

DIRECTORS & OFFICERS LIABILITY INSURANCE

FOR



EFFECTIVE DATE - September 1ST, 2008

PRESENTED BY



BFL CANADA RISK AND INSURANCE INC

DUTIES & LIABILITIES

THE DUTIES AND LIABILITIES OF DIRECTORS AND OFFICERS ARE OUTLINED IN THE BUSINESS CORPORATIONS ACT OR SOCIETIES ACT DEPENDING ON THE PROVINCE.

EVERY DIRECTOR IN EXERCISING HIS POWERS AND DISCHARGING HIS DUTIES SHALL:

- A) ACT HONESTLY AND IN GOOD FAITH WITH A VIEW TO THE BEST INTERESTS OF THE CORPORATION:** and
- B) EXERCISE THE CARE, DILIGENCE AND SKILL THAT A REASONABLY PRUDENT PERSON WOULD EXERCISE IN COMPARABLE CIRCUMSTANCES.**

THE COMMON LAW STANDARD REQUIRES DIRECTORS TO ACT WITH A DEGREE OF REASONABLE PRUDENCE THAT MIGHT BE EXPECTED OF PERSONS WITH THEIR KNOWLEDGE AND EXPERIENCE.

DUTY OF DILIGENCE- REQUIRING THAT A DIRECTOR SEEK OUT PROFESSIONAL ASSISTANCE IN CERTAIN CIRCUMSTANCES.

DUTY OF OBEDIENCE- A DIRECTOR IS OBLIGED TO ASSIST IN IMPLEMENTING VALID CORPORATE DECISIONS; FAILURE TO DO SO MIGHT AMOUNT TO A BREACH OF DUTY TO THE ORGANISATION, ALSO A DIRECTOR IS OBLIGED TO SEE THAT THE ORGANISATION AND ITS OFFICERS AND AGENTS OBEY THE GENERAL LAW APPLICABLE TO THE ORGANISATION

RISK MANAGEMENT AND DIRECTORS AND OFFICERS

SOURCE: Directors Duties in Canada: Managing Risk

M. Priest, R. Mecredy-Williams, B.R.C. Doherty and J.W. O'Reilly (North York: CCH Canadian Limited, 1995)

- A.** Directors must be familiar with how the corporation and the board functions:
1. Directors should understand both their own legal obligations and the corporation's.
 2. Directors should be aware of the corporation's operations and business affairs.
 3. Directors should be familiar with how the board functions.
- B.** Directors must have the tools to supervise and manage.
1. Directors should establish regular information-reporting systems.
 2. Directors should ensure they have confidence in management.
- C.** Directors must fulfil their duties.
1. Directors must always remember their duty of loyalty to the corporation.
 2. Directors should carry out their functions diligently, including documentation of their activities.
 3. Directors should maintain their independence of mind.
- D.** Directors must communicate their goals and expectations
- E.** Directors should establish and maintain regulatory compliance systems

and reporting procedures.

DIRECTORS AND OFFICERS LIABILITY INSURANCE

NAMED INSURED: THE INDIVIDUAL OR ORGANISATION
NAMED IN THE DECLARATIONS

INSURED:

- A) ANY DIRECTOR OR OFFICER OF THE
NAMED INSURED WHILE ACTING WITHIN
THE SCOPE OF HIS OR HER DUTIES
- B) ANY MEMBER OF - A STATUTORY OR
SPECIAL COMMITTEE, MEMBER OF A
COMMISSION, ASSEMBLY OR BOARD
CREATED BY THE NAMED

INSURED.

- C) ANY EMPLOYEE OR FORMER EMPLOYEE
- D) HEIRS, LEGAL REPRESENTATIVES OR
ASSIGNS OF THE ABOVE.

DIRECTOR MEANS any member or former member of the Board of
Directors and newly elected members.

OFFICER MEANS the holder or former holder of a position that can only
be filled by a decision of the Board of Directors.

ADMINISTRATIVE DUTIES:

MEANS ANY ACT, DUTY, PREROGATIVE OR DECISION INCUMBENT UPON ELECTED PERSONS ON THE BOARD OR LEGALLY NAMED TO ADMINISTRATIVE OFFICE OR TO COMMITTEES ETC. ACTING WITHIN THE SCOPE OF THEIR GENERAL DUTIES OF GENERAL ADMINISTRATION OF THE ORGANISATION, INCLUDING FINANCE, MANAGEMENT OF FUNDS, COLLECTION OF REVENUE, EXPENSES ALLOCATION APPROVAL OR AWARDED OF CONTRACTS, SUBMISSIONS, AGREEMENTS AND ANY OTHER PROJECT ON BEHALF OF THE ORGANISATION.

WRONGFUL ACT:

MEANS ANY NEGLIGENT ACT, ERROR OR OMISSION, BREACH OF DUTY, MISLEADING STATEMENT OR ANY OTHER ACT DONE OR ALLEGED TO HAVE BEEN WRONGFULLY DONE BY THE INSURED IN THE DISCHARGE OF HIS DUTIES AND WHICH IS NOT EXCLUDED BY THE POLICY.

NOTE: ALL COVERAGES APPLY AS LONG AS THE DIRECTOR,
OFFICER OR EMPLOYEE ARE ACTING WITHIN
THE SCOPE OF THEIR DUTIES.

INSURING AGREEMENTS:

A- LIABILITY FOR WRONGFUL ACTS.

THE POLICY WILL PAY COMPENSATORY DAMAGES WHICH THE INSURED IS LEGALLY OBLIGATED TO PAY

B- PENAL DEFENCE COSTS.

REIMBURSE ALL REASONABLE COSTS, FEES & EXPENSES INCURRED BY THE DIRECTORS OR OFFICERS IN THE DEFENCE OF CHARGES OF A PENAL NATURE AGAINST THEM UNDER ANY FEDERAL OR PROVINCIAL LAW, PROVIDED,

THE CHARGES OR INVESTIGATION DID NOT OCCUR PRIOR TO THE INCEPTION OF THE POLICY, AND THE DIRECTOR OR OFFICER IS FOUND INNOCENT OR THE CHARGES ARE WITHDRAWN.

D&O EXCLUSIONS:

- A) CLAIMS OR LOSSES KNOWN TO THE INSURED PRIOR TO THE INCEPTION DATE OF THE POLICY;**
- B) FINES PENALTIES PUNITIVE OR EXEMPLARY DAMAGES OR DAMAGES OF ANY TYPE OTHER THAN COMPENSATORY DAMAGES;**
- C) DISHONEST ACTS, AND OR BAD FAITH;**
- D) CLAIMS BASED ON ANY UNJUSTIFIED OR ILLEGAL GAIN, PROFIT OR ADVANTAGE;**
- E) CLAIMS FOR THE RETURN, BY THE D's & O's OF ANY REMUNERATION ILLEGALLY PAID TO THEM BY THE ORGANISATION;**
- F) CLAIMS ARISING OUT OF THE DISCHARGE ETC. OF POLLUTANTS;**
- G) FAILURE TO PURCHASE OR MAINTAIN INSURANCE COVERAGE;**
- H) CLAIMS FOR WHICH OTHER VALID AND COLLECTIBLE INSURANCE IS AVAILABLE;**
- I) CLAIMS INITIATED OR INSTITUTED BY THE ORGANISATION AGAINST AN INSURED;**
- J) CLAIMS MADE BY AN EMPLOYEE BASED UPON OR ARISING OUT OF THE BREAKING OF A COLLECTIVE OR INDIVIDUAL WORKING AGREEMENT UNLESS SUCH CLAIM IS MADE DIRECTLY AGAINST A DIRECTOR;**
- K) CLAIMS FOR BODILY INJURIES OR PROPERTY DAMAGE;**
- L) LIABILITY IMPOSED BY, OR UNDER ANY NUCLEAR LIABILITY ACT.**
- M) SEXUAL HARASSMENT OR ABUSE**

CHECK-LIST FOR DIRECTORS AND OFFICERS OF NON-PROFIT ORGANISATIONS

Questions you can ask when faced with a difficult corporate decision:

1. What are the stated purposes of the organisation?
2. Does the transaction advance the stated purpose?
3. Does the transaction benefit a private individual?
4. Were any promises made when the funds were raised?
5. Were any conditions placed on donated funds?
6. Does the Director attend the meetings?
7. Are meetings held regularly?
8. Does the Director have all of the relevant facts?
9. Is there any reason not to trust the information being furnished?
10. Are taxes being paid?
11. Is there a conflict of interest or self-dealing?
12. Is the transaction fair to the organisation?
13. How would an ordinarily reasonable and prudent person decide the matter?
14. Are there other laws/regulations that affect the particular situation?
15. How accurate are the records?
16. Is the Director acting honestly' in good faith, and with total integrity?
17. Is this transaction in the best interest of the organisation?

(From Lisa Runquist, "Responsibilities and Duties of Directors of Non-profit Corporations- Corporate Issues". The American Bar Association, Section of Business Law, Annual Meeting, San Francisco, California, August 1992, pp.756-766.)