insure that you are not under-insured for these instances.

Nonprofits have to be prudent and ask landlords what their minimum requirements for CGL are in their contract. If an organization were to enter into a contract with a landlord and simply imply that they had enough liability insurance, just to get the lease signed, they are opening themselves up to two lawsuits if a claim is made: one from the third party who is suing and another from the landlord if it were ever determined that the organization was a) not insured in the first place or b) underinsured.

Save money by “piggy backing”

Does your organization have separately incorporated affiliates (e.g., a foundation, a national “parent” organization) or frequently partner with other organizations? If so, you may want to ask them if you can “piggy back” on their insurance policy. Of course, the other organization is taking a risk that you will have a claim and affect its future premiums or coverage, and you will need to make sure that the coverage is adequate. This can, however, be a good way to save money.

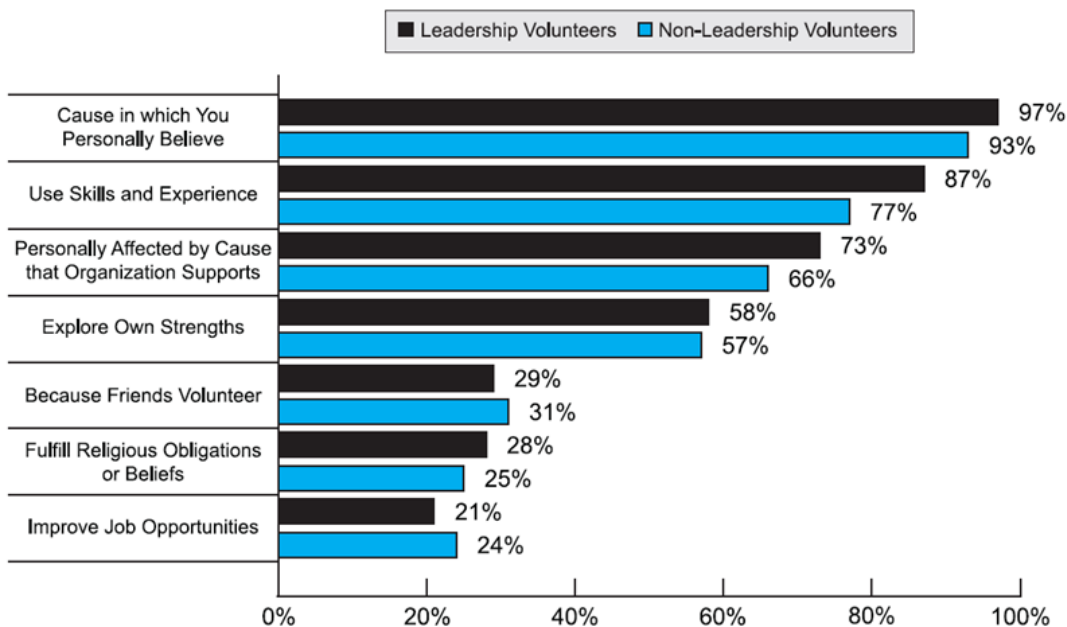
Directors & Officers Liability ("D&O Policy")

Pillars of our communities

Virtually all nonprofit organizations in Canada are governed by volunteer boards of directors. Board volunteers are a diverse group of people in terms of age, occupation, and volunteer experiences, but they share a desire to give back to their communities and to help organizations they care about achieve their missions.

In 2006, Imagine Canada published a research report entitled *Board Volunteers in Canada: Their motivations and challenges*. Co-authored by the Director of the Liability & Insurance Resource Centre for Nonprofits, Cathy Barr, this report includes the follow graph which reveals the main motivations of both leadership volunteers (defined as board and committee members) and non-leadership volunteers.

Motivations of Leadership and Non-Leadership Volunteers



According to the 2000 National Survey on Giving, Volunteering and Participating, about 41% of Canadian volunteers serve on boards and committees.

A growing percentage of these board members worry about being sued. It's one thing to give their valuable time and attention to a good cause. It's another thing altogether to risk personal liability if something goes wrong.

Key dangers for directors and officers

Directors and officers of nonprofit organization face three key dangers:

1. They can be held personally liable for their decisions.
2. They can be held liable for acts committed by other directors simply because they sit on the same board.
3. Damages can extend to their entire personal estate.

Terrance Carter is co-chair of the Charities Committee of the Canadian Bar Association of Ontario and a frequent speaker on legal issues relating to nonprofits and charities. He says, “Canada has become more litigious, and because a litigation lawyer’s job is to find “deep pockets”, it’s only natural to look to directors and officers if the organization itself has insufficient assets or insufficient insurance.”

Mr. Carter says that the directors’ and officers’ obligation to the nonprofit and its assets “is similar to acting as a trustee of an estate where there’s an infant beneficiary.” After his board training sessions fortunately there aren’t mass resignations but “they certainly take their jobs more seriously when they become aware of what they’re exposed to and what their responsibilities are.”

Some of the legal dangers come out of governance issues. An example is the need for boards to ensure that the organization’s activities relate to the organization’s mandate as specified in the corporate filing known as the letters patent. Jane Burke-Robertson, a partner in the Ottawa law firm of Drache, Burke-Robertson and Buchmayer, says “I’ve seen situations where the objects [mandate in the letters patent] don’t authorize half of the activities that are being carried on.” That can be a problem. Acting beyond the scope of authority set out in the corporation’s objects can expose a director to liability.

What does a D&O policy cover?

Directors’ and Officers’ Liability policies provide personal financial protection for Directors and Officers against claims alleging *wrongful management acts while performing their duties*.

Wrongful acts might include *actual or alleged* errors, omissions, misleading statements, and neglect or breach of duty on the part of the board of directors and other insured persons and entities.

It is important to note that many claims are unjustified. The value of the D&O in these cases is providing the resources to defend the board.

So is a D&O policy a prudent purchase for a nonprofit? Terrance Carter says “it’s one of the first things I recommend as part of a comprehensive risk management approach.”

What *doesn't* a D&O policy cover?

D&O policies don't cover everything a nonprofit board could get sued for. Jane Burke-Robertson says they don't cover "certain liabilities imposed by legislation, such as failure to remit taxes, CPP or UI for employees or for remitting the G.S.T."

D&O vs. CGL

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

1. The CGL (commercial general liability) policy, which deals with alleged "wrongful acts" that result in bodily injury, property damage or personal injury to a third party.
2. The D&O (directors' and officers' liability) policy, which deals with alleged "wrongful acts" that result in financial loss to a third party.

While the CGL has an IBC standardized policy that most insurers use fully or partially, there is currently no standardized D&O policy. Each insurer has a unique wording, which should be examined with a broker or agent to understand your coverage.

This is very important. D&O policies are often assumed to be the same no matter what insurer you purchase it from. They are not. They are unique to each insurer!

Who is covered?

D&O insurance protects individual directors and officers when they are sued individually or jointly. Today's D&O policies, especially nonprofit D&O policies, usually cover not only directors and officers, but the nonprofit itself (the entity), employees and other volunteers. However, never assume that this is the case. Always ask your broker or agent and review the exact wording of your coverage with him/her.

Directors and officers: Large responsibility, large risk

Most directors and officers in Canada are aware (or becoming aware) of the significant personal risk that service as a director or officer entails.

Common law and many statutes and regulations impose onerous duties and personal liability on corporate directors and officers. Directors and officers are expected to balance the interests of an increasingly broad spectrum of stakeholders, such as members, donors, employees, government agencies, the local community, and others.

The Canada Business Corporations Act and numerous statutes in each province require many duties on the nonprofit corporation director. Directors and officers have a duty to exercise due

diligence in overseeing the activities of the organization they serve. They are required to act in good faith and in the best interest of the organization.

Directors have three basic duties:

1. Duty of care (also referred to as duty of diligence): Act reasonably, in good faith, in the organization's best interest.
2. Duty of loyalty: Place the interests of the organization before your own.
3. Duty of obedience: Act within the scope of the organization, within applicable rules and laws.

Directors are not expected to be experts in all aspects of the nonprofit. It is assumed that they will rely on information, such as financial statements, prepared by executive officers or managers. However, there are conditions, such as due diligence, that directors must meet to justify their reliance on the information.

D&O lawsuits occur when there is:

- ❖ Failure to act as required under a statute. For example, if a statute requires directors to file a report or maintain certain records, and these reports and records are not maintained, then the director may be liable for an offence under that statute.
- ❖ Non-compliance of the organization with a statute. For example, directors may be liable for mismanagement, financial losses, wrongful dismissal, employee discrimination or failure to remediate environmental damage.

What is “board indemnity” and is it important?

An indemnity agreement occurs when one party (in this case, the nonprofit corporation) assumes the liability of another (in this case the directors and officers) in the event of a claim or loss. Such an indemnity agreement can be added to the organization's bylaws with the purpose of protecting the personal assets of the directors and officers should a claim ever come against them. In the bylaws, this is normally called the *indemnity clause*.

Imagine you are a plaintiff lawyer considering filing suit against a small NPO. Besides looking for coverage, a good lawyer will look for value of coverage, that is who has the deepest pockets to recover monies from. The nonprofit (entity) itself will generally not have the type of assets that would attract a large suit. However, if a board member or a number of board members are wealthy, or seemed to be wealthy, a lawyer might go directly after a particular board member in order to maximize the claim.

These days, an indemnity agreement plus a D&O policy are great tools to recruit high profile directors. By ensuring that their personal assets are protected against a suit, they will be far more likely to serve on your board of directors.

Indemnification clauses: A D&O necessity!

“It is surprising that many organizations do not encourage security for their directorship with a covenant in their bylaws to provide for indemnification of the directors; however what is more surprising is that persons would actually accept a directorship position under such circumstances.

“[Do] these individuals understand and appreciate the potential severity of personal risk they have accepted when taking a seat on a board? Of even greater concern is the false sense of security that is being felt by the directors of the many organizations that apply to us for a quotation to compare to their existing directors liability insurance which they have purchased even though the organization’s bylaws do not include an indemnification clause.

The wording of standard insuring agreements within directors’ & officers’ liability insurance policies state that the insurer agrees to provide indemnity to the directors on behalf of the organization. The organization lacking an obligation to indemnify the directors poses an insurance functionality problem, as the insurer cannot subsequently adhere to its commitment in acting [correct? “to act” would be more grammatical] on behalf of the organization if the organization does not have such as an obligation in the first place.

Metaphorically speaking, this is comparable to buying a car without an engine in hopes that it will provide transportation if you someday need to go somewhere.”

From the Canadian Association Program (CAP) website

Who might sue a nonprofit board?

Lawsuits against a nonprofit board can come from many different directions.

1. Current and former staff or volunteers of a nonprofit can bring a lawsuit alleging many types of wrongful acts, including wrongful termination, sexual harassment, discriminatory hiring practices, wrongful discipline, invasion of privacy, etc.
2. Third parties (e.g., funders, partners, vendors) that have a relationship with a nonprofit can bring a lawsuit alleging harm caused by the nonprofit and/or its directors, officers, employees or volunteers.
3. Board members of a nonprofit can bring a lawsuit against other board members alleging violation of a duty owed to the nonprofit.
4. Clients (the people you are serving) can sue alleging some kind of wrongdoing.
5. Members (if your nonprofit is a membership association) can sue alleging harm to their interests as members.
6. Donors can sue alleging misuse of a restricted gift.
7. Canada Revenue Agency can sue to recover monies owed.

What are the most common lawsuits?

The most commonly made allegations against 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, and
- ❖ unauthorized company borrowing.

Note: It is very important to remember that the above only need to be *alleged* for legal and other costs to be incurred in defending the director.

The possibility of these types of charges being made is most likely the result of:

- ❖ bankruptcy,
- ❖ waste or mismanagement of assets,
- ❖ employee dismissal,
- ❖ board room disputes, and
- ❖ breach of contract.

Small organization, big problem

A small, parent-run sports club that wanted a dedicated coach to develop their young athletes engaged a part-time Head Coach. It was understood by both the coach and the organization that the coach would not be an employee but an independent contractor and would be paid accordingly.

After a falling-out between the parties, the CRA examined the affairs of the organization and determined that the Head Coach was, in fact, an employee. As the organization had not accounted for any source deductions, CRA pursued the organization for these monies. Unfortunately, the sole asset possessed by the organization was about \$2,000 held in a bank account. When the organization was unable to satisfy CRA's claim, CRA pursued the directors and officers, receiving judgment against them personally.

Had a D&O policy been in place, the club would have received the all-important legal expertise required to deal with the CRA, as well as funds to defend the claim.

Common exclusions

Every insurance company has a different D&O policy, but three areas of general exclusions are common to most.

1. If litigation started on the claim before the policy started the claim is excluded

Prior or Pending Litigation: Some D&O policies will pay claims for things that happened many, many years ago that are just being reported now. What this exclusion means is that if the claim was known about before the D&O policy began than it should have been dealt with through the previous insurer if there was one. (Please see next page for “Claims-Made” explanation).

2. If other insurance is applicable then D&O excludes the claim

Excluded are claims that are more appropriately covered under other policies, such as: Bodily Injury and Property Damage, which would be covered by an Automobile policy or a Commercial General Liability policy; or Pollution, which can be provided under an Environmental Impairment Policy.

3. If the matter is uninsurable under the law then D&O excludes the claim

Remuneration illegally paid to directors, or any personal profit to which they were not legally entitled, are examples of matters that are not the subject of liability insurance (which is intended to cover negligence).

“Claims-made” vs. “occurrence” policies

Most D&O insurance is “claims-made” coverage. This is a unique concept, even in insurance.

Claims-made D&O policy (vast majority of D&O policies)

Claims-made coverage applies only when claims are brought against the director or officer during the policy period. It does not matter when the offending incident happened. This means that the nonprofit must notify the insurer before the termination of the policy period of any potential claims that the directors and officers of the corporation may be aware of – if they want it defended by the insurer.

It is not necessary that a lawsuit be commenced in the policy period, but insurers require that the demand be an overt communication stating an intention by the third party to hold the director or officer liable for the consequences of some wrongful act. If the insured knew that about the claim or received notice about it prior to the policy starting, it will be excluded from coverage. This is fair it seems as an insured would be motivated to purchase insurance only then after finding out about a problem.

The key learning here is that it is very important that someone in the organization is responsible for finding out about and reporting potential and actual claims.

Occurrence D&O policy (very few D&O policies)

In this type of policy, coverage applies only when claims occur against the director or officer during policy period. It does not matter if the offended party waits until after the policy period to actually bring forward the claim.

Personal car and home insurance is occurrence-based. CGL coverage is occurrence-based which simply means that if an insurable claim “happens” during the policy period it will covered (even if it reported later with certain conditions). However the D&O policy, because it often is covering claims many years after the offending event, is usually claims-made.

The dilemma with occurrence policies with liability policies like D&O is that although they are available for the future, if the limit of insurance was small back when the policy was active, that is the amount of D&O insurance available for a claim many years later when the claim is communicated by the third party. So if the incident occurred 20 years ago when the nonprofit had \$50,000 or \$100,000 per occurrence that would be a very low amount of liability coverage available for a pending lawsuit and it would place the nonprofits’ assets at risk.

Many liability policies are claims-made, like most D&O policies. Claims-made concerns that have to be watched carefully are primarily the retroactive date and extended reporting period.

CLAIMS-MADE	OCCURRENCE
<p><u>Claims-made</u> policies provide coverage for claims submitted during the policy term, even if the incident leading to the claim was before the policy was in place. However, insurance companies often add a “retroactive” clause so the policy will only cover claims stemming from incidents that happen while the policy is active, not claims based on incidents that took place before the policy was in place.</p>	<p><u>Occurrence</u> based policies provide coverage for incidents occurring during the time the policy is in effect, even if the claim is years later and the policy is no longer active.</p>
<p>Example:</p> <p>1991 and before: Your organization does not have a policy for abuse coverage.</p> <p>1991 – A client is allegedly abused by one of your employees.</p> <p>1992- You purchase your first claims-made policy that includes a retroactive clause.</p> <p>2001 – The client who was allegedly abused sues your organization.</p> <p>Your 1992 claims-made policy will not respond to the claim as it was before the policy was active and the policy includes a retroactive clause. As there was no policy active in 1991 when the alleged incident happened, you do not have coverage.</p>	<p>Example:</p> <p>1985 to 1995 - You have an occurrence-based policy with ABC Insurance.</p> <p>1991 – A client is allegedly abused by one of your employees.</p> <p>2001 – You cancel your ABC Insurance policy and buy a new occurrence-based policy with the XYZ Insurance company.</p> <p>2002 – The client who was allegedly abused sues your organization.</p> <p>Under an occurrence-based policy, the claim would be covered by the ABC Insurance policy that was active in 1991, not your current policy.</p>

The rule of retroactive dates: never change it. Often when a nonprofit changes insurers the new company wants to advance the retroactive date to the inception date of its policy. If the insurer does this, the nonprofit has no coverage for any losses that occur between the date of its first claims-made policy and the inception date of the new policy. This creates a huge gap in coverage that is expensive to address. **The only exception** to this rule is if the new policy is if the new policy is written with “full prior acts” coverage and a retroactive date doesn’t apply.

When buying any form of “claims–made” coverage or changing insurers:

- ❖ Purchase something called "full prior acts" coverage or set the retroactive date (the start date of the new policy coverage) as the inception date of your original policy. Knowledge of any "incidents" that may lead to a claim must be indicated on any application or renewal form by the applicant.
- ❖ The nonprofit has to report a claim being made before end of policy, make sure to have a provision called “extended reporting period” (30 days past expiration for example) to report claims. If you purchase this it can last several months or even years (e.g. nonprofit ceases activity).
- ❖ If you note any such incidents on an application for a new carrier, ensure that they are also reported to your current carrier.

Examples of claims

Here are some “actual” examples of D&O claims:

1. A wealthy family made a substantial donation to a foundation. It was expected that the monies would be earmarked for a specific cause. After spending the money for another purpose, one that seriously contradicted the donor’s strong religious beliefs, action was made against the directors to recoup the funds. The D&O policy responded to what was determined to be a “wrongful act” by the board.
2. A small town union’s responsibilities included pre-screening applicants for teaching positions at the college. For this, they formed a hiring committee whose primary responsibility was to make suggestions to the business for potential hiring. In a pre-screening interview, a member of the committee inadvertently suggested that the union was looking to hire younger staff. After not receiving a call back, the applicant sued the union for ageism, suggesting that he was not hired because he was in his 50s. In this case, the D&O policy responded to the suit for negligence against the committee member as it was their “wrongful act” that precipitated the claim.
3. The Sawmill Museum Revitalization Association’s mandate was to raise funds to restore, preserve and protect the historic Johnstown Sawmill. In its application to the Province of Manitoba, it promised to use a \$100,000 to restore the museum. A portion of the grant was earmarked to hire a local restoration company to do work on the premises. After six months of work, the Association concluded that the company’s work was unacceptable. It was later found out that the owner of the company had personal ties to a trustee of the association.

After a preliminary investigation by some of the board members, they sued the trustee for breach of duty.

In this case, there are two exposures, but luckily only one claim was brought forth. The wrongful act committed was the decision by one of the trustees to use the contractor without seeking several interviews with other restoration companies. While there was a breach of duty on the trustee, there could also be potential litigation against the president of the association as it is his/her fiduciary duty to ensure that prudent actions are taken in all of the association's affairs.

4. The Kabali Club of Ontario was formed 17 years ago to provide a voice for seniors and to promote and support their contributions to the community. It has branches in many towns and each branch is run by its own board of directors. The Riverbend branch operates and maintains a hall that is owned by the Kabali Club of Ontario. Each year, the branch hosts a Christmas party at the hall. One year, the contractor hired by the branch to maintain the building neglected to salt the steps leading to the front door of the hall, which tended to ice up in winter. As a long-time member of the branch was leaving the party, he slipped on the steps and bumped his head on a nearby handrail.

In this case, the member sued the Kabali Club for not maintaining proper care of the facility. He also sued the local board of directors for not ensuring the security of those entering the building. While liability for the actual injuries was partially the responsibility of the contractor, the management of the board of directors was called into question, resulting in a large settlement in favour of the member.



- The Lakeridge Peony Society was a local group that wanted to share their love of peonies with other members of the community. As part of its fundraising efforts, the society held numerous barbeques where it sold hamburgers, hotdogs, barbeque chicken, etc. At one event in the summer, a volunteer inadvertently left some condiments out of the cooler for an extended period of time. After the event was over, at least two complaints were filed with the health department by patrons who became sick from eating food at the party.

In this instance, one claimant filed a suit against the Peony Society for Bodily Injury and also sued the volunteers of the organization for failure to provide food safety. The suit against the society never made to trial. However, the D&O claim went forward against the volunteers and was settled out of court.

D&O claims and costs

Don Radford has worked in the insurance industry for over 30 years. He provided this list of actual claims and the dollar figures in his training for Volunteer Alberta that we have in our reference section.

- Association terminated senior executive after receiving complaints from other employees concerning the executive's behaviour, which included sexual misconduct and harassment.

Defence Costs: \$254,000
Award: Unknown (settled out of court)

- Claim for damages arising from suspension of membership.

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

- The government brought a claim for damages for misrepresenting the use of the funds and for breach of fiduciary duty. Grant monies used for purposes other than those that had been initially represented.

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

- Claim for damages against an association, several directors and officers for breach of fiduciary duty, defamation and interference with economic interests.

Defence Costs: \$110,000
Settlement: \$ 25,000

- Executive director of a large nonprofit association dismissed. Action claimed damages for pay in lieu of notice, defamation, vacation pay, loss of benefits and punitive damages.

Defence Costs: \$ 55,000
Settlement: \$110,000

Questions to ask your insurance professional

1. As with CGL, always ask who is insured under your D&O policy. Are all your staff members protected? What about your volunteers? Committee members?

There are now policies that extend to directors' and officers' spouses. Ask if they are included.

Does the policy cover the nonprofit itself (the corporate entity) where it has responsibilities apart from individual directors and officers? This full entity coverage is newer coverage in the insurance world.

Does the policy extend to protect all past and present directors, officers and committee members? Incidents could have occurred many years ago that you may not know about yet.

2. Is there provision that any notice of cancellation (e.g., nonpayment cancellation because the insurance premiums were missed) be directed not only to the nonprofit, but also to the chair of the board? This ensures that the board is notified of any intended cancellation of the policy. With a claims-made policy, this is crucial.
3. Are defence costs provided exclusive of (i.e., on top of) the limit of liability? This means that if you have a \$1 million D&O policy there is a full one million available to pay a claim, with defence costs (which can be astronomical) not taking up that space.
4. How do deductibles apply to the policy? Some D&O policies have a "first dollar defence", which takes away the deductible on defence costs.
5. Is your D&O limit sufficient? This is very important. Talking to other staff at other nonprofits that are similar in size and/or activities to yours may help you determine this. You should also talk to your insurance broker or agent.
6. If possible, the method of payment by the insurer should be described as "to pay on behalf of" otherwise the nonprofit will be required to fund the defence and make payment before the insurers will reimburse.

One final point: Have your broker, agent, or lawyer clarify for you what's covered and what isn't in any D&O insurance product. If the areas you're concerned about aren't covered, shop around. Be sure you understand and can live with any exclusion your policy contains.

Questions an insurer will ask before issuing a D&O policy

The follow are some questions that a insurer will ask before issuing a D&O policy:

1. How long has the organization been around?
2. What type of insurance market are we currently in?
3. What is the scope of their operations?

4. What is their operating budget?
5. Do they have any international exposure?
6. How many directors and officers do they have?
7. What type of media exposures do they have?
8. Who prepares their finances? Do they have proper financial statements?

Often a broker or agent will focus on the annual budget. One broker said “this is the easiest way to see what type of coverage they need. Their budget usually dictates if they are an aggressive organization or a passive one; a complex or simple one. While it is not the only thing to determine their necessary coverages, it is the best barometer.”

At the time of a quote, in addition to a completed application, brokers and agents generally require the following information before they will be able to provide a quotation.

1. a current list of directors and officers,
2. your latest financial statement or latest annual report,
3. a budget statement for the current year, and
4. a copy of your current by-laws or charter.

Board risk management and the D&O policy

It is not enough to have a D&O policy and assume that this is all that you are responsible for as a board member. Board members must also adhere to the requirements set out in the D&O policy, for example:

- ❖ Are the nonprofits’ financial statements audited?
- ❖ Do they have an indemnity clause in their by-laws (as previously discussed)?
- ❖ Are they abiding by their constitution in maintaining an adequate number of D&O’s? (The Attorney General requires a minimum of three).
- ❖ Do they meet regularly?
- ❖ Is their treasurer a different person than the president?

One broker with a great deal of experience serving the nonprofit community in Ontario said this: “So often I’ve seen in-house budgets reviewed by one person. This is not correct, and if their D&O underwriter ever saw this, they would cancel them at renewal. If a constitution says that they must have six directors, serving maximum two-year terms, then having the same four people in the same position doesn’t make sense. If they don’t abide by their own rules, it makes it difficult for the insurer to expect them to abide by society’s.”

The D&O coverage is the small picture in a larger picture of risk management through strong governance. This will be covered later in the Risk Management – Governance section.

Employment Practices Liability (EPL) or Wrongful Dismissal Liability Insurance

Employment practices liability and wrongful dismissal liability are different names for the same coverage. Some insurance professionals believe that this coverage is only necessary for nonprofits with higher turnover of staff and volunteers; others state that regardless of the turnover rate, nonprofits need this coverage. This again illustrates the necessity of building a relationship with an insurance professional who understands your nonprofit and its risks.

The 2002 manual *Coverage, Claims and Consequences* edited by Melanie Herman of the Nonprofit Risk Management Centre is written from an American perspective. However, there are likely some similarities to the situation here in Canada. The manual states that “the scarcity of nonprofit D&O claims ended in the 1980s with the arrival of employment practices litigation, which includes claims for discrimination, sexual and racial harassment, retaliation, and wrongful termination. Employment-related claims account for the vast majority of legal actions brought against nonprofits, nonprofit boards, and nonprofit managers and executives.”

These types of claims are generally excluded on the CGL policy and that is the reason for this endorsement which “writes back in” the ability to be covered for this type of claim. Most D&O policies also exclude employment practices.

This coverage is not cheap. For a nonprofit with 10 staff policies often have a minimum premium of \$1,500. Minimum premiums mean exactly that, that: even if a premium would be lower because of the size of an organization, the premium will never go lower than that.

What does it cover?

EPL protects the nonprofit corporation (entity), its directors, officers and employees if a claim is brought for allegations of:

- ❖ wrongful dismissal, discharge or termination of employment,
- ❖ employment-related misrepresentation,
- ❖ violation of any employment laws,
- ❖ wrongful discipline,
- ❖ sexual or workplace harassment (*not* sexual misconduct or sexual abuse),
- ❖ wrongful failure to employ or promote,
- ❖ discrimination due to a person’s citizenship, dependence on alcohol or drugs, linguistic background, mental or physical disability, political belief or source of income, religious beliefs, country or nationality of origin,
- ❖ negligent evaluation, wrongful deprivation of a career opportunity,
- ❖ employment-related defamation, invasion of privacy,
- ❖ employment-related wrongful infliction of emotional distress,
- ❖ breach of any oral or written employment contract or quasi-employment contract,

- ❖ failure to provide adequate workplace or employment policies or procedures,
- ❖ unfair or wrongful dealing, retaliatory treatment (“whistleblower protection”),
- ❖ contagious diseases, reproductive hazards, and
- ❖ workplace violence.

Sources of claims

Claims under EPL policies are most likely to originate from the following:

- ❖ refusal to employ a qualified applicant,
- ❖ failure to promote a qualified employee,
- ❖ demotion, evaluation, reassignment, or discipline of an employee, including constructive discharge,
- ❖ harassment, coercion, or unfair discrimination as a consequence of such things as race, color, nation of origin, creed, religion, gender and age,
- ❖ defamation of character,
- ❖ oral or written publication of material that slanders or libels an employee,
- ❖ violation or invasion of an employee’s right to privacy,
- ❖ failure to provide or update employee conduct manuals
- ❖ layoffs, demotions and job transfers resulting from mergers and acquisitions,
- ❖ human resource managers not trained to handle employee complaints or claims,
- ❖ lack of discipline or lack of consistency when discipline applied arbitrarily, and
- ❖ policies and employment procedures violated or applied arbitrarily.

Examples of claims

These examples are from the resource section of the CAP nonprofit insurance program website.

Sexual Harassment

A large national nonprofit organization had encouraged its employees to attend conferences, although attendance was not mandatory. The complainant, who was an employee of the organization, was sexually harassed by a fellow employee in a hospitality suite at a conference late in the evening after the other guests had left. The court deemed that the incident occurred outside the course of employment because it occurred after the hospitality suite had closed, thus employees were no longer acting within the course of employment.

Hiring Discrimination

A long-term volunteer for a Niagara Falls, Ontario organization that served the disabled felt passed over during the selection of candidates for a permanent, salaried position. Litigation commenced against the association and its directors who have to bear costs directly as no insurance was in place that could respond to this action. The case is currently pending.

Gender Bias

A trade association was sued after the executive director commented to a female employee that a promotion and pay increase had been given to a male counterpart solely on the basis that the organization's members were mostly male and it was felt that the female employee would not be as "in tune" with their needs.

Miscommunication

Due to budget cuts, a national nonprofit dismissed a senior employee. However, the board of directors, in an effort to avoid paying severance, advised staff with a memo that the dismissal was for failing to meet expectations. The former employee sued the organization and its directors alleging that this communication damaged his reputation and impaired his opportunities when seeking other employment.

Questions to ask your insurance professional

1. Who is covered by the policy? Who is not covered?
2. Is this coverage already a part of our D&O policy (if you have one)? If it isn't, you would have to purchase it as an endorsement.
3. What exclusions, limits and deductibles apply?
4. Is the policy claims-made or occurrence based? (See the Director's and Officer's Liability section for more information.)
5. Does the policy simply state "employment practices" in its wording or does it list exactly what is covered? Which way is better? One experienced nonprofit broker said he preferred the latter because there was no confusion as to what is covered. If there is a list, ask if it is missing any important coverages.

Professional Liability

Who can be held to a professional standard of care? Until recently, only organizations employing doctors, lawyers and accountants worried about the cost and availability of Professional Liability insurance. Today, a growing number of nonprofits are exposed to the types of claims alleging errors and omissions in the delivery of professional services that are covered under these policies.

This list gives some sense of whose employment creates an exposure to these claims:

- ❖ teachers and other educators,
- ❖ mental health counselors (marriage, addiction, youth, family, pregnancy, etc.),
- ❖ clergy,
- ❖ social workers,
- ❖ placement services workers,
- ❖ consultants,
- ❖ members of professional associations,
- ❖ anyone licensed, accredited or certified to provide services to patients, clients or students, and
- ❖ anyone providing traditional or nontraditional health care services.

What does it cover?

This policy covers claims arising from acts of professional negligence.

It provides protection for those who give advice, make educated recommendations, design solutions or represent the needs of others. It can be important coverage for anyone who deals with clients who could claim that something done on their behalf was done incorrectly and that this error cost them money or caused them harm in some way.

The following examples show the difference between the two categories of professional negligence: financial loss and bodily harm.

Financial Loss

Your organization offers a program that provides financial advice to low income earners. Advice from one of your employees who is trained as a professional financial advisor leads a client to lose her life savings. The client seeks compensation from your organization.

Bodily Injury

As part of your organization's teen suicide hotline service, an employee who is a trained psychologist speaks to a teen caller. Subsequently, the teen commits suicide and the victim's family sues your organization alleging negligence.

Is this the same as E&O and malpractice liability?

Depending on your insurance company, professional liability coverage may also be called “Errors and Omissions” (E&O) or Malpractice Liability insurance.

One broker explained that E&O covers “money professionals” (e.g. accountants, investors, engineers, insurance brokers), whereas Professional Liability covers “people professionals” (e.g., nurses, counselors, therapists, hair dressers, etc.).

Malpractice is similar to professional liability, however it only covers bodily injury.

The CAP nonprofit insurance program’s website lists three questions to consider when deciding if your nonprofit needs E&O coverage:

1. Do you offer advice, recommendations, plans, therapy?
2. Are you sought for your special knowledge, guidance or expertise?
3. Could a delay, interruption or error in your services cause financial harm?

If you answer yes to one or more of these questions, you should consider purchasing E&O insurance.

Check funder requirements

Depending on the programs and services you offer, your funders may require certain types of professional liability insurance be in place. Carefully review all contracts from funders and talk to your broker to determine what coverage you need to meet the funder’s requirements and to protect your organization.

Tips from *Coverage, Claims & Consequences*

This comprehensive insurance manual from the Nonprofit Risk Management Centre in Washington, D.C. offers the following tips:

- ❖ Ask if the policy is “claims-made” or “occurrence-based.” When available, occurrence-based is almost always better.
- ❖ Nonprofits employing social workers or mental health counselors need professional policies that do not exclude bodily injury.
- ❖ If possible, a nonprofit should purchase their CGL and professional liability coverage from the same insurance company.

Questions to ask your insurance professional

1. There are various versions of professional liability, E&O and malpractice policies. Ask your insurance professional for the one best suited for your needs.
2. If you are following one of the tips above, ensure that your broker or agent counsels you on its validity in your circumstances.
3. Ask if the policy is claims-made or occurrence based (see notes with Director's and Officer's liability policy to remember what this means).
4. Always ask about exclusions, policy limits and deductibles.

Employer's Liability

This coverage is easily confused with Employment Practices Liability, but it is quite different.

What does it cover?

Employer's liability covers legal liability in the event an employee is injured on the job and sues the organization (employer) for compensation.

This only applies if your organization is *exempt* from having Workers' Compensation (now called Workplace Health and Safety Insurance Board or WHSIB) coverage for your employees. Unlike WHSIB, the employee would have to sue the employer and the employer would have to be found negligent for the policy to provide coverage. Liability policies almost exclusively only provide coverage when the insured is considered negligent.

Questions to ask your insurance professional

1. Who is covered by this policy? Is it possible to cover volunteers?
2. What are the exclusions, policy limits and deductibles?
3. Is the policy claims-made or occurrence-based?
4. If you are unsure, check with WHSIB to see if your organization is exempt from having WHSIB coverage. One broker wrote that office workers, for instance, are generally always excluded from WHSIB coverage, whereas anyone doing maintenance would require it. Confirm with WHSIB and talk to your broker.

Abuse Liability

Organizations working with vulnerable populations such as children, the elderly, or the disabled should consider obtaining abuse coverage, which covers physical, sexual and other types of abuse.

Many commercial general liability (CGL) policies exclude this coverage. Sometimes it can be added on as an endorsement; other times it requires a separate policy. Each policy has to be reviewed with your agent or broker.

However, it is important to note that only a small number of insurance companies in Canada offer abuse coverage. It is an expensive coverage because of the risk involved for insurers, however it may end up saving your nonprofit organization a great deal more than the premium should allegations of abuse ever arise.

Finding the right coverage

There are various coverages available, all with different terminology (e.g., sexual abuse, sexual misconduct, sexual molestation). If your nonprofit works with vulnerable populations, spend the time to speak with at least two insurance representatives about what is available in the insurance market. The wordings will be extremely important in terms of what is covered and what is excluded.

Generally, abuse policies provide a defense to the organization and the alleged perpetrator, up to the point at which allegations have been substantiated. At that point, defence stops for the perpetrator but continues for the organization.

Insurers who offer abuse coverage will most likely want to know what risk management strategies (e.g., screening, police checks) your nonprofit has in place to ward off these kinds of claims and protect the vulnerable.

If you are searching for this type of coverage, it is worth taking the time to learn about all available options. What wasn't available a few years ago may be available today.

Questions to ask your insurance professional

1. Who is covered by this policy? Who is not covered?
2. What are the exclusions, policy limits and deductibles?
3. Is the policy claims-made or occurrence-based?
4. Are there any requirements made on the nonprofit with regard to this coverage?

Liquor Liability

Banquets and galas can be excellent ways to raise funds and bring your cause to the attention of local dignitaries. Thank-you dinners are appreciated by loyal volunteers. Club members enjoy a cocktail before their monthly meetings.

The inherent liability risk associated with such events is that they involve the consumption of alcohol. This can lead to falls, violence towards others, lessened inhibitions, and poor judgment, not to mention drinking-related automobile accidents.

When events take place at a hired facility that is responsible for serving the alcohol, liability findings against the sponsoring organization are likely to be minimal. However, there is still a possibility that the organization that sponsored the event will be assigned a percentage of responsibility for any adverse events.

When you serve alcohol at an event or function, your organization is exposed to several liquor-related liabilities including:

- ❖ Liability as a server: serving people past the point of intoxication.
- ❖ Liability as an occupier: whether you own the event venue, or are renting, you have a responsibility to protect people on the premises from harm.
- ❖ Liability as an employer: when employees are consuming alcohol at events such as staff parties.

Buying a liquor liability policy for an event or function can help protect your organization. However, you should also consider implementing risk management strategies that address the risks connected to serving alcohol. For example, internal policies and procedures may limit the amount of alcohol served to guests, not allow bartenders to serve intoxicated guests, and encourage or pay for guests to use taxis.

Claim example

A nonprofit organization's evening social event turned deadly later that night when an intoxicated guest caused a horrific automobile accident on the way home. The drunk driver and two occupants of another vehicle were killed. After the police investigation into the driver's previous whereabouts revealed his attendance at the earlier party, the organization was named in the subsequent law suit.

Questions to ask your insurance professional

1. Does the CGL you currently have provide enough protection for alcohol liability?
2. What are the exclusions, policy limits and deductibles?
3. Is the policy claims-made or occurrence-based?
4. Make sure your agent or broker is fully aware of all special events where liquor is served well in advance. Insurers want the opportunity to make sure that proper insurance is in place based on the risk.

Special Events Liability

Many CGL policies exclude special events like fairs, festivals, fundraisers, concerts etc. Insurers are aware that these types of events are fraught with risk exposure, and brokers tell us that many claims occur as a result of special events. However, insurers are also fully aware that organizations need to hold such events to raise money. The question is always whether or not the risk is worth the end result.

It is important to ensure that coverage is in place for special events, but it is even more important that the *right* type of coverage is in place.

It is also important to explain to your broker or agent exactly what events are planned, which ones are possible, and which ones are anticipated in the future. This will allow them to do their job properly. If new special events are planned during the year that the insurer is not aware of, you should call your broker or agent ahead of time to make sure insurance will be in place.

Also always ensure that a special event stays within the mandate of your organization. For example if the nonprofit has a mission to be a resource for adults to write better resumes and they go to a mall to sell raffle tickets to raise money to fund their activities. This takes very little time and their focus remains on their mission. Hosting a large fair which takes a great deal of revenue, resources and risk to put on would likely not, this would be an example of “mission drift”

Questions to ask your insurance professional

1. Does a special event liability policy need to be purchased, or are your events already covered by the CGL?
2. Is there coverage for cancellation of the event? Under what circumstances (e.g., bad weather)? What costs are recovered?
3. Are the limits of insurance adequate to have a given event, or should additional insurance be purchased?
4. Is the policy claims-made or occurrence-based?
5. Make sure they know well in advance about all special events so that proper insurance can be put in place.

Non-owned Automobile Liability

Organizations can't insure vehicles they don't own, so what is this coverage all about?

It is an extension of the CGL that provides protection to the employer against claims arising from employees or volunteers who use their own vehicles in the course of carrying out the organization's activities (e.g., delivering meals, taking a client to an appointment, picking up printing, etc). It also includes any other vehicle the nonprofit does not own that is being operated for nonprofit activities and is involved in an at-fault (even partially at-fault) accident.

The third party who has suffered harm or loss in an automobile accident can sue both the person driving the vehicle and the organization they were carrying out activities on behalf of at the time of the accident.

This coverage has a very small premium.

Examples of claims

Bank Trip

An employee of a small nonprofit was driving her personal vehicle to drop off some cheques at the bank. She was using the time away from the office to call a friend on a cell phone. The distraction quickly became obvious when she failed to stop at a red light and struck a pedestrian. The pedestrian was severely injured and sued not only the driver but the nonprofit as well.

Volunteer's accident

With a directors' meeting about to begin, the president asked a volunteer to help out by picking up food at a nearby restaurant during break time. On the way to pick up the food order, an accident occurred and the organization was "dragged into" a subsequent liability lawsuit.

Volunteers using personal vehicles

Volunteers do not have to advise their broker or agent if they use their vehicle occasionally as part of their volunteer activities, as this is not considered "business use." Even if they are reimbursed for vehicle expenses (e.g., mileage or gas costs), they do not have to let their insurer know and it is not necessary to purchase extra insurance (e.g., an endorsement on their personal car insurance). However, if volunteers who use their own vehicles regularly as part of their volunteer activities should call their personal car insurance broker or agent to ensure they are fully covered.

What about rental car liability?

If your organization needs to rent a vehicle, the liability insurance is covered with no charge by the rental company. If for some reason, this coverage was insufficient or inactive, the above non-owned auto liability would defend your organization. If you are looking for physical damage coverage for the rental vehicle, this can be purchased at the rental agency or you can purchase another endorsement from your broker or agent to cover it.

Owned auto coverage

Under Ontario law, if a person or organization owns a vehicle, they must insure it. There is **commercial auto insurance** for nonprofit/for-profit organizations that own vehicles. If your nonprofit owns one or more vehicles, you must buy an owned auto policy. The only question is what type of coverage you want on the vehicle(s).

Owned auto policies have two parts: (1) liability coverage, and (2) physical damage coverage. The former is required. The latter is required if there is a lease or financing on the vehicle.

Owned auto insurance has no connection to the CGL.

Umbrella Liability or Excess Liability

These are not exactly the same, but they both essentially allow an organization to increase the amount of liability it has available on its various liability policies.

As we have seen, there are many available liability policies, not just CGL and D&O. Each may have a different limit of coverage per occurrence (the total amount the insurer will pay for one claim) and aggregate (the total amount the insurer will pay for all claims during the policy term, usually one year).

There are nonprofit organizations that need higher limits because they have greater risk. Umbrella liability or excess liability allows all of the liability coverages to rise to a higher dollar limit. It may also broaden the coverage itself.

This complex coverage, so if you are interested in it, you will need to talk with an agent or broker.

Questions to ask your insurance professional

1. Does the umbrella or excess liability policy you are discussing offer increased coverage and not just increased limits? In other words, beyond just increasing the liability limit to \$3 million, are there now increased coverages as well?
2. Will there be any changes to deductibles on liability policies?

Commercial Property Insurance

Property coverage protects your nonprofit's buildings, land and contents from loss. Since most Ontario nonprofits lease or rent (if they have a space of their own at all), and they do not have significant equipment or inventory, some nonprofits might question whether this coverage is needed.

If you lease or rent you do not need to purchase any building coverage. That has to be purchased by the owner of the property. What you likely were required to get was a commercial general liability policy (CGL) including tenants legal liability in the event, for example, you damaged the owner's property and he needed to sue you to recover.

Commercial Property insurance is for property that your nonprofit does own. It's very easy to confuse the term "property" here for building, contents might be closer to the truth.

The question that must be asked is: what would your organization do if all or some of its property were taken, damaged or destroyed? What about important papers or computer files? What would happen if they were gone?

If coverage is in place, the loss (e.g., theft) must be substantiated (e.g., theft would require a police report) and there must be no evidence that it was intentionally caused by the insured (e.g., a fire started by the insured).

Important coverage questions

1. "Garage sale" value or "brand new" value?

There are basically two types of coverage for your property/contents: actual cash value and replacement cost. To explain how each would respond after a claim, let's use the example of a 20-year old brand name refrigerator that is destroyed by a fire.

With actual cash value (ACV) coverage, depreciation is factored in. What would a 20 year old fridge be worth with depreciation factored in? This is difficult to figure out. The best way may be to ask yourself: how much would you have received in cash for it at a garage sale (if you could find a buyer)? Likely the insurer would be prepared to pay \$50 to \$200 depending on the kindness of the adjuster. However, because there is likely at least a \$500 deductible on the policy, the nonprofit would get nothing.

With replacement cost coverage the insurer would pay for the nonprofit to purchase a brand new fridge of like quality (minus the deductible). You would be getting the "brand new" value. So if the refrigerator costs \$1,300 and the deductible is \$500, the insurer would pay \$800.

Always make sure that your property coverage is "replacement cost" in the event of a claim. If it is not specified, then the coverage is "actual cash value" which takes depreciation into account

ACTUAL CASH VALUE VS REPLACEMENT COST

Unless specified otherwise in your policy wordings, claims for damage to an organization's property are settled on an "actual cash value" basis or depreciated basis. Usually, there is no cost to have your property insurance policy changed to a "replacement cost" basis for settling claims.

2. Coverage for a few risks or many?

There are several ways an insurer can insure your property. Most brokers and agents will try and ensure you are getting *comprehensive* or *all-risk* coverage meaning that you are insured for the most likely types of claims that can occur. You are covered for everything unless it is specifically excluded on the policy.

There may be times when an insurer is only able to offer you *named perils* coverage which only provides coverage for a much shorter list of risks including fire and theft.

Try to get comprehensive coverage if at all possible.

3. How much are you insured for?

Generally, a broker or agent will ask you for the replacement value of all your property (make sure you are talking about replacement value and not actual cash value). This can be very difficult to determine, but it is very important so that you do not under-insure. With personal home insurance it usually doesn't matter because the coverage is usually far greater than you could use, however with commercial insurance the policy is set up in such a way that if you under-insure (set the value to replace your property too low) you will end up receiving back less than full value of your property on *any and every* claim. This is because of a concept in commercial insurance called co-insurance (see below).

Make sure you do not under-insure. Walk through and try to determine what it would cost to replace (brand new) every valued property that your organization owns. Don't include accounts receivable or valuable papers, which are discussed later and insured separately. Also don't insure extremely valuable items such as paintings. They should also have their own specific policy so that it is clear how much exactly is insured. That type of separate policy is, of course, much more expensive, but the coverage is usually better and there is no deductible.

Co-insurance clause . . . bring out the calculator

This might just be the most difficult term in the insurance world, so get ready!

With your personal home or tenants insurance, your building and/or contents are covered 100%. The only thing that you have to cover is the insurance deductible (usually \$500 or \$1,000). This is not the case with commercial property insurance. There is something called a “co-insurance clause” that generally is set at 90%. I wish it were as easy as meaning that the insurance company will pay 90% of the claim and you are left with the remainder of the loss.

It is quite tricky. The easiest way to explain it is with this formula:

$$\frac{\text{Amount you DID insure for}}{\text{Amount you SHOULD have insured for (usually 90\% of replacement value)}} \times \text{LOSS} = \text{PAYMENT}$$

Example: A nonprofit insures all of its property for \$50,000. There is a fire and all their property is destroyed. Their insurer determines that their property will cost \$100,000 to replace.

$$\frac{\$50,000 \text{ (amount you did insure for)}}{\$90,000 \text{ (90\% of the amount you should have insured for)}} \times \$100,000 \text{ (loss)} = \$55,555 \text{ (payment)}$$

This nonprofit severely under-insured and the co-insurance clause makes them pay for it. To be fair, though, they were only paying premium on \$50,000 worth of property and they will be getting a cheque for more than that amount.

The purpose of co-insurance is to ensure that organizations really try to figure out what the replacement value of their property is and secondly, to encourage organizations not to under-insure to save premium.

The lower the co-insurance percentage the better, but 80% is likely the lowest you will find.

Be careful when co-insurance is 100%

Some insurers do this for risky items like laptops (there are a lot of claims for stolen laptops). One hundred percent co-insurance in the above example would have meant the payout would have been only \$50,000.

If you insure for the proper amount, you never have to worry. With items such as laptops, however, you may want to decrease the insured value every one or two renewals as the cost of new laps is dropping and you don't want to be over-paying premium.

Review the value of your property at each renewal

You are paying premium based on the total value you tell the insurer you want covered. Each year, have a look at this. You may have sold things, given things away, and/or purchased new items. Each year, it is a good idea to have a look at the total value.

During the policy period, if you buy something of value that you really want to properly insure, call your broker or agent.

Deductible

Remember that on top of the whole co-insurance issue there is usually a deductible with all property claims, \$500 or \$1,000 or higher. If your loss is lower than this there will be no insurance funds coming. Remember though that those deductibles are helping to reduce the premium.

Covering items in-transit

Many organizations move items they own from one location to another, for example a laptop and projector that are used for presentations, or lighting and staging used for a community theater program. Depending on your insurance company, you may have the following options for covering these “moveable” items.

Floater: Covering Specific Items

Adding a floater policy to your property insurance allows you to name specific property items that are moveable and need coverage, such as an LCD projector or laptop computer.

In-Transit Coverage: General Coverage

An in-transit endorsement can also be used to provide coverage for items that are moveable. Under this type of coverage, you do not need to name the specific items that are in-transit as this provides blanket coverage.

Extensions of coverage

Basic commercial property insurance provides protection only for the value of the damage. Should books of records be destroyed or lost (by an insured peril), the insurer is obligated only to pay the depreciated value (ACV) or replacement value (RC) of the property. To provide comprehensive protection, extensions to the property coverage are needed. The most common extensions are listed below.

The **accounts receivable** extension covers costs arising from the reconstruction of accounts receivables information. This includes labour for investigation and research, courier costs, and duplication costs, as well as interest to offset temporary loans.

The **valuable papers** extension covers the cost of reconstructing or salvaging paper records, other than the receivables, damaged or destroyed by a covered peril.

The **professional fees** extension is very broad. For most small organizations, losses that can occur that would be insured here include fees for lawyers, accountants and auditors. Where a nonprofit has a building this can also include interior designer fees and architect fees including the costs of construction plans and permits.

Business interruption covers loss of income if your premises are completely shut down for a period of time due to a covered property peril. Income from funding sources and client fees are included in the amount of loss. Coverage is for continuing expenses such as rent or salaries.

Extra expense covers the additional costs to keep operating if your premises are damaged by a covered peril. Whatever extra costs your nonprofit reasonably has to pay while your premises are being repaired will be covered.

Flood or earthquake insurance covers these risks that are excluded from standard policies. The premium is relatively expensive and there are usually large deductibles, but depending on your location you may need this coverage. If you have ever seen a river overflow and wipe out a business or home, the value of flood insurance becomes very evident. If there is very little chance of that near your nonprofit, then this may be a chance you, like many others, are willing to take.

Electronic data processing equipment is one name for this extension, which allows you to insure all of your organization's electronic office equipment (e.g., computers, telephone system, photocopiers, fax machines). The purpose of this coverage is to protect against both the physical loss of the equipment and the loss of income and extra expense that result from the physical loss. Make sure to talk to talk broker or agent about exactly which electronic equipment is included in the coverage you are being offered (e.g., does it include software?) and what risks are covered (think about what could go wrong to cause damage).

Equipment breakdown is generally for larger nonprofits that own their own buildings. It covers things like heating and cooling systems, refrigeration and freezers, computers, office equipment, security and fire systems, lighting, communication systems, boilers, etc. Coverage is designed like most of these extensions to fill the gaps left by standard property insurance exclusions. Equipment breakdown pays the cost to repair or replace damaged equipment, including parts and labour and for extra costs like renting equipment.

Property stored at a member's home

Many small nonprofits neither own space nor rent it on an ongoing basis. Members may meet once a month at their president's home or at a local coffee shop to discuss the affairs of the organization and attend to the decisions that need to be made.

The only "property" they own are their books of record such as minutes of meetings, membership lists, accounts receivable (membership dues, donation pledges) and other documentation. This property is often kept at the home of the secretary. So won't the secretary's personal home insurance policy provide coverage? No, it will not!

Personal home insurance is a contract between the homeowner and his/her insurance company. The nonprofit is not involved in this contract. Therefore, there is no obligation on the part of the insurer to pay for the loss of the nonprofit's property. The exception is when the homeowner is found liable for damage through negligence, but this only happens after a court case, which your organization likely doesn't have the money to fund, nor months or years to wait out.

Most home insurance policies do provide coverage for business property up to a very minimal limit (often \$2,500). What many people (including some insurance professionals) fail to recognize, however, is that this property must belong to a business owned by the homeowner. Nonprofits are not "owned" by anyone and certainly not the homeowner, so this coverage is of no value to the nonprofit.

Finally, even if the home insurance claims adjuster felt that this was a "gray area" and decided the nonprofit's property could be included in a home insurance claim, home insurance policies do not have provisions for the cost of reconstructing information. They would treat the nonprofit's records merely as a three ring binder, some paper and some ink.

Bottom line: get properly insured.

Things to discuss with your broker or agent

1. Review how much total coverage you have and discuss whether it is adequate. Co-insurance is in place to make sure organizations do not under-insure and it works.
2. If you think you may need an extension of coverage, you need to talk to your broker or agent. Every insurance company (called "market" by those in the insurance world) can have different wordings. Don't assume that what is written above is what any company actually offers. This resource binder is a guide, but it cannot replace their professional advice.
3. If you have property that travels or property of special value, ask about specific coverage for these so that there is no surprise in the event of a claim. Although it is more expensive to insure items separately, the coverage is generally improved, deductibles are waived and the amount of insurance is much clearer.

Crime Coverage

Each year in the news, we hear about employees who steal, embezzle or commit other crimes against their employers. Although no employer wants to think about this, crime coverage will provide protection for these types of financial losses. As well, if your organization has custody of other people's property (e.g., if you provide in-home care for clients), you can get a dishonesty bond to cover theft of clients' property.

Crime policies cover inside and outside crime. There are many variations, so talk to your insurance professional.

Common packages include fidelity bonds, which provide financial protection against the potential dishonest acts of employees, and a "3D" (destruction, disappearance and dishonesty) policy, which covers theft and similar crime losses inside and outside the premises.

Fidelity bonds (also known as employee dishonesty bonds) only provide coverage if an employee commits the theft or embezzlement. They normally do not cover clients or volunteers. Ask your broker if volunteers are covered under any coverage you are offered.

One broker offered the following advice on this issue: "I would advise they have a 'peak season' endorsement for times when they have fundraisers. Some nonprofits have one or two large fundraisers a year, which would be a time they would have more cash than normal." What an interesting idea!

Questions to ask your insurance professional

1. Would claims be covered if any person in the nonprofit committed the crime? Who would not be covered?
2. Will the insurer require the nonprofit to report the incident to the police, giving the name of the "inside" perpetrator? This may or may not be of concern to you.
3. What are the limits and exclusions on the coverage?
4. What deductible is in place? Practically speaking, this means that there is no insurance until that amount has been surpassed; \$1,000 is not unusual.

Specialty Market Coverages

Although we have covered all of the standard insurance policies and coverages available to nonprofit organizations, there are additional coverages available.

“Specialty markets” are insurers who are willing to take on beyond-standard risks. They do this, of course, for higher premiums that match the risks they are taking.

Speak to your insurance professional about other coverages that may be available.

As an example, here are two coverages that one broker has available through a specialty market:

1. Board Members Accident Insurance – In the event that a board member has an accident, there would be coverage available.
2. Volunteer’s Accident Insurance – In the event a volunteer has an accident there would be coverage available.

Five Final Case Studies

1. ABC Early Education Association was an association of local Early Education Centres. Their mandate was to come together to discuss, review and share information regarding early education for children with learning disabilities. The president of the organization, who also acted as the treasurer, had the duty of collecting and documenting all of the organization's finances, including who had paid their dues, where money was being spent, etc. A marketing representative by day, the president did most of her work for the organization in her basement office. After a large rainstorm one night, the sewer adjacent to her house backed up and went into her basement, flooding the entire floor. The flooding caused massive damage including to the papers, letters patent, records and account balances of the organization for the last three years.

In this case, the insured made a claim against her homeowner's policy for the lost records, but was denied as the records were used in conjunction with a business. She then made a claim against the organization's policy. As her office was covered, so were the important documents. The cost to recover them from the Canadian government and the organization's accountant was all covered under the Valuable Paper extension of their CGL policy.

2. The Johnstown Food Bank was created to help those less fortunate in the Johnstown and surrounding areas. At the peak of a fall food drive in 2005, the Food Bank was broken into and much of their food was intentionally spoiled. On top of this, their one computer, which stored family information from 500 families in the community, was stolen.

In this particular instance, the Food Bank had opted not to insure their stock and equipment, insisting that a CGL policy was all that was needed this year. The food drive was crippled due to the lack of insurance, causing a rift between the Food Bank and its users.

3. At a local fundraiser, the Johnstown Youth Centre sold raffle tickets for a draw to win tickets to a hockey game between the local police officers and a team of retired professional hockey players. At the end of the day, with almost \$1,000 in raised funds, a volunteer was walking the money to the bank when she was robbed. The incident was reported to the police and the culprit was later apprehended, without the money.

In this case, the youth centre's CGL policy covered the loss of the money by robbery. Despite a small deductible, the organization was able to recover \$500 from their insurance policy, which went to cover most of the purchased tickets.

4. The Johnstown Educational Foundation was formed to provide educational resources and support to the Johnstown School Board. The Foundation developed a software program, which vastly improved the system of tracking and producing report cards. After developing the software and selling it on CD to the Johnstown School Board and other provincial boards (some 1,500 copies, and 10,000 licenses), the Foundation discovered that some copies had serious programming flaws and had to be recalled.

In this instance, the Products and Completed Operations portion of their policy would respond to this claim. Despite their best attempts to confirm with their supplier that complete testing had been done, the glitch had gone unnoticed. The cost to recall the faulty CDs and produce and ship new ones was covered by the insurance policy.

5. The Johnstown Ladies Auxiliary's mandate was to raise money from the local community and donate it to worthy causes. As part of its fundraising each year, it would raffle off a vehicle donated by a local car dealer. It set up a ticket booth in the Johnstown Mall for three weeks in December. After the conclusion of the raffle, it was a volunteer's responsibility to drive the car from the mall back to the dealer where it would sit until the draw was announced. While the volunteer was backing the vehicle out of the mall, he struck a pillar located in the concourse of the mall. This caused structural damage to the pillar, which had to be replaced. In addition, a kiosk in the middle of the mall had to be temporarily relocated in order to properly replace the pillar. After a sharp decline in sales, the owners of the kiosk filed suit against the Ladies Auxiliary, as did the mall for the cost of replacing the pillar.

In this instance, there are two claims. The Property Damage portion of the organization's CGL policy would have covered the first claim for property damage to the pillar. The second claim against the organization would be covered under the Tenant's Legal Liability portion, as it was their actions that led to the kiosk being temporarily relocated.

Appendix: IBC's Standard CGL Policy