

**CARTERS**

BARRISTERS

SOLICITORS

TRADEMARK AGENTS

# IMAGINE CANADA CHARITY TAX TOOLS

**December 4, 2012**

## **An Extended Overview of Directors' and Officers' Duties and Liabilities**

By Terrance S. Carter, B.A., LL.B., TEP, Trade-mark Agent

[tcarter@carters.ca](mailto:tcarter@carters.ca)

1-877-942-0001

© 2012 Carters Professional Corporation

CARTERS PROFESSIONAL CORPORATION  
TOLL FREE: 1-877-942-0001

Ottawa Toronto Mississauga Orangeville  
[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca) [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca)

## A. INTRODUCTION

- The 2010 National Survey of Giving, Volunteering and Participating by Statistics Canada reported that a third of all Canadian volunteers hold positions on boards and committees
- Specifically, many individuals take on the position of director or officer of a charity or a not-for-profit organization (“NPO”)
- There is frequently a mistaken belief that the position of a director or officer on a charity or a NPO somehow involves less exposure to liability than a for-profit corporation
- This presentation will explain what those duties and liabilities actually are

## B. OVERVIEW OF TOPICS

- Definition of Directors and Officers
- Different Types of Corporations
- Common Law Duties
- Common Law Liabilities
- Statutory Duties and Liabilities
- Establishing Due Diligence Through Good Governance
- Tools to Protect Directors and Officers

**Note:** For more information see paper on “Directors’ and Officers’ Duties & Liabilities of Charities and Not-for-Profit Organizations in Ontario”, November 17, 2011 at <http://www.carters.ca/pub/article/charity/2011/tsc1117.pdf>

## C. DEFINITION OF DIRECTORS AND OFFICERS

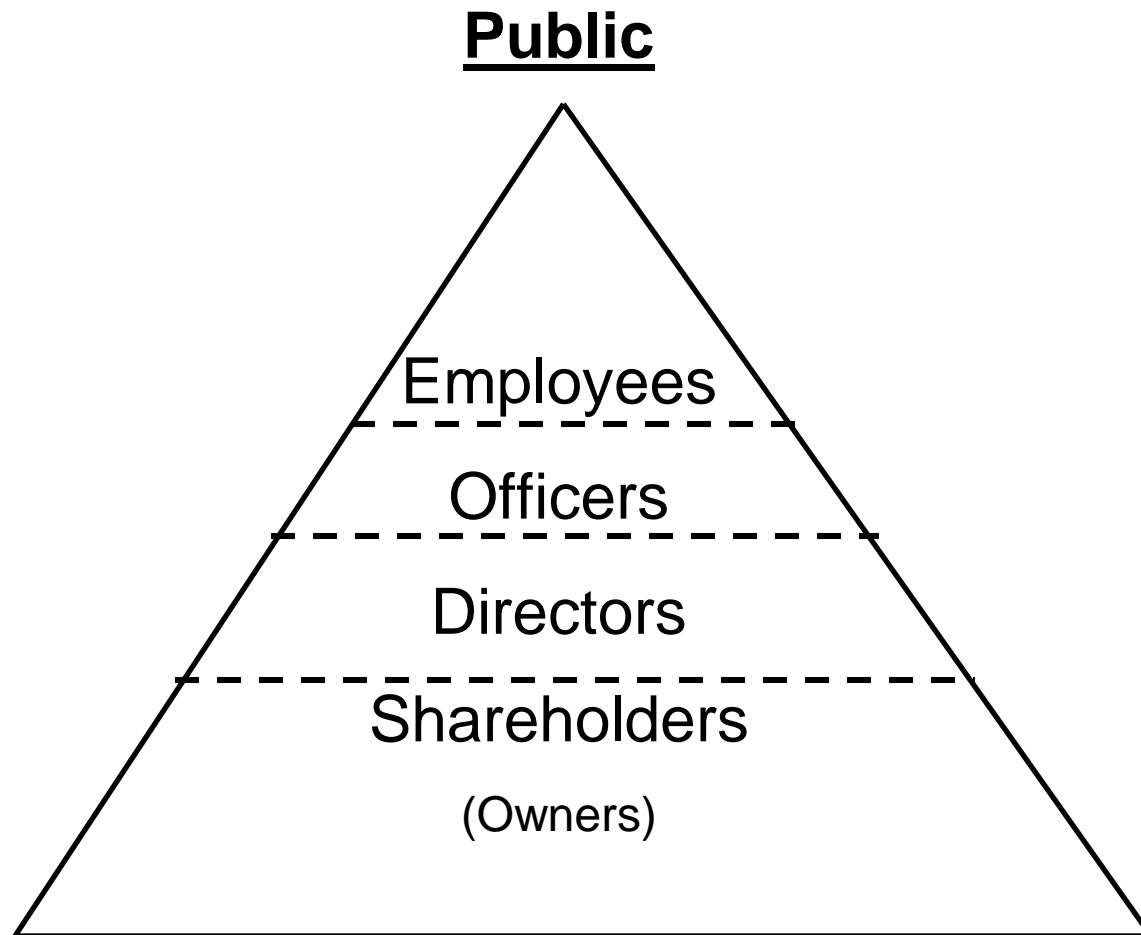
- A director is generally anyone who takes on the role of the directing mind of a corporation
- A director can be known by different names, such as, a governor, a board member, or a trustee as a member of the board of management
- The name given to a director is not what is important, rather it is the authority that the person exercises that will determine whether that person is a director



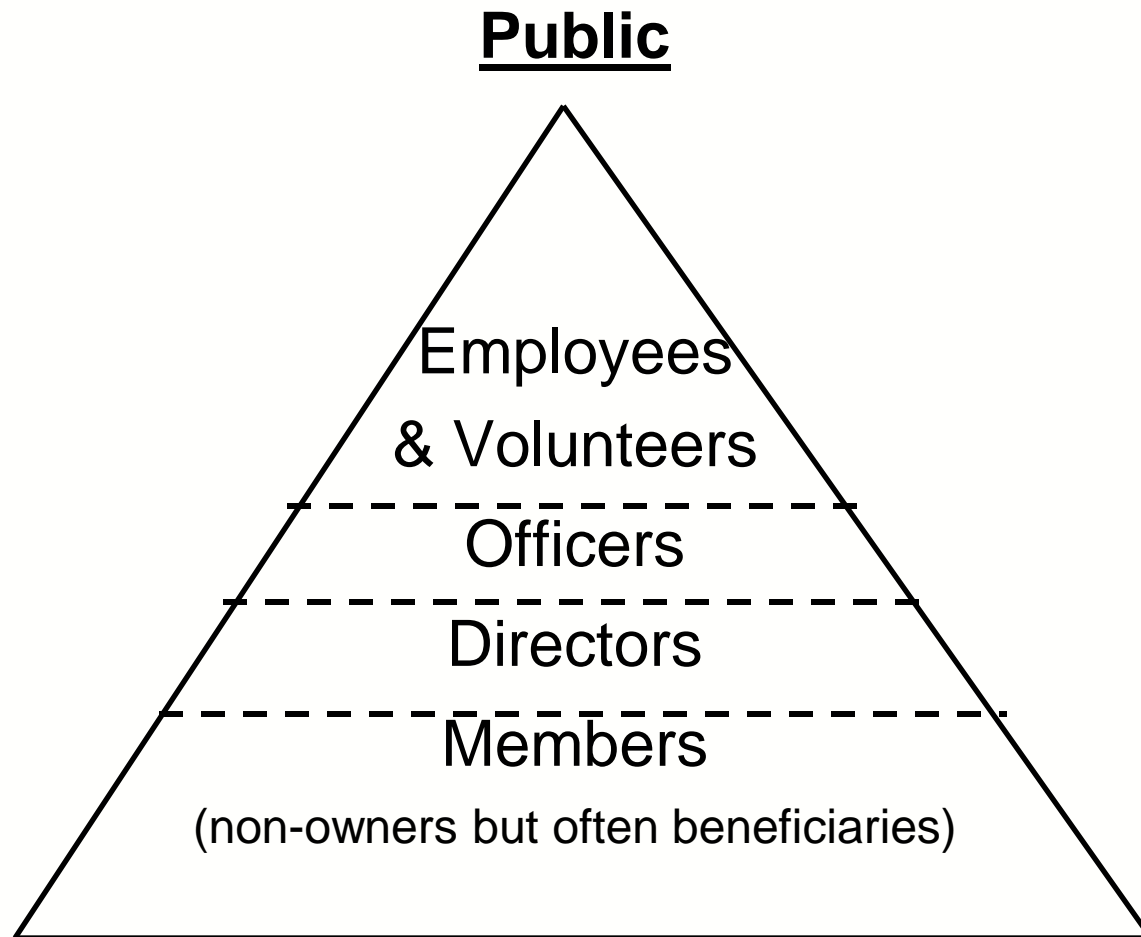
- A director has a fiduciary obligation to put the interest of the corporation ahead of his or her own interest
- An officer carries out the day to day functions of the corporation at the direction of the board
- An officer also has a fiduciary obligation to the corporation
- An officer can also be a director or can be found to have become a *de facto* director if the officer takes on the functions of a director
- For purposes of this presentation, reference to directors is deemed to include officers unless otherwise stated

## D. DIFFERENT TYPES OF CORPORATIONS

- Share Capital Corporations  
(business purpose to make a profit)



- Not-for-Profit Organizations  
(non profit purpose)



- Charitable Corporations  
(charitable purpose akin to a public trust)





- Directors of NPOs and charitable corporations can be found liable for their actions under more than 200 statutes or regulations (in Ontario and federally)
- For organizations operating across Canada applicable legal requirements in other provinces would also apply
- Directors of NPOs and charities can also be found liable at common law for their actions and inactions
- In this presentation, the focus is on the duties and liabilities of directors and officers of both NPOs and charities

## E. COMMON LAW DUTIES

- Management of the Corporation
  - Directors are responsible for all aspects of the corporation's operations on a joint and several basis
  - Generally, directors are required to manage or supervise the management of the activities and affairs of the corporation
  - To fulfill duties, directors must ensure:
    - Objects or purposes are properly carried out and activities fit within those objects or purposes
    - Corporation's financial stability and overall performance
    - Proper hiring, training, and supervision of management, staff and volunteers

- Failure to act, i.e. inaction, can result in personal exposure to liability, i.e. liability of WorldCom and Enron directors
- For charities, the courts have an inherent equitable jurisdiction to supervise and can interfere in charitable property if mismanagement occurs
  - The court may interfere if charitable property is not administered in accordance with its charitable purposes or if funds are misapplied
  - i.e. *The Toronto Human Society* decision (2010) where the court ordered the destruction of charitable property (a dangerous dog)



- Duty of Care
  - Directors of for-profit corporations are held to an objective standard of care under the *Canada Business Corporations Act* (“CBCA”) and the *Ontario Business Corporations Act* (“OBCA”)
  - A statutory standard of care is not provided for charities incorporated under either the *Ontario Corporations Act* or *Canada Corporations Act*
  - Therefore, the duty of care for directors under those acts remains the common law subjective standard
  - i.e., they “need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience”
  - As such, personal knowledge and experience of each director is a factor with a subjective standard

- In contrast, the *Canada Not-for-Profit Corporations Act* (“CNCA”) and the *Ontario Not-for-Profit Corporations Act* (“ONCA”) mirror the objective standard provided for under the CBCA and OBCA
- The CNCA and ONCA set out this objective standard as the duty to exercise the “care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances”
  - Known as the “Business Judgment Rule”, the rule protects directors and senior officers against hindsight and second guessing by third parties and the courts
  - i.e. a court will defer to the expertise of the directors and will not interfere with reasonable business decisions

- Directors will need to ask themselves the following questions in helping to meet the objective standard of care under the CNCA and ONCA:
  - Have they analyzed and understood the issue before them?
  - Have they retained independent advisors or advisors recommended by management and do the advisors have the requisite expertise and experience?
  - Have they tested and challenged their advisors, or merely followed recommendations without question?



- Is the amount of time that they have spent on the issue proportionate to its importance and complexity?
- Have they debated the issue amongst themselves and engaged in a candid exchange of views?
- Were they actually present at the applicable board meeting?
- Were a summary of the discussions and decision properly documented, for example, in minutes or resolutions of the board?

- Summary of general fiduciary duties that apply to both NPOs and charities in putting the best interest of the corporation ahead of their own
  - Duty to Act in Good Faith, Honestly, Loyalty
    - A director's sole interest is to the corporation
    - A director's duty is to the corporation and not to the interest of those who the director may be representing on the board, e.g. where a director is an appointee from another organization
    - The interests of the director must not be placed in conflict with those of the corporation



- Duty of Diligence/Duty to Act in Good Faith
  - Directors to diligently attend to duties by being familiar with all aspects of corporation
  - Directors may have liability exposure at common law for failure to attend to their legal duties or those of the corporation
  - This can be complied with by being familiar with all aspects of the corporation's operations through attending board meetings and reviewing the minutes of missed board meetings
  - Where necessary, the advice of qualified professionals should be sought



- Duty to Exercise Power
  - Directors responsible for managing or supervising the management of the corporation
  - In order to justify accounts and decisions made regarding corporate assets, directors must ensure that there is proper maintenance of books, records and minutes of the corporation
  - Delegation to management, staff and volunteers is permitted, but directors must always supervise and require accountability
- Duty of Obedience
  - Directors must comply with applicable legislation and the corporation's governing documents (letters patent, articles, by-laws, etc.)
  - All valid corporate decisions must be implemented

- Duty of Confidence
  - Directors must not disclose confidential information that they acquire to outside parties
- Duty to Avoid Conflict of Interest
  - Directors must declare and avoid any conflicts of interest or anything that gives a director the appearance of a personal benefit
  - Where a conflict of interest arises, it must be declared, and the director must not participate in any discussion or vote and, depending on the circumstances, the director may have to resign
  - If this procedure is not followed, directors may be made to account for profits they have made



- CNCA and ONCA expand the provisions concerning conflict of interest in that they will apply to both directors and officers and address transactions the corporation enters into on a more general basis as opposed to being limited to contracts only
- Duty to Continue
  - Directors have continuing obligations to the corporation which cannot be relieved by simply resigning if the corporation is facing difficulties
  - Resignation to avoid personal liability may be ineffective and constitute a breach of fiduciary duty where a director puts their own self interests ahead of those of the corporation

- To Whom is the Fiduciary Duty Owed?
  - The Corporation
    - Case law has affirmed that directors of charities and NPOs are in a fiduciary relationship to the corporation, not to its members
  - Duties Owed to Members
    - Directors also have certain duties to the members of the corporation, although it is not specifically a fiduciary relationship
    - Directors must ensure that the corporation abide by the terms of its letter patent, articles, and by-laws
    - Case law affirms that relationship between corporation and members is an implicit contractual obligation to comply with the constating documents and by-laws

- High Fiduciary Duties with Regard to Charitable Property
  - The following duties relate specifically to the high fiduciary duties where charitable property is involved, whether such property is held by a charity or by an NPO
  - Duty to Carry out the Charitable Purpose
    - Charities can have one or more charitable purposes
    - The charity's resources must be used to carry out the purposes of the charity
    - Directors have a positive duty to further the charitable purposes of the corporation

- Duty to Protect and Conserve Charitable Property
  - Directors must protect charitable property
  - Directors in Ontario must ensure that such property is appropriately invested in accordance with terms of the *Trustee Act*
  - Restricted charitable purpose trusts are no longer recognized as separate trusts distinct from the general assets of the charity for purposes of exigibility (i.e. claims by third parties)
  - Therefore, it is important for directors to consider what steps can be taken to assist in protecting restricted charitable purpose trusts in the future



- Duty to Act Gratuitously for the Charity
  - Directors in Ontario cannot receive any remuneration, either directly or indirectly, from the charity
  - Can seek approval for remuneration from the court under section 13 of the *Charities Accounting Act* (“CAA”) for payment for services other than as a director but difficult to attain
  - The onus will be on the applicant to show that such payment for services “is in the best interest of the trust in light of the circumstances and the basic rules of equity which affect trustees”
  - Directors and officer insurance, as well as indemnification available provided that regulations under the CAA are complied with



- Duty to Account
  - Directors of charities must keep records to evidence that the charitable property has been properly managed
  - The Ontario Public Guardian and Trustee (“PGT”) can compel the directors of a charity to pass the accounts of the organization before the court
  - This can be a long and expensive process
  - It can also result in personal liability for the directors



## F. COMMON LAW LIABILITIES

- Liability for Breach of Fiduciary Duty
  - Directors and officers have a fiduciary duty to put the best interests of the corporation ahead of their own
  - Examples of breach of fiduciary duty can include mismanagement of corporate funds and property, or the misappropriation of corporate opportunity
  - Directors and officers can be found liable for any loss that the corporation suffers as a result of a breach of fiduciary duty

- Liability for Breach of Corporate Authority
  - When directors permit the corporation to act beyond the scope of the authority set out in the corporation's objects, the directors may be found personally liable for *ultra vires* actions
  - The issue of acting *ultra vires* will no longer be a concern once the ONCA and CNCA apply, as they each give the corporation the same powers of a natural person as those given to directors of for-profit corporations under modern business corporations legislation
  - However, every director is still under a duty to comply with the articles and bylaws of the corporation, including its purposes

- Liability Risk for Negligent Mismanagement (Tort)
  - Tort is civil wrong for which injured party can seek damages from the court
  - If their carelessness in the oversight of the corporation's operations leads to injury, directors of charities can be found liable in tort for negligent mismanagement, for instance:
    - Failing to adequately supervise hiring of staff and employees
    - Failing to implement a child protection policy



- Failing to monitor the on-going conduct of staff and employees, especially in regard to sexual harassment of employees
- Wrongful dismissal - where directors acted with malice or otherwise improperly dismissed the employee
- Permitting unsafe conditions on corporation's property leading to an accident
- Knowingly drawing cheques against insufficient funds

- Liability Risk in Contract
  - Directors generally are not personally responsible for contracts signed for the corporation unless they are found to have intended to assume personal liability
  - However, they need to have proper corporate authority to sign contracts and ensure contractual terms are complied with
  - To reduce liability exposure, directors need to ensure contracts are duly authorized by the board before entering into them



- Common problems in relation to breach of contract for directors:
  - The directors do not properly identify the corporation in such contract or to the contracting party
  - The other party believes the director is signing in his or her own name
  - The directors are found to have induced a breach of contract with other parties prior to the signing of the contract
  - The directors do not follow through to ensure that the corporation complies with the contract

- Liability for Special Purpose Charitable Trusts
  - Case law has confirmed that while a charitable corporation owns its general assets beneficially and not as trustee of those assets, a corporation can still receive charitable property under express or implied terms in trust and thereby be trustee of such funds
  - To the extent that a gift constitutes a special purpose charitable trust, the charity can only use the gift to accomplish the specific charitable purpose established by the donor and for no other purpose



- Commingling of special purpose charitable trusts
  - Are gifts subject to restrictions or limitations by the donor
  - Commingling of donor restricted gifts possible under *Charities Accounting Act* (Ontario) regulations
  - But cannot commingle special purpose charitable trusts with general funds
  - See Charity Law Bulletin #4 for details at <http://www.carters.ca/pub/bulletin/charity/2001/chylb04-01.pdf>

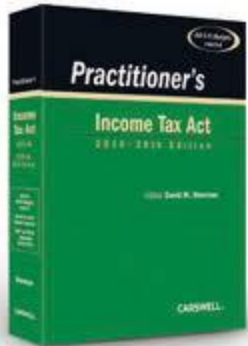


- Liability for Imprudent Investments
  - Section 10.1 of the CAA confirms that sections 27 to 30 of the *Trustee Act* apply to all charities that deal with charitable property unless the constating documents of the charity or the gift agreement state otherwise
  - The *Trustee Act* establishes a prudent investment standard governing investment decision-making of trustees of charitable property
  - The board needs to have a investment policy in order to obtain protection under the *Trustee Act* where there is delegation of investment decision making

## G. STATUTORY DUTIES AND LIABILITIES

- Overview
  - Many federal and provincial statutes impose offences and penalties for acts and omissions of corporate directors
  - Directors can be held personally liable, as well as jointly and severally, with other directors for breach of statutory duties
  - Ignorance of the law is not an excuse, as offences are generally strict liability
  - Generally, the only defence is due diligence
  - Resigning as a director may not limit liability, though there are generally limitation periods that apply

- Federal Statutes



### *Income Tax Act* (Canada)

- Directors are jointly and severally liable to pay employee income tax deductions for claims brought within two years after end of term of office as a director
- Directors may also face liability, including fines and imprisonment if they are involved in making false or deceptive statements or evading compliance with the *Income Tax Act* (e.g. improperly characterizing employees as independent contractors)

- *Excise Tax Act (Canada)*
  - Directors jointly and severally liable for corporation's failure to collect and remit HST
  - Liability continues for two years after cease to be director
- *Canada Pension Plan*
  - Joint and several liability where corporation fails to remit employee pension premiums
- *Criminal Code*
  - Bill C-45 (Westray Mines) potential criminal liability for negligence in work place safety
  - s. 336 – criminal breach of trust

- *Anti-terrorism Legislation*
  - Legislation has serious liability risks for charitable corporations and directors, particularly those involved in work outside of Canada
  - See [www.antiterrorismmlaw.ca](http://www.antiterrorismmlaw.ca) for details
- *Canada Corporations Act (“CCA”)*
  - Unpaid wages
    - Directors are jointly and severally liable for 6 months wages and claims due for services by employees for the corporation while they were directors if brought within 12 months of holding office

- Conflict of interest
  - Every director with an interest in a contract with the corporation must disclose such interest
- Reporting requirements
  - Annual summary for the corporation to be filed each year
- Books, minutes and records
  - Corporation required to maintain proper books, records and accounting records
- General penalty
  - Directors will be liable to fine of \$1000 and imprisonment not more than a year for doing anything contrary to the legislation or failing to comply where specific penalty not prescribed



- *Canada Not-for-Profit Corporations Act* (“CNCA”)
  - Continues similar liability for wages as described under the CCA
  - CNCA also enhances the accountability of directors to members by providing members with the power to remove directors by ordinary resolution at any time
  - Members will be able to apply to the court for an oppression remedy, a court-ordered liquidation, a derivative action and compliance and restraining order



- Ontario Statutes
  - Ontario *Corporations Act* (“OCA”)
    - Directors are jointly and severally liable to the employees, apprentices and other wage earners for all debts due for services performed for the corporation, not exceeding six months wages and twelve months vacation pay
    - Failure to keep proper books, records and registers at the head office of the corporation and failure to make such books, records and registers available for inspection by entitled persons may result in personal liability for the directors

- Ontario *Not-for-Profit Corporations Act* (“ONCA”)
  - Expected to be in force on July 1, 2013
  - Directors can be held jointly and severally liable to their employees for the following debts if the corporation is sued and cannot satisfy all or part of the debt
    - 6 month’s wages; and
    - Vacation pay (up to 12 months)
  - Significantly increases the rights of members



- *Charities Accounting Act* (“CAA”)
  - PGT can seek an order under section 4 of the CAA if he or she is of the opinion that there has been a misapplication or misappropriation of any charitable funds, an improper or unauthorized investment of any monies, or failure to apply charitable property as directed by the donor
  - Third-parties can bring applications under subsection 6(1) without notice to the charity or anyone else, with the court being able to order the PGT to conduct a public inquiry under the *Public Inquiries Act*

- Could result in an application by the PGT to obtain a court order requiring the charity to comply with the terms of the donor direction in accordance with s.4(d) of the CAA
- Subsection 10(1) of the CAA permits two or more individuals to make a court application where they allege a breach of a trust created for a charitable purpose or seek the direction of the court for the administration of a trust for a charitable purpose
  - *Retail Sales Tax*
    - Directors jointly and severally liable where corporation fails to remit

- *Workplace Safety and Insurance Act* (Ontario)
  - Directors are not liable for corporation's failure to remit premiums unless it can be shown they did not intend to pay them
- *Employer Health Tax Act* (Ontario)
  - Directors will be held personally liable for premiums and health tax not paid by corporation
- *Occupational Health and Safety Act* (Ontario)
  - Directors required to take reasonable steps to comply with workplace health and safety requirements
  - Failure to do so will result in fines to corporation and its directors

- *Environmental Protection Act* (Ontario) and Related Legislation
  - Directors required to take reasonable care to prevent unlawful discharge of contaminants
  - Persons in control of contaminants are responsible for cleanup and related costs
  - Appropriate environmental audits need to be obtained before purchasing or receiving land
- *Child and Family Services Act* (Ontario)
  - Failure to report child abuse is an offence
  - Charities, NPOs and their directors and officers could be liable where employees fail to report abuse or where it occurs because of failure to monitor employees and operations

- *Human Rights Code* (Ontario)
  - Possible claims of discrimination by employees or by the public for provision of services
  - Based upon violation of prohibited grounds of discrimination, such as, race, creed, marital status, sexual orientation, etc.
  - Important to understand what exemptions apply
  - Directors and officers could be exposed to liability in egregious situations



## H. ESTABLISHING DUE DILIGENCE THROUGH GOOD GOVERNANCE

- Maintaining organizational structure
  - Be knowledgeable of corporate structure
    - Letters patent and supplementary letters patent
    - Articles of incorporation, articles of continuance
    - By-laws
    - Special resolutions
    - Policies
  - Be prepared to change corporate structure as necessary to better reflect programs undertaken



- Developing a mission and strategic plan
  - Ensure that the mission statement is consistent with corporate objects
  - Do periodic reviews of both
  - Develop a strategic plan for implementation
- Ensure transparency and communication
  - Communicate to members, donors and the public
  - Focus on ensuring accountability
- Understand the role of the board
  - Continually educate board members
  - Develop conflict of interest, confidentiality and code of conduct policies as appropriate
  - Prepare a board manual for new board members and update it on a regular basis

- Size of the Board
  - Reducing size of board reduces the extent of risk
  - A smaller board may also allow for more effective control
- Committees and Advisory Boards
  - Committees and advisory boards can be an effective means of attracting volunteers without the risk of being directors
  - But directors must always remain in control



- Exercise fiscal responsibility
  - Establish and maintain a budget
  - Monitor all fiscal expenditures and/or commitments
  - Monitor human resources of both staff and volunteers
  - Review and approve all fundraising and initiatives and donation receipts
- Establish effective risk management in operations
  - Develop and implement a legal risk management checklist, see sample checklists at:  
<http://www.carters.ca/pub/checklst/charity.pdf> or  
<http://www.carters.ca/pub/checklst/nonprofit.pdf>

- Develop and implement operational policies, such as policies dealing with employees, volunteers, work place safety and vulnerable persons
- Establish a governance and risk management committee
- Plan for the diversity and succession of the board
  - Determine specific needs of the board and recruit in accordance with those needs
  - Develop eligibility criteria for recruiting directors
  - Plan for an orderly succession of directors

# I. TOOLS TO PROTECT DIRECTORS AND OFFICERS

## 1. Statutory Due Diligence Defence

- Nothing available under either the CCA or OCA
- Under the CNCA
  - Directors provided with “reasonable diligence” defence
  - Directors are not liable if they exercise the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances
    - reliance in good faith on the corporation’s financial statements or the report of “a person whose profession lends credibility to a statement made by that person”
  - But must comply with CNCA, regulations, articles, by-laws and any unanimous member agreement



- Under the ONCA
  - Directors provided with a “reasonable diligence” defence
    - Reasonable reliance on officers and employees of the corporation and on professional advice
  - Director is not liable if they exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances
    - Including good faith reliance on financial statements and accounting professionals

## 2. Liability Shields

- In order to help provide liability protection for the organization and its directors and officers, consider requiring third parties to execute liability shields, such as:
  - Informed consents
  - Disclaimers
  - Waiver and releases
  - Indemnities
- The wording and implementation of liability shields needs to be done in conjunction with legal counsel



dreamstime.com

### 3. Indemnification

- a) Indemnification under CCA and OCA
- CCA permits a corporation to indemnify a director for all costs, charges and expenses sustained in any action commenced or prosecuted against him, in relation to the execution of the duties of his office except costs that occur by his own willful neglect or default
  - OCA permits a corporation, with the approval of the members at a meeting of the members, to indemnify a director or officer for all “costs, charges and expenses” arising from an action in relation to the director’s execution of the duties of his office except costs due to their own willful neglect or default



## b) Indemnification under CNCA and ONCA

- Mandatory Indemnification

- A present or former director or officer, due to their association, is entitled to indemnification against all costs, charges and expenses reasonably incurred by them in connection with the defence of any civil, criminal, administrative, investigative or other proceedings if:
  - Was not judged to have committed any fault or omission
  - Acted honestly and in good faith
  - For criminal or administrative actions, had reasonable grounds for believing conduct was lawful

- Permissive Indemnification
  - Indemnification of a present or former director or officer is permitted against all reasonable costs, including an amount paid to settle an action or satisfy a judgment, in respect of any proceeding in which the individual is involved because of their association with the corporation
  - Corporation may advance the money for costs of a proceeding referred to above, provided that the director or officer is found to have acted honestly and in good faith with a view to the best interests of the corporation
  - Subject to limitations listed below





- Prohibited Indemnification
  - Corporation cannot indemnify if the director or officer failed to act honestly and in good faith
  - Corporation cannot indemnify in criminal or administrative proceedings or actions enforced by a monetary penalty if the director or officer had no reasonable grounds for believing that their conduct was lawful
  - If no court approval, indemnification is prohibited in an action by or on behalf of the corporation to obtain judgment in its favour where a director or officer may be made a party due to their association with the corporation

- c) Indemnification involving a charity
- Regardless of which corporate statute applies, Regulation 4/01 under the Ontario *Charities Accounting Act* (“CAA”) requires that prior to a charity indemnifying its directors, the directors must consider certain factors enumerated in the regulation, which consideration need to be documented in the minutes
  - The ability for directors of the corporation to receive indemnification or purchase of director and officer insurance must not render the corporation insolvent
  - The PGT generally takes the position that a director of a charity ought to be indemnified only for those acts properly undertaken in the administration of the charity or undertaken in breach of trust under an honest and reasonable mistake

- d) What does indemnification involve?
- Corporate indemnification generally provides compensation for the following
    - Legal fees
    - Fines that were paid under a statute
    - A financial settlement that results from a lawsuit
    - Any other obligation that a director was required to fulfill
  - Corporate indemnification should always be implemented but may be of limited practical benefit
  - Indemnification is only as good as the financial security of the corporation and its insurance
  - Indemnification is therefore tied to the strength of the insurance coverage of the corporation

## 4. Insurance Protection

- a) Insurance coverage should generally include, where applicable:
- All risk property insurance
  - General liability insurance
  - Directors' and officers' insurance
  - Sexual abuse and/or harassment coverage
  - Insurance for particular risks, i.e. counseling, non-owned auto, third-party use of property, etc.
  - Wrongful dismissal coverage
  - Errors and omissions coverage



- b) Both the CNCA and ONCA permit a corporation to purchase and maintain personal liability insurance for the benefit of a present or former director or officer of the corporation, or another individual who acts or acted at the corporation's request as a director or officer or in a similar capacity of another entity
- Under the ONCA, however, director and officer insurance may not be purchased for a charity unless the corporation complies with the *Charities Accounting Act* and its regulations that permits the purchase of such insurance
  - The same provisions would generally apply with the CNCA, although nothing is specifically stated in the CNCA to that effect

c) Factors to consider

- How much coverage does the policy provide for?
- Who are the named insureds?
- Does insurance cover all former and existing directors, officers and committee members?
- Are there exclusionary clauses that limit the protection offered by the policy, such as sexual abuse?
- Is coverage on a “claims made basis” or on an “occurrence basis”?
- Are there geographical limits to the coverage?
- Is there a historical record of insurance policies?



- d) Communicating with insurance brokers
- Advise insurance broker in writing each year of all activities of the charity or NPO and all known risks
  - Ask insurance broker to respond in writing to the following questions:
    - What risks are covered?
    - Who is covered under the policy?
    - What is the amount of coverage per claim and in the aggregate?
    - What risks are not covered under the policy?
    - What additional insurance coverage should be obtained?

# CARTERS

BARRISTERS

SOLICITORS

TRADEMARK AGENTS

## Disclaimer

This handout is provided as an information service by Carters Professional Corporation. It is current only as of the date of the handout and does not reflect subsequent changes in the law. This handout is distributed with the understanding that it does not constitute legal advice or establish a solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

© 2012 Carters Professional Corporation

CARTERS PROFESSIONAL CORPORATION  
TOLL FREE: 1-877-942-0001

Ottawa Toronto Mississauga Orangeville  
[www.carters.ca](http://www.carters.ca) [www.charitylaw.ca](http://www.charitylaw.ca) [www.antiterrorismlaw.ca](http://www.antiterrorismlaw.ca)