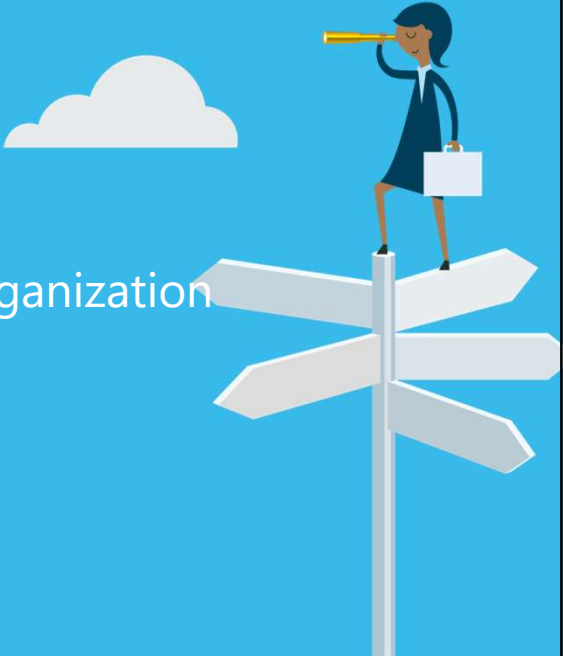



# Nonprofit Directors and Officers Liability And Insurance

Protecting yourself and your organization

January 29, 2026  
1-2:30 pm



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## Mohkinsstis Land Acknowledgement

Bearspaw First Nation      Siksika First Nation

Piikani First Nation      Goodstoney First Nation

Chiniki First Nation      Kainai First Nation

Tsuut'ina First Nation

Métis Nation of Alberta, District 5 and 6



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Moderator

**C. Yvonne Chenier, K.C.**

*IntegralOrg* Legal Counsel, Founder



Presenter

**Doug Tweddle**

Client Executive – Not for Profit, BLF Canada



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## Overview

- Directors and Officers (D&O) insurance
- Directors' fiduciary duties
- D & O claim examples
- Freedom to Care Act: What is protected and not protected?

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## Why Consider Directors & Officers (D&O) Liability?



Directors and/or Officers can be held “personally liable” for corporate liabilities.

Statutory liabilities include employment, volunteer-related practices, CRA obligations, competitors, creditors, donors, fundraisers, and other stakeholders.

Nonprofit organizations should discuss their insurance needs with a knowledgeable broker or agent.

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## D&O Insurance



In a claim, legal costs of defending the action can be high!

D&O insurance covers the damage award as well as the association defense costs.

Nonprofit organizations should discuss their insurance needs with a knowledgeable broker or agent.

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## D&O Coverage: What is available?



- Side A – Claims against an individual, where the corporation cannot, or will not, indemnify.
- Side B – Claims against an individual, where the corporation has the ability to indemnify.
- Side C – Claims against the Entity.
- Employment Practices and Fiduciary Liability.


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## Key Roles of the Board



- Strategic Direction
- Manage the CEO/Executive Director
- Monitor Performance
- Risk Oversight
- Governance System and Processes
- Fiduciary Oversight
- Black Swans/Major Events

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## Directors' Fiduciary Duties

- Duty of Care**
- Duty of Loyalty**
- Duty of Obedience**

Established in law and owed to the corporation. Also, the board is held to the standards by the community and other stakeholders.

Carrying out these duties appropriately is the best risk mitigation.

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## Duty of Care

- Act honestly.
- Be diligent – acquire adequate knowledge and information.
- Exercise power only when appropriate – apply established policies/ appoint/supervise leadership.
- Be obedient – comply with legal requirements.
- Spend the time necessary to deal with the issue.
- Best practice is to rely on “experts.”


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## Duty of Loyalty

- A director cannot profit from the position at the expense of the corporation.
- Must always place the corporation's interest first.
- Act honestly and in good faith in the best interest of the corporation and not in your own or any particular stakeholder's interest.
- Avoid and disclose conflicts of interest at all times.
- Duty to disclose or to keep confidential information.
- Duty to not take advantage of your position on the board.


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## Duty of Obedience

- Know the law – make sure the corporation is abiding by all applicable laws and regulations.
- Obey the law – engaging in illegal or unauthorized activities contrary to the law.
- Carry out the organization's mission in accordance with the purpose stated when registered as a nonprofit entity.

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## Legal Duties = Moral Duties


Stakeholders/Funders/Donors/Clients will generally hold the board to the same standards as the Courts.

Legal Duties established from 400+ years of common law equals common sense.

Duties of Care/Loyalty/Obedience Equal Common Sense Standards

'What a reasonable and prudent person would do'

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## D&O Claims


Employment practices – wrongful termination

Human rights – discrimination, harassment, etc. whether of employees or third parties; we're seeing social diversity and inclusion pushing this into the forefront.

CRA matters related to donations, deductions due at source, etc.  
*Northbridge Insurance*

Around 80% of our specialty claims come from employment practices. This is really where the majority of the liability lies including from volunteers.  
*Travelers Insurance*

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## D&O Claims: Donors

**DONORS** – Claims resulting from those who make donations to the organizations

**Example:** The Board of Directors of a church was sued by a number of their donors, alleging misrepresentation of the financial status of the organization. Three members brought separate suits for repayment of the money lent to the church. The first case settled for \$240,000 of which \$117,000 accounted for expense.

The second case settled for \$75,000 and incurred \$86,000 in defense costs. The last case paid nothing to the claimant, but incurred \$13,000 in defense costs. The total loss including defense costs exceeded \$530,000.

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## D&O Claims: Third Parties

**THIRD PARTIES** – Third party lawsuits can be filed for various reasons.

**Example:** An organization filed a suit against a foundation and its Board of Directors for improperly infringing upon the claimant's intellectual property rights. The claimant filed suit seeking injunctive and monetary relief for the Foundation's alleged improper use of trademarked property while promoting their fundraiser. The claim settled and the total loss including defense was over \$400,000.

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## D&O Claims: Employees

**EMPLOYEES** – The most common claims made by employees involve **discrimination, harassment, wrongful termination, retaliation and hostile work environment.**

**Discrimination Example:** After 10 years of employment, an employee was fired for poor work performance. This employee brought a discrimination suit against their employer under the Americans with Disabilities Act (ADA). The individual alleged lack of workplace accommodation and constructive discharge. The claim was closed for a total loss of over \$80,000, including more than \$20,000 in defense costs.

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## D&O Claims: Employees

**Sexual Harassment Example:** An employee alleged one of the directors sexually harassed her by unwanted physical contact, which occurred multiple times. After mediation, the case settled for \$30,000. The defense costs exceeded \$20,000.

**Retaliation Example:** A former employee discovered illegal transactions involving retirement funds. Shortly after reporting the violations, she was terminated by her employer. She filed suit alleging retaliation and wrongful termination. The total loss exceeded \$100,000 with the settlement figure over \$80,000.

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## D&O Claims: Volunteers

**Volunteers – Volunteers are able to bring suits similar to those made by employees.**

**Example:** A volunteer claimed the denial of a fulltime position was due to her sex, race and pregnant condition. She filed a lawsuit claiming discrimination. The claim is pending further litigation and defense costs paid to date total over \$10,000 with an outstanding loss reserve of \$65,000.

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## D&O Claims: Members

**Members – A claim against the directors to protect the members' interest.**

**Example:** A law enforcement fraternity began proceedings to have a member removed from the organization. This member then sued the organization in order to have the proceedings halted. While there was no monetary settlement, the defense costs were \$15,000

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## D&O Claims: Beneficiaries/Clients



**Beneficiaries/Clients – A claim by the recipient of the organization’s services.**

**Example:** A discrimination suit was filed against the Board of Directors when the claimant requested a transfer within the housing complex and was denied. The claimant alleged discrimination based on national origin, religion and sex. The claimant was a resident at a drug and alcohol rehabilitation center. The court dismissed the case due to a lack of evidence. More than \$10,000 was paid in defense costs.

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## Liability Protection



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## Freedom to Care Act

### SA 2021, c F-25.4 ("the Act")



In Alberta there is liability protection for volunteer directors, officers, or trustees of a nonprofit organization as defined by the Act

Source

<https://www.alberta.ca/freedom-to-care.aspx>

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## Freedom to Care Act

### SA 2021, c F-25.4 ("the Act")



### What is protected?

The Act is intended to provide protection from liability for volunteers and remove potential barriers/concerns to volunteering.

The Act provides broad liability protection for individual volunteers acting within the scope of their duties on behalf of an organization.

### The definition of a volunteer?

The Act defines a volunteer as including a **director, officer or trustee** of a nonprofit organization who is not compensated for their role, apart from reasonable reimbursement for expenses.

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## What is not protected?

The Act does *not* afford liability protection to any individuals that cause damages where:

- the damage was caused **by willful, reckless or criminal misconduct or gross negligence** by the volunteer,
- the damage was caused by the volunteer while **operating a motor vehicle**, vessel, aircraft or other vehicle for which the owner is required by law to maintain **insurance**,
- the act or omission that caused **the damage constitutes an offence**, or
- the volunteer was unlawfully using or **impaired** by alcohol or drugs at the time of the act or omission that caused the damage.

This Act **does not affect the liability of any nonprofit organization itself.**

The nonprofit organization has **no right of recovery against the volunteer if the volunteer is not liable.**

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## First Reported Alberta Judicial Decision on the Freedom to Care Act!

The Judge concluded the President's actions were in breach of her duty of loyalty to this Alberta Society and therefore was unable to conclude she was acting within the scope of her responsibilities as President.

"Actions taken in breach of a director or officer's common law duty of care and fiduciary duty to an organization are the antithesis of acting within the scope of their responsibilities"

Therefore ... the Freedom to Care Act does not insulate her from liability

Edmonton (Hakka Tsung Tsin Association) v Demei, 2025 ABKB 80 (CanLII), <<https://canlii.ca/t/k9fwg>>

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A note on...

## Indemnities



Indemnities are intended to cover certain liabilities.

Effectiveness of an indemnity contract depends on the organization's ability to enter into an indemnification contract, governing legislation, bylaws, ability to pay etc.

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## Protections for Directors Risk Management

Importance of process and good records  
Due diligence defence and business judgement rule require **a record of the process, considerations, expert advice and decisions.**

**Most important record is minutes!**

- Sometimes incomplete or over done
- Old records not well maintained




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## Protections for Directors Risk Management

- Job descriptions
- Board orientation and education
- Board agenda item
- Committee role
- Review of governance practices

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## Risk Management Resources

### CPA Canada

***20 questions nonprofit board directors should ask about overseeing management of risk***  
<https://www.cpacanada.ca/en/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/20-questions-for-nfp-directors-on-risk-management>

***20 questions nonprofit board organizations should ask about director's duties***  
<https://www.cpacanada.ca/business-and-accounting-resources/strategy-risk-and-governance/not-for-profit-governance/publications/not-for-profit-director-duties-20-questions>

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# Risk Management Toolkit

Available for free! [toolkits.integralorg.ca](https://toolkits.integralorg.ca)

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Legal & Compliance Risk

Skip

Legal Matters

Does your organization have a scope of duties that explain the specific tasks required to protect them from liability as required by the Freedom to Care Act?

Yes

No or unsure, this is an area requiring attention

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## Freedom to Care Act

The **Freedom to Care Act** protects volunteers from personal liability when volunteering in good faith, and allows non-profit organizations to apply for a one-time exemption to certain regulatory requirements if an exemption doesn't already exist. A volunteer as defined under the Act is someone - including directors, officers and trustees - who is not provided compensation for their role in a non-profit, apart from being reasonably reimbursed for their expenses.

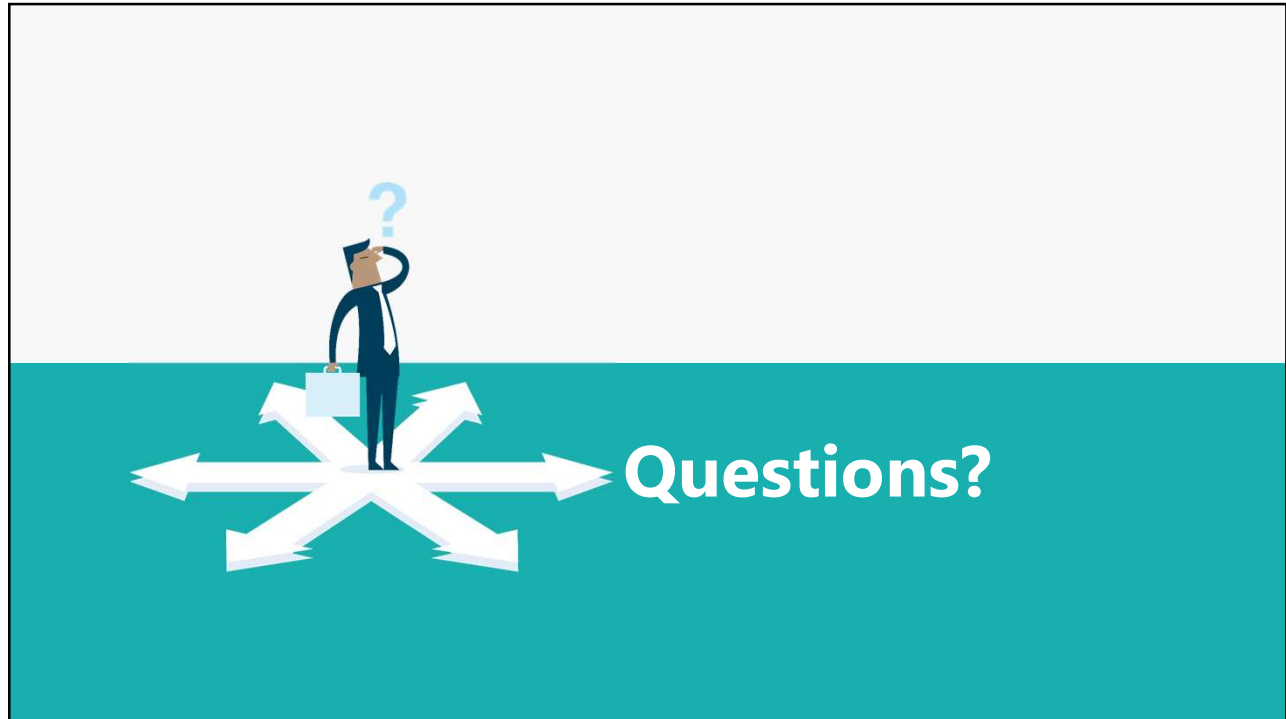
Under the *Freedom to Care Act*, 'volunteer liability protections' refer to how volunteers are now protected from liability claims as long as they are:

- acting in good faith within their **scope of duties**
- not causing harm or damage as a result of:
  - willful, reckless or criminal misconduct
  - gross negligence
  - operating a motor vehicle
  - being unlawfully impaired by alcohol or drugs when the harm or damage occurred

A **scope of duties** is a detailed, clear description of a volunteer's role and responsibilities. It explains a volunteer's specific tasks, including:

- work/duties they will perform
- any authorizations, licenses, training or requirements for that work to be completed
- where, when, how and with whom the work will happen

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## When you have questions, IntegralOrg has services to help

**A legal clinic is an opportunity to chat with a lawyer with decades of experience in the Alberta nonprofit sector about a legal issue related to your nonprofit.**

### You might have questions about

- Attaining charitable status
- Policies & bylaws (writing and review)
- Social enterprise legal structure
- Other law-related questions

**This service is free of charge!**

Find out more at [integralorg.ca/who-we-work-with/clinics/](https://integralorg.ca/who-we-work-with/clinics/)

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## Disclaimer



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