

Sitting on a non-profit board: A risk management checklist

Serving as a director of a charitable or not-for-profit corporation can be a rewarding but potentially risky experience. A director can be held personally liable for his or her own actions or failures to act, as well as jointly and severally liable with the other members of the board of directors. Directors with specialized knowledge and expertise, such as lawyers, are held to a higher standard of care. LAWPRO's standard professional liability insurance policy provides coverage only for the "professional services" that a lawyer provides as a lawyer. It does not provide coverage for liability arising as a result of a lawyer's actions as a director.

Accordingly, here are some questions you should ask yourself before serving as a director on the board of a charity or not-for-profit organization.

1. How well do I know this organization? Does it engage in activities that have an especially high risk of attracting legal liability?
2. What are my motivations for joining this board – business, personal, community service, etc.?
3. Will I be able to devote my time and energy to ensure that I fully meet my obligations in this role?
4. Do I understand the risks and responsibilities that come with directorship? Am I aware of the statutory and common law liabilities that I may be exposed to?
5. Does my firm have a policy regarding its lawyers serving on the boards of charities and not-for-profits?
6. Is the charity or not-for-profit organization a client of my firm? If so, does my firm have a policy regarding its lawyers serving on the boards of charities and not-for-profits that are clients of the firm?
7. Will the charity or not-for-profit organization agree to indemnify me for liability arising out of my role as director?
8. Does the charity or not-for-profit organization maintain directors and officers (D&O) insurance to protect me from personal liability arising out of my role as director?

9. If so, what are the details of this D&O insurance? What policy terms, conditions and exclusions are likely to apply? What are the limits of liability per claim and in the aggregate?
10. Is there an outside director liability (ODL) insurance policy in place that may respond to claims against me arising out of my directorship? If not, should I purchase such insurance, whether from the Canadian Bar Insurance Association (CBIA) or through my insurance broker?
11. Is there any other insurance in place or optional coverage that may be purchased that may cover my activities as director? Have I consulted my insurance broker? (Note: LAWPRO's optional excess insurance policy does not provide incidental D&O coverage, but some excess professional liability insurance policies may do so. If so, does that coverage "drop down" to afford primary protection?)