

Sexsmith Football Club
Meeting Minutes of a Regular Board Meeting
March 26th, 2018
Sexsmith Football Club Locker Room, 6:30pm

Attending:

Board: Lianne LaValley - President, Misty Dettling – Vice President, Jaclyn Bryce - Secretary, Teresa Anderson - Treasurer, Austin Yu - Director, Kevin Oltmanns - Director, Patrick Ewan – Grievance Director

Absent:

Meeting called to order: 6:34pm by Lianne LaValley President of Sexsmith Football Club

Approval of previous Minutes:

- Motioned by Misty, to adopt the minutes of the Meeting held on March 5th, 2018 with corrections, 2nd by Teresa Anderson.
- Approved – Motion carried.

Treasurers Report

ATTACHED

Motion made by Kevin to accept Treasures report, Misty 2nd the motion. All in favour-motion carried.

Policies and Procedures, Parent/Player handbook, Code of Conducts and Bylaws

Teresa is looking into getting a copy for the old bylaws. Then the board will be reviewing them to possibly amend in the upcoming meetings.

Motion by Misty to accept the new Policies and Procedures and Parent/Player handbook, Kevin 2nd the motion. All in favour - motion carried.

Insurance and Legal Responsibility

Lianne is looking into getting all Sexsmith Football's belongs insured and would like to see something put in place to protect the board.

Pat brought forward The Legal Responsivities of a Board book for the RCMP. **(ATTACHED)**

AGLC and Fundraising

Lianne confirmed the club is in good standing with AGLC and were are now registered online.

The club is waiting to for Society number to look into working a casino.

Heather Misner has ordered what we needed for the seed order.

Lianne has spoke with the town and from the volunteering of helping with their casino, we may approach them for some funding if/when needed.

Important Dates

Atom

Registration is online now and will end April 15th, 2018

Equipment handouts April 17th from 1 to 3pm and April 21st from 5:30 to 7:30pm.

Practices will be Tuesday/Thursday from 5:30pm to 6:30pm.

First Practice scheduled for April 24th, 2018.

Final day is June 28th, 2018 at Forbes School (BBQ)

Peewee

Last game will be June 23rd, 2018.

Teresa made a motion that Jaclyn is to get a contract made up for renting the changeroom at the Sportsplex for football supplies. Kevin 2nd the motion. All in favour-motion carried.

Bantam

Registration is now online and will end April 15th, 2018

Spring Camp will start on May 29th and run Tuesday/Thursday from 6:30 to 8:30pm.

Motion by Misty for the meeting to go In-camera at 8:40pm. All in favour-motion Carried.

Motion by Jaclyn for the meeting to come Out of camera at 8:46pm. All in favour-motion Carried.

Lianne welcomed Ashely Seely as the Stingers Team Manager.

Coaches

Lianne spoke with Coach Casey about Travis and Troy assisting him with the Stingers this year.

The board discussed about the up coming Bantam season.

Teresa made a motion, Lianne is to pay by credit card for all coaches' courses and will be reimbursed at a later date when all are registered. Misty 2nd the motion. All in favour-motion carried

Advertising for around the field

South 40 Dental approached the club and was interested in putting up some advertising.

Misty made a motion to approve the advertising for all companies for \$500 per advertising, Pat 2nd the motion. All in favour-motion carried.

Misty made a motion the South 40 Dental to receive a discounted price from \$500 to \$350, because of all the sport they give our club to equip the players with mouthguards. Jaclyn 2nd the motion. All in favour-motion carried.

Dibs Ideas for website

Garbage removal

Mop/sweep

Bathroom checks

Snacks

Sticks

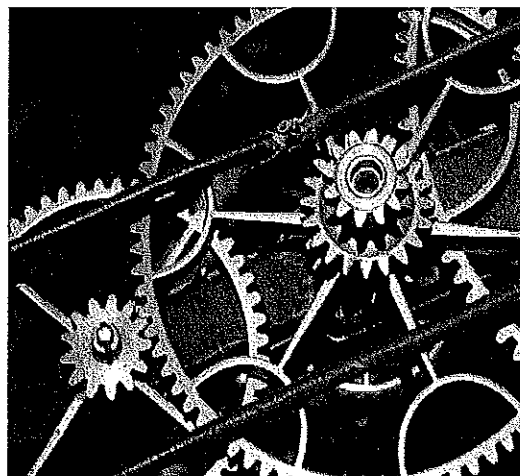
Counting plays (Bantam)

NEXT MEETING to be held at the Curling Rink April 16th, 2018 at 6:30pm

Meeting Adjourned at 10:05pm

The Legal Responsibilities of Boards

by E. Grant MacDonald



The board of directors of an incorporated non-profit organization is legally responsible for the actions of the organization, including those of its employees and volunteers. The organization may be liable (subject to a penalty) if something goes wrong. The board members themselves may be liable if it can be shown that the board itself was negligent¹. The board must therefore demonstrate “due diligence”² with respect to the following four areas of responsibility³:

1. Fiscal responsibility

The board must insure that the organization operates in a financially responsible manner. This includes:

- Developing a financial budget and monitoring financial performance relative to that budget
- Avoiding a deficit
- Insuring the collection and remittance of required payroll deductions (income tax, UI and CPP)
- Insuring that none of the resources of the organization is used for the personal gain of officers and directors
- Maintaining financial records

2. Statutory responsibility

The organization is required to obey all laws relating to individuals and employers. Boards themselves or their primary “agent”, the organization’s executive director, should be familiar with labour standards, human rights and occupational health and safety legislation. Those organizations operating in particular areas would need to be familiar with additional laws and regulations (e.g. environmental protection).

Laws also come into play in terms of fundraising practices and acquiring and maintaining non-profit incorporation and charitable status.

3. Contracts

The board should have a full understanding of the organization’s major contractual obligations, especially to funders, and monitor the organization’s compliance with them.

4. Standard of care

The board must insure that practices are in place to reduce the risk of harm to its employees, volunteers and clients.

Due Diligence Safeguards

1. **Board education:** The Board must have some understanding of how to interpret the organization's financial statements, the kind of policies (directions to staff) it requires, and how to assess the level of risks⁴ the organization faces in its day-to-day activities.
2. **By-laws and policies:** The board must insure that it follows the *by-laws* with which it was incorporated (or change them) and direct operations by setting *policies* that give directions on how the organizations will conduct itself in regard to:
 - Financial management practices
 - Human resource or personnel management practices
 - Personnel safety and client care practices
3. **Monitoring of performance:** While boards struggle with balancing their attention between the competing demands of internal operations and external and strategic issues, on a regular and consistent basis, they must spend time monitoring what the organization is doing. Monitoring primarily involves:
 - The regular review of income and expenditures (actual compared to budget)
 - An annual review or independent audit of financial results (financial statements)
 - Reviewing reports on activities (e.g. the monthly executive director's report)
 - Monitoring the implementation of key policies (e.g. part of the evaluation of the executive director)

Evidence of the board of directors monitoring work is the **minutes** of its meetings. While minutes need not be extremely detailed, they must be complete and maintained in a safe place.

4. **Adequate insurance:** Insurance should be considered the last line of defence in risk management. Most organizations require:
 - General liability insurance
 - Motor vehicle public liability insurance (if they own/lease and operate one or more vehicles)
 - Accident, fire, theft insurance

Where the risk to individuals is judged to be high (standards of care), organizations may want to obtain:

- Directors' and officers' liability insurance⁵

¹ Negligence refers to the *failure* to do something a reasonable and prudent person would do or *doing* something a reasonable or prudent person would not do in the circumstances. While it is extremely rare in Canada for a volunteer board to be sued, and rarer still that it is found to be liable (i.e. successfully sued), the possibility exists.

² Due diligence refers to the degree of oversight, attentiveness or vigilance that would be expected from a reasonable and prudent person. Due diligence with respect to monitoring operations does not imply that a board needs to constantly delve into details, sometimes referred to as "micro managing".

³ Legal responsibilities as used here equate with the possibility of liability. Accountability is a somewhat different area of responsibility that has more to do with the organization's ethical or moral obligations to its members, its funders and the community.

⁴ Organizations in the health and human services sector, particularly those with the responsibility for the care of dependent individuals, often undertake a formal "risk management" process to determine what safeguards should be put in place.

⁵ Such insurance should pay the organization's legal costs as well as compensation in the unlikely event the board is found to have some liability.



Province of Alberta

SOCIETIES ACT

Revised Statutes of Alberta 2000
Chapter S-14

Current as of September 22, 2014

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Societies Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	Amendments
Societies Act		
Societies	122/2000	206/2001, 251/2001, 27/2002, 203/2003, 354/2003, 35/2007, 68/2008, 53/2011, 31/2012, 62/2013, 184/2014, 146/2015, 83/2016

SOCIETIES ACT

Chapter S-14

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "body corporate" means a body corporate however or
wherever incorporated;
- (a.1) "director" means any person occupying the position of
director by whatever name called;
- (b) "Registrar" means Registrar as defined in the *Business
Corporations Act*;

- (c) “society” means a society incorporated or continued under this Act and not discontinued;
- (d) “special resolution” means
 - (i) a resolution passed
 - (A) at a general meeting or special meeting of which not less than 21 days’ notice specifying the intention to propose the resolution has been duly given, and
 - (B) by the vote of not less than 75% of those members who, if entitled to do so, vote in person or by proxy,
 - (ii) a resolution proposed and passed as a special resolution at a general meeting or special meeting of which less than 21 days’ notice has been given, if all the members entitled to attend and vote at the general meeting or special meeting so agree, or
 - (iii) a resolution consented to in writing by all the members who would have been entitled at a general meeting or special meeting to vote on the resolution in person or, where proxies are permitted, by proxy.

RSA 2000 cS-14 s1;2014 c8 s8

Application to existing societies

2(1) Any benevolent society incorporated under *An Ordinance respecting Benevolent and other Societies*, CONWT 1898 c66, or under *The Benevolent Societies Act*, RSA 1922 c159, and also any corporation incorporated under *The Mechanics’ and Literary Institutes Act*, SA 1908 c16 and RSA 1922 c163, are deemed to be a society incorporated under this Act.

(2) The bylaws or the statutory provisions in the nature of bylaws by which a society referred to in subsection (1) is governed shall, so far as they are not contrary to an expressed provision of this Act, continue in force until altered or rescinded.

RSA 1980 cS-18 s2

Incorporation**Incorporation**

3(1) Five or more persons may become incorporated under this Act for any benevolent, philanthropic, charitable, provident, scientific, artistic, literary, social, educational, agricultural, sporting or other useful purpose, but not for the purpose of carrying on a trade or business.

(2) If an Act other than the *Companies Act* provides for the incorporation of persons for a special purpose, no society shall be incorporated for that purpose under this Act.

RSA 1980 cS-18 s3

Shares, etc.

4(1) No society shall have a capital divided into shares or declare any dividend or distribute its property among its members during the existence of the society.

(2) The interest of a member in a society is not transferable.

(3) This section does not apply to a benevolent society incorporated before April 12, 1924,

(a) under *An Ordinance respecting Benevolent and other Societies*, CONWT 1898 c66, or

(c) under *The Benevolent Societies Act*, RSA 1922 c159.

RSA 1980 cS-18 s4

Reservation of name

5 If requested to do so by the incorporators of a society, or by a society, the Registrar shall assign to the society as its name a designated number determined by the Registrar.

1981 c38 s2;1984 c12 s7

Name of society

6(1) Subject to the circumstances and conditions prescribed by the regulations, a society shall not have a name

(a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations,

(b) that is identical to the name of

(i) a body corporate incorporated under the laws of Alberta, whether in existence or not,

(ii) an extra-provincial corporation registered in Alberta, or

(iii) a corporation incorporated by or under an Act of the Parliament of Canada,

(c) that is, in the opinion of the Registrar, similar to the name of

(i) a body corporate incorporated under the laws of Alberta,

(ii) an extra-provincial corporation registered in Alberta, or

- (iii) a corporation incorporated by or under an Act of the Parliament of Canada

if the use of that name is confusing or misleading, or

- (d) that does not meet the requirements prescribed by the regulations.

(2) If,

- (a) through inadvertence or otherwise, a society comes into existence with or acquires a name that contravenes subsection (1), or
- (b) the Registrar disapproves a society's name after it is acquired by the society,

the Registrar may, by notice in writing, giving the Registrar's reasons, direct the society to change its name to a new name that the Registrar approves.

(3) The Registrar may give a notice under subsection (2) on the Registrar's own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1).

(4) If a society

- (a) is directed to change its name under subsection (2), and
- (b) does not appeal the direction of the Registrar within 60 days after the date of the notice,

the Registrar may revoke the name of the society and assign to it as its name a designated number, and until changed in accordance with this Act and the regulations the name of the society is the designated number so assigned.

(5) If an application is made to restore a society under this Act and, between the date of dissolution of the society and the date of its restoration, another society has come into existence with or has acquired a name that is likely to be confused with the name of the society to be restored, the Registrar may require, as a condition of the restoration, that the restored society does not pursue its original purposes, or, if it seeks to do so, that it change its name to a name approved by the Registrar or to a designated number, immediately after it is restored.

1981 c38 s2;1984 c12 s7

Revocation of name

7 When a society has had its name revoked and a name assigned to it under section 6(4), the Registrar shall issue a certificate of amendment showing the new name of the society and, on and after the date shown on the certificate of amendment, the application and bylaws of the society are deemed to be amended to refer to the new name shown in the certificate of amendment.

1981 c38 s2

Application to change Registrar's decision

8(1) A person who feels aggrieved by a decision of the Registrar to assign a name under section 5, or to approve a name or to change, revoke, disapprove or assign a name under section 6 may apply to the Court of Queen's Bench, on at least 7 days' notice to the Registrar and any other persons that the Court directs, for an order requiring the Registrar to change that decision, and on the application the Court may so order and make any further order it thinks fit.

(2) Within 10 days after the entry of an order of the Court of Queen's Bench made under subsection (1), the person who obtained the order shall file with the Registrar a copy of that order certified by the clerk of the court.

1981 c38 s2; 1984 c12 s7

Application for incorporation

9(1) Persons desiring to become incorporated under this Act shall make and subscribe an application for incorporation in the prescribed form, and also bylaws agreed on by them for the government of the society, and shall transmit the application and bylaws together with documents relating to corporate names that are prescribed by the regulations and an incorporation fee as set by the regulations, to the Registrar.

(2) The application shall set out

- (a) the intended corporate name of the society, and
- (b) the purpose or purposes for which incorporation is desired.

(3) The application shall be accompanied with any information respecting the subscribers to the application that may be required by the regulations under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada) in the form and manner prescribed by those regulations.

(4) The bylaws that accompany the application shall contain provisions for all the following matters:

- (a) terms of admission of members and their rights and obligations;
- (b) the conditions of withdrawal of members and the manner, if any, in which a member may be expelled;
- (c) the mode and time of calling general and special meetings of the society and number constituting a quorum at any of those meetings and rights of voting;
- (d) the appointment and removal of directors and officers and their duties, powers and remuneration;
- (e) the exercise of borrowing powers;
- (f) the audit of accounts;
- (g) the custody and use of the seal of the society;
- (h) the manner of making, altering and rescinding bylaws;
- (i) the preparation and custody of minutes of proceedings of meetings of the society and of the directors, and other books and records of the society;
- (j) the time and place, if any, at which the books and records of the society may be inspected by members.

RSA 1980 cS-18 s5;1984 c12 s7;1994 c23 s50

Discretion of Registrar

10(1) Subject to the right of appeal given under subsection (3), the Registrar is the sole judge as to whether the purposes mentioned in the application for incorporation, or any of them, are purposes for which the society may be incorporated under this Act.

(2) The Registrar may direct that any of the purposes mentioned in the application, or any of the bylaws accompanying the application, be struck out or be modified in accordance with the directions given by the Registrar.

(3) An appeal may be taken to the Lieutenant Governor in Council from a decision given by the Registrar under this section within 30 days after the date of the decision.

RSA 1980 cS-18 s6

Refusal of incorporation

11 The Registrar may refuse incorporation for any reason that appears to the Registrar to be sufficient.

RSA 1980 cS-18 s7

Incorporation certificate

12 The Registrar, on receipt of the application and the bylaws and in compliance with the directions, if any, given by the Registrar with respect to them,

- (a) may issue under the Registrar's seal of office a certificate that the society is incorporated, and
- (b) shall, at the expense of the applicants, publish a notice of the incorporation in The Alberta Gazette or the Registrar's periodical published under the *Business Corporations Act*.

RSA 1980 cS-18 s8;1983 c22 s6

Certificate as evidence of regularity

13 A certificate of incorporation issued by the Registrar in respect of a society is conclusive proof

- (a) that the requirements of this Act in respect of incorporation have been complied with, and
- (b) that the society is incorporated in accordance with this Act.

RSA 1980 cS-18 s9

Effect of certificate

14 From the date of the certificate of incorporation, the subscribers to the application and the other persons that from time to time become members of the society are a corporation and have all the powers, rights and immunities vested by law in a corporation.

RSA 1980 cS-18 s10

Rescission, etc. of bylaws

15(1) The bylaws of a society shall not be rescinded, altered or added to except by special resolution of the society.

(2) No rescission or alteration of or addition to a bylaw has effect until it has been registered by the Registrar.

(3) If the Registrar is of the opinion that a bylaw is not in accordance with the application for incorporation or that it contains anything contrary to law, the Registrar shall refuse to register it.

RSA 1980 cS-18 s11

Alteration of objects

16(1) A society may, by special resolution, alter its objects

- (a) to include some object or objects that may conveniently or advantageously be combined with the existing objects of the society, or

(b) to restrict or abandon an object specified in its application,

but the resolution does not take effect until the Registrar has approved and registered it.

(2) A notice of the alteration of objects shall be published, at the expense of the society, in The Alberta Gazette or the Registrar's periodical published under the *Business Corporations Act*.

RSA 1980 cS-18 s12;1983 c22 s6

Powers of society

17(1) A society may acquire and take by purchase, donation, devise or otherwise all kinds of real estate and personal property, and may sell, exchange, mortgage, lease, let, improve and develop it, and may erect and maintain any necessary buildings.

(2) The funds and property of the society shall be used and dealt with for its legitimate objects only and in accordance with its bylaws.

RSA 1980 cS-18 s13

Borrowing powers

18(1) For the purpose of carrying out its objects, a society may borrow or raise or secure the payment of money in any manner it thinks fit, and in particular by the issue of debentures.

(2) The power of a society under subsection (1) shall be exercised only under the authority of the bylaws of the society and in no case shall debentures be issued without the sanction of a special resolution of the society.

RSA 1980 cS-18 s14

Negotiable instruments

19 For the purpose of carrying out its objects, a society may, subject to its bylaws, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments.

RSA 1980 cS-18 s15

Members

Minors

20 A person under the age of 18 years who is elected or admitted as a member of a society or appointed to an office in it is liable to the payment of fees and otherwise liable under the rules of the society as if the person were an adult.

RSA 1980 cS-18 s16

Limitation of liability of members

21 No member of a society is, in the member's individual capacity, liable for a debt or liability of the society.

RSA 1980 cS-18 s17

Arbitration

22(1) The bylaws of a society may provide that a dispute arising out of the affairs of the society and between any members of the society or between

- (a) a member or a person who is aggrieved and who has for not more than 6 months ceased to be a member, or
- (b) a person claiming through the member or aggrieved person or claiming under the bylaws of the society,

and the society or a director or officer of the society, shall be decided by arbitration, which shall be under the *Arbitration Act* unless the bylaws prescribe some other method.

(2) A decision made pursuant to an arbitration is binding on all parties and may be enforced on application to the Court of Queen's Bench, and unless the bylaws otherwise provide there is no appeal from it.

RSA 1980 cS-18 s18

Fines

23(1) A society may by its bylaws impose a penalty of not more than \$5 on a member contravening a bylaw of the society.

(2) A penalty may be recovered as a debt due from the member of the society, and all penalties so recovered belong to the society.

RSA 1980 cS-18 s19

Returns**Registered office**

24(1) Every society shall have a registered office in Alberta to which all communications and notices may be sent and at which all process may be served.

(2) Notice of the location of the registered office of a society, giving the postal address, shall be filed with the Registrar

- (a) with the application for incorporation or the application for continuance, as the case may be, and
- (b) within 15 days after a change in the location of the registered office.

RSA 2000 cS-14 s24;2014 c8 s8

Annual general meeting

25 A society shall hold an annual general meeting in Alberta and shall present at that meeting a financial statement setting out its income, disbursements, assets and liabilities, audited and signed by the society's auditor.

RSA 1980 cS-18 s21

Annual report

26(1) In this section, "anniversary month" means the month in each year that is the same as the month in which the certificate of incorporation of the society was issued.

(2) A society shall each year, on or before the last day of the month immediately following its anniversary month, make a return to the Registrar containing

- (a) the address of the registered office of the society,
- (b) the full name, address and occupation of each officer and director of the society,
- (c) any information respecting the members of the society that may be required by regulations under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada) in the form and manner prescribed by those regulations, and
- (d) the audited financial statement presented at the last annual general meeting of the society.

(3) Notwithstanding anything in this section, where there is a change

- (a) in the membership of the officers or directors of a society, or
- (b) in the name, address or occupation of an officer or director of a society,

the society shall, within 30 days from the day that the change occurs, give notice to the Registrar in a form acceptable to the Registrar setting out the change.

RSA 1980 cS-18 s22;1994 c23 s50;1996 c32 s7

Officers and directors

27 A society shall, on request of the Registrar, furnish the Registrar with particulars of its officers and directors.

RSA 1980 cS-18 s23

Filing special resolution

28 A society shall file with the Registrar every special resolution passed for any purpose mentioned in this Act.

RSA 1980 cS-18 s24

Verification of notice, etc.

29 Every notice, return or resolution required to be filed with the Registrar shall be dated and verified by a person having knowledge of the affairs of, and who is authorized by, the society on whose behalf the notice, return or resolution is made.

RSA 1980 cS-18 s25

Furnishing copy of bylaws

30 A society shall furnish to a member, at the member's request and on payment of a sum not exceeding \$0.50, a copy of its application for incorporation and bylaws.

RSA 1980 cS-18 s26

Branch Societies**Branch societies**

31(1) A society may establish and maintain one or more branch societies.

(2) A branch society shall have the powers, not exceeding the powers of the society, that the society may from time to time confer.

(3) When a society establishes a branch society, it shall send immediately to the Registrar a notice setting out

- (a) the date on which the branch society was authorized,
- (b) the title, locality and powers of the society, and
- (c) any other information the Registrar requires,

and the society shall likewise notify the Registrar when a branch ceases to exist.

RSA 1980 cS-18 s27

Amalgamation**Amalgamation**

32(1) Two or more societies may amalgamate and continue as one society.

(2) Each society proposing to amalgamate shall enter into an amalgamation agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the name of the amalgamated society;
 - (b) the objects of the amalgamated society;
 - (c) the name and address of each proposed director of the amalgamated society;
 - (d) whether the bylaws of the amalgamated society are to be those of one of the amalgamating societies and, if not, a copy of the proposed bylaws of the amalgamated society;
 - (e) any other matters that may be necessary to effect the amalgamation and to provide for the subsequent management and working of the amalgamated society.
- (3) The directors of each amalgamating society shall submit the amalgamation agreement to the members of the society for adoption by special resolution.
- (4) After an amalgamation has been adopted under subsection (3), an application for amalgamation in the prescribed form must be filed with the Registrar together with the following:
- (a) a copy of the special resolution of each amalgamating society adopting the amalgamation agreement, certified to be a true copy by the president and secretary of the society;
 - (b) the amalgamation agreement;
 - (c) if the name of the amalgamated society is not the same as that of one of the amalgamating societies, documents relating to the name of a society as prescribed by the regulations;
 - (d) any other information required by the Registrar.
- (5) On receipt of the documents and the prescribed fee, the Registrar may issue a certificate of amalgamation in the prescribed form.
- (6) On the date shown in a certificate of amalgamation,
- (a) the amalgamating societies are amalgamated and are continued as one society;
 - (b) the property of each amalgamating society continues to be the property of the amalgamated society;
 - (c) the amalgamated society continues to be liable for all debts and obligations of each amalgamating society;

- (d) a civil, criminal or administrative action or proceeding pending by or against an amalgamating society may be continued to be prosecuted by or against the amalgamated society;
- (e) a conviction against, or a ruling, order or judgment in favour of or against, an amalgamating society may be enforced by or against the amalgamated society;
- (f) the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated society.

1998 c23 s22

Dissolution

Dissolution

33(1) In this section, "society" includes a society or club that is incorporated by a private Act of the Legislature and that has for its object the provision of facilities for the social intercourse and recreation of its members.

(2) On sufficient cause being shown to the Registrar, the Registrar may issue to the Lieutenant Governor in Council a certificate under the Registrar's seal of office declaring that the Registrar is satisfied that the incorporation of a society should be revoked and cancelled.

(3) On receipt of the certificate, the Lieutenant Governor in Council may

- (a) revoke and cancel the incorporation of the society, and
- (b) declare the society to be dissolved on any conditions and subject to any provisions that the Lieutenant Governor in Council considers proper.

(4) A person who, alone or in association with others, carries on or attempts to carry on the affairs of a society the incorporation of which has been revoked and cancelled and that has been declared to be dissolved is guilty of an offence and liable to a fine not exceeding \$500.

(5) On the revocation of the incorporation of a society, or on its disorganization, the Lieutenant Governor in Council may appoint a liquidator or liquidators to wind up the affairs of the society.

(6) The liquidator or liquidators appointed under subsection (5) may exercise all the powers conferred by incorporation on the society or on the directors or on any other official of the society, for the purpose of selling or otherwise disposing of the assets of the

society and distributing the proceeds among the persons by law entitled to them.

RSA 1980 cS-18 s28

Surrender of certificate of incorporation

34(1) A society may, by special resolution, surrender its certificate of incorporation.

(2) If satisfied that sufficient notice of the society's intention to surrender its certificate of incorporation has been given and that no debts or liabilities of the society are outstanding, the Registrar may accept the surrender of the certificate and cancel it, and fix a date from which the society shall be dissolved.

RSA 1980 cS-18 s29

Winding up

35(1) Part 17 of the *Business Corporations Act* applies to a society under this Act as if it were a corporation.

(2) Notwithstanding subsection (1), for the purposes of this Act

- (a) the period referred to in section 213(1)(c) of the *Business Corporations Act* shall be 2 years, and
- (b) the notice under section 213(2)(a) of the *Business Corporations Act* is not required to be given to the directors.

RSA 1980 cS-18 s30; 1981 cB-15 s284(28); 1984 c12 s7

Register of members, etc.

36(1) A society shall keep a register of its members containing the names of the applicants for incorporation and the name of every other person who is admitted as a member of the society, together with the following particulars of each person:

- (a) the full name and residential address;
- (b) the date on which the person is admitted as a member;
- (c) the date on which the person ceases to be a member;
- (d) the class of membership of the person, if the society has classes of members.

(2) A society shall, on and after its date of registration, keep the register of its members at its registered office and shall, on each regular business day during not less than 2 regular business hours as determined by the society at a general meeting, permit a member of the society to inspect the register without payment of a fee.

(3) A society shall, within a reasonable time of receiving from a member of the society a request to provide to the member a copy of the register, the annual list of members or an excerpt from any one or more of them and on payment by the member of a sum not exceeding \$0.25 for every 100 words to be copied, provide to that member the copy of the register, list or excerpt so requested.

RSA 1980 cS-18 s31

Use of register

36.1(1) In this section, "personal information" means personal information as defined in the *Personal Information Protection Act* other than business contact information to which that Act does not apply by virtue of section 4(3)(d) of that Act.

(2) Notwithstanding section 36, a society may disclose the register or an annual list of members or an excerpt of either or both of them to a member of the society only if the information contained in the register, list or excerpt is to be used by the member for matters relating to the affairs of the society.

(3) A member of a society may use personal information about another member of the society that is contained in the register, list or excerpt for any matter not referred to in subsection (2) if that other member gives consent to that use.

2003 cP-6.5 s73

Continuance of Not-for-profit Organizations

Continuance from other jurisdictions

36.2(1) A body corporate incorporated or continued under the laws of any jurisdiction other than Alberta may apply to the Registrar for a certificate of continuance if

- (a) continuance under this Act is authorized by the laws of that jurisdiction, and
- (b) the body corporate satisfies, or by its application for continuance would satisfy, the requirements for incorporation under this Act.

(2) A body corporate that applies for a certificate under subsection (1) may effect, by its application for continuance, any amendment to its act of incorporation, articles, letters patent or memorandum or articles of association that a society incorporated under this Act may make to its objects, name and bylaws.

(3) If the body corporate is a body corporate with share capital, the body corporate shall establish the terms and conditions on which the body corporate is converted to a society without share capital.

(4) A body corporate that applies for a certificate of continuance under subsection (1) shall file with the Registrar an application for continuance in the prescribed form and include

- (a) a copy of the bylaws of the proposed society,
- (b) the prescribed fee,
- (c) the prescribed documents, if any, and
- (d) any other information requested by the Registrar.

(5) On receipt of the application for continuance under subsection (4), the Registrar may, on the terms and subject to the limitations and conditions that the Registrar considers appropriate, issue a certificate of continuance in the form set by the Registrar.

(6) The Registrar may refuse to issue a certificate of continuance, in which case the Registrar shall advise the body corporate of the refusal.

(7) On the date shown on the certificate of continuance,

- (a) the body corporate becomes a society to which this Act applies as if it had been incorporated under this Act,
- (b) the name of the body corporate provided for in the application for continuance is deemed to be the name of the society,
- (c) the objects of the body corporate provided for in the application for continuance are deemed to be the objects of the society,
- (d) the bylaws a copy of which was included with the application for continuance submitted under subsection (4) are deemed to be the bylaws of the society,
- (e) the certificate of continuance is deemed to be the certificate of incorporation of the society, and
- (f) any shareholders or members of the body corporate cease to be shareholders or members of the body corporate and become members of the society.

(8) The Registrar shall provide a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act is authorized.

- (9) On and from the date of continuance of a body corporate as a society under this Act,
- (a) the property of the body corporate continues to be the property of the society,
 - (b) the society continues to be liable for the obligations of the body corporate,
 - (c) any existing cause of action, claim or liability to prosecution is unaffected,
 - (d) any civil, criminal, administrative, investigative or other action or proceeding pending by or against the body corporate may continue to be prosecuted by or against the society, and
 - (e) any conviction against or ruling, order or judgment in favour of or against the body corporate may be enforced by or against the society.
- (10) A membership in a body corporate issued before the body corporate was continued under this Act is deemed to have been issued in compliance with this Act and the bylaws of the society.

2014 c8 s8

Continuance to other jurisdictions

- 36.3(1)** Subject to this section, a society may apply to the appropriate official or public body of another jurisdiction requesting that the society be continued as if it had been incorporated under the laws of that other jurisdiction.
- (2) An application for continuance may be made under subsection (1) only if
- (a) the application for continuance is authorized by the members of the society by special resolution, and
 - (b) the society obtains the approval of the Registrar under subsection (3).
- (3) The Registrar may grant a society approval to make an application under subsection (1) if
- (a) the society provides the Registrar with a copy of the special resolution referred to in subsection (2)(a) certified to be a true copy by a director, officer or authorized representative of the society,

- (b) the society establishes, to the satisfaction of the Registrar, that its proposed continuance in the other jurisdiction will not adversely affect creditors or members of the society,
 - (c) the Registrar is satisfied that the continuation is not prohibited by subsection (4), and
 - (d) the society provides, to the satisfaction of the Registrar, any other documents or information requested by the Registrar.
- (4) A society shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that
- (a) the property of the society continues to be the property of the body corporate,
 - (b) the body corporate continues to be liable for the obligations of the society,
 - (c) any existing cause of action, claim or liability to prosecution is unaffected,
 - (d) any civil, criminal, administrative, investigative or other action or proceeding pending by or against the society may continue to be prosecuted by or against the body corporate, and
 - (e) any conviction against or ruling, order or judgment in favour of or against the society may be enforced by or against the body corporate.
- (5) Each membership in the society carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.
- (6) The directors and officers of a society may, if authorized by the members at the time of authorizing an application for continuance, abandon the application without further approval of the members.
- (7) If the Registrar has granted an approval under subsection (3) and the Registrar has received a notice satisfactory to the Registrar that the society has been continued under the laws of another jurisdiction, the Registrar shall issue a certificate of discontinuance in a form set by the Registrar.
- (8) On the date shown on the certificate of discontinuance, the society becomes an extra-provincial body corporate as if it had been incorporated under the laws of the other jurisdiction.

2014 c8 s8

General**General penalty**

37 A society that contravenes this Act or the regulations is guilty of an offence and liable to a fine not exceeding \$100.

RSA 1980 cS-18 s32

Change of name

38 A society may change its name, and may contract in the same way as if it were incorporated under the *Business Corporations Act*.

RSA 1980 cS-18 s33;1981 cB-15 s284(28)

Regulations

39 The Lieutenant Governor in Council may make regulations

- (a) for carrying out the purposes of this Act;
- (b) setting the fees payable to the Registrar for incorporation, for applications, for filings and for services under this Act;
- (c) prescribing forms for the purposes of this Act;
- (d) prescribing the returns to be made by societies and the form of the returns;
- (e) prescribing the documents referred to in sections 9(1), 32(4) and 36.2(4);
- (f) respecting names of societies;
- (g) prohibiting the use of any names or any words or expressions in a name;
- (h) defining any word or expression used in section 6(1)(c);
- (i) prescribing requirements for the purposes of section 6(1)(d);
- (j) respecting the circumstances and conditions under which a name under section 6 may be used;
- (k) prescribing the punctuation marks and other marks that may form part of a name.

RSA 2000 cS-14 s39;2014 c8 s8



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Province of Alberta

CHARITABLE FUND-RAISING ACT

Revised Statutes of Alberta 2000
Chapter C-9

Current as of December 15, 2017

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the current as of date shown on the cover. It does not include the following amendments:

2017 c21 s29 amends s3(c).

Regulations

The following is a list of the regulations made under the *Charitable Fund-raising Act* that are filed as Alberta Regulations under the Regulations Act

Alta. Reg.	Amendments
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Charitable Fund-raising Act	
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Charitable Fund-raising.....	108/2000 251/2001, 57/2004, 108/2004, 182/2005, 38/2007, 60/2009, 196/2014, 94/2017
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CHARITABLE FUND-RAISING ACT

Chapter C-9

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Interpretation**1(1)** In this Act,

(a) "business" means

- (i) an entity, including an individual carrying on business as a sole proprietorship or a partnership or corporation, that is formed to make a profit for its owners, members or shareholders, or
- (ii) a corporation that is allowed under the law that applies to its formation to distribute any profits to its owners, members or shareholders during its existence;

(b) "charitable organization" means

- (i) any incorporated or unincorporated organization that is formed for a charitable purpose, or
- (ii) a person who makes solicitations for contributions to be used for a charitable purpose and who is not connected to any incorporated or unincorporated organization that

is formed for the charitable purpose for which the solicitation is made;

- (c) “charitable purpose” includes a philanthropic, benevolent, educational, health, humane, religious, cultural, artistic or recreational purpose, so long as the purpose is not part of a business;
- (d) “contribution” means money, goods or services or a promise or pledge to give money, goods or services;
- (e) “donor fund-raiser” means a business described in section 33;
- (f) “fund-raising agreement” means an agreement between a charitable organization and a fund-raising business described in section 30;
- (g) “fund-raising business” means a fund-raising business described in section 20;
- (h) “gross contributions” means gross contributions as calculated in accordance with the regulations;
- (i) “licence” means a licence issued or renewed under this Act;
- (j) “licensed” means holding a valid and subsisting licence;
- (k) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (l) “registered” means holding a valid and subsisting registration under this Act;
- (m) “registration” means a registration made or renewed under this Act;
- (n) “solicitation” means
 - (i) a direct or indirect request for a contribution in which it is stated or implied that the contribution will be used by a charitable organization or for a charitable purpose, or
 - (ii) a request for a contribution through a direct or indirect request to buy a good or service in which it is stated or implied that all or a portion of the purchase price will be used by a charitable organization or for a charitable purpose;

- (o) "standards of practice" means the standards of practice established under section 31;
 - (p) "volunteer" means a person who offers their services in any capacity and does not receive remuneration.
- (2) In this Act,
- (a) a reference to a solicitation made by a charitable organization means a solicitation made by the charitable organization or its employees or volunteers;
 - (b) a reference to a solicitation made on behalf of a charitable organization means a solicitation made by a fund-raising business on behalf of the charitable organization;
 - (c) a reference to a solicitation made by a fund-raising business means a solicitation made by a fund-raising business or the employees or volunteers of the fund-raising business.

1995 cC-4.5 s1; 1997 c19 s1(2)

Purposes**2** The purposes of this Act are

- (a) to ensure that the public has sufficient information to make informed decisions when making contributions to a charitable organization or for a charitable purpose, and
- (b) to protect the public from fraudulent, misleading or confusing solicitations and to establish standards for charitable organizations and fund-raising businesses when making solicitations.

1995 cC-4.5 s2; 1997 c19 s1(26)

Application**3** This Act does not apply to

- (a) a solicitation made by a charitable organization to a person or to a member of a person's family if the person is a member of the organization when the solicitation is made,
- (b) a solicitation made by a charitable organization for goods or services that are to be used by the charitable organization for its administration or some other non-charitable purpose, or
- (c) a solicitation made in respect of a gaming activity that is authorized by a licence under the *Gaming and Liquor Act*.

1995 cC-4.5 s3; 1996 cG-0.5 s135

Part 1

Soliciting Contributions

Application of Part 1

4(1) This Part applies only to the following solicitations and the solicitations described in subsection (2):

- (a) solicitations made by a fund-raising business;
- (b) solicitations made by a charitable organization that uses a fund-raising business to make solicitations on its behalf or to manage or be responsible for solicitations made by or on behalf of the charitable organization;
- (c) solicitations made by a charitable organization in its financial year if the charitable organization intends to raise, as a result of those solicitations, gross contributions of \$25 000 or more from persons in Alberta during that financial year.

(2) Regardless of a charitable organization's intent, if a charitable organization in its financial year raises, as a result of solicitations, gross contributions of \$25 000 or more from persons in Alberta, this Part applies to solicitations made by the charitable organization from the time it reaches \$25 000 in gross contributions until the end of that financial year.

1995 cC-4.5 s4;1997 c19 s1(3)

Hours of solicitation

5 A person making solicitations by telephone may make them only between 8 a.m. and 9 p.m.

1995 cC-4.5 s5

Providing information during solicitation

6(1) A person who makes a solicitation in person must, before accepting a contribution, provide the person who is being solicited with

- (a) the information required by the regulations in the manner and form required by the regulations, and
- (b) an adequate opportunity to review the information.

(2) A person who makes a solicitation by telephone must provide each person who is being solicited and who gives a contribution with the information required by the regulations in the manner and form required by the regulations.

(3) A person who makes a solicitation through printed material, television or other media must provide the information required by the regulations in the manner and form required by the regulations.

1995 cC-4.5 s6; 1997 c19 s1(4)

Duty to maintain records

7 A charitable organization or fund-raising business that makes solicitations must maintain

- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the solicitations are made,
- (b) records regarding the solicitations made in Alberta for at least 3 years after the solicitations are made, and
- (c) other records and documents described in the regulations for the period described in the regulations.

1995 cC-4.5 s7; 1997 c19 s1(5)

Financial statements and returns

8 If solicitations are made by or on behalf of a charitable organization in a financial year, the charitable organization must prepare for that financial year financial information returns as specified by the regulations that meet the requirements of the regulations.

RSA 2000 cC-9 s8; 2014 c8 s1

General information

9(1) If solicitations are made by or on behalf of a charitable organization, the charitable organization must provide the following information to any person who requests it:

- (a) a copy of the most recent financial information return that the charitable organization is required to prepare under section 8;
- (b) the portion of gross contributions received during the charitable organization's last financial year that were used directly for charitable purposes and not for the administration of the charitable organization or other purposes and an estimate of the portion of gross contributions received in its current financial year that will be used directly for charitable purposes and not for the administration of the charitable organization or other purposes;
- (c) reasonable detail about where and how the contributions received as a result of the solicitations will be spent;
- (d) the information that must be provided under section 6.

(2) Despite subsection (1)(a), a charitable organization may establish a reasonable fee for providing a copy of its financial information return that is based on the cost of reproducing the return, and postage if the return is to be mailed, and the charitable organization may refuse to provide a copy of the return unless the fee is paid.

RSA 2000 cC-9 s9;2014 c8 s1

Receipts

10(1) A person who makes a solicitation must give a receipt to a person making a monetary contribution if the person making the contribution requests a receipt.

(2) This section does not apply to a solicitation that involves a direct or indirect request to buy a good or service.

1995 cC-4.5 s10

Holding contributions in trust

11(1) Every fund-raising business and every employee of a fund-raising business who receives contributions on behalf of a charitable organization holds the contributions in trust for the charitable organization.

(2) The trustee has no power to invest monetary contributions received on behalf of a charitable organization and must, within 3 days after receiving the monetary contributions, not including Saturdays and holidays, deposit the money, without making any deductions, into an account held in a bank, trust corporation, credit union or treasury branch in Canada.

(3) The account must be in the name of the charitable organization that is the beneficiary and be under the sole control of the charitable organization.

(4) The trustee must comply with any requirements established for the trust by the regulations.

(5) The *Trustee Act* does not apply to the trust.

RSA 2000 cC-9 s11;2009 c7 s3

Part 2 Charitable Organizations and Fund-raising Businesses

Charitable Organizations

Solicitations to individuals

12(1) No charitable organization may make a solicitation to an individual unless the charitable organization is registered.

(2) For the purposes of this section, a solicitation made to an individual

- (a) includes a solicitation made to an individual who operates a sole proprietorship or is a partner in a partnership, and
- (b) does not include a solicitation made to a corporation or a government.

(3) Subject to subsection (4), this section does not apply to a charitable organization during its financial year if the solicitations it makes to individuals in Alberta or to individuals and others in Alberta are intended to raise gross contributions that have a value of less than \$25 000 during that financial year.

(4) Regardless of a charitable organization's intent, if a charitable organization in its financial year raises, as a result of solicitations, gross contributions of \$25 000 or more from individuals in Alberta or individuals and others in Alberta, the charitable organization must be registered within 45 days after the gross contributions reach \$25 000.

(5) This section does not apply to a charitable organization if, throughout its financial year,

- (a) the charitable organization is not incorporated,
- (b) the charitable organization is affiliated in some manner with another charitable organization, referred to in this subsection as the affiliated organization, and
- (c) the affiliated organization controls the distribution of any contributions the charitable organization receives during its financial year as a result of solicitations made by the charitable organization.

1995 cC-4.5 s12;1997 c19 s1(9)

Use of fund-raising businesses

13 No charitable organization may use a fund-raising business

- (a) to make solicitations on its behalf, or
- (b) to manage or be responsible for solicitations made by or on behalf of the charitable organization

unless the charitable organization is registered.

1995 cC-4.5 s13;1997 c19 s1(25)

Registration

14 A charitable organization that wishes to be registered or to have its registration renewed must provide the Minister with

- (a) the information required under the regulations, and
- (b) the fee established under the regulations.

1995 cC-4.5 s14

Grounds for refusing registration, terms and conditions

15(1) In this section, “conviction” means a conviction for

- (a) an offence under this Act, or
- (b) an offence under any criminal or other law in force in Alberta or elsewhere that, in the Minister’s opinion, indicates that the person convicted is unsuitable to deal with contributions or to make solicitations.

(2) The Minister may refuse to register or renew the registration of a charitable organization and the Minister may impose terms and conditions on a registration when registering or renewing the registration of a charitable organization if the charitable organization or any of its principals, directors or managers, within the 5 years preceding the application for registration or renewal,

- (a) is convicted of an offence referred to in subsection (1) or is serving a sentence imposed under a conviction,
- (b) fails to pay a fine imposed under a conviction or fails to comply with an order made in relation to a conviction,
- (b.1) is named in a certificate signed under the *Charities Registration (Security Information) Act* (Canada), or
- (c) is subject to an order made under the *Consumer Protection Act* or a predecessor or successor of the *Consumer Protection Act*, the making of which, in the Minister’s opinion, indicates that the person who is subject to the order is unsuitable to deal with contributions or to make solicitations.

(3) The Minister may also refuse to register or renew the registration of a charitable organization if the Minister has reasonable grounds to believe that the charitable organization or any of its principals, directors or managers will contravene this Act.

(4) The Minister may also refuse to register or renew the registration of a charitable organization and the Minister may

impose terms and conditions on a registration when registering or renewing the registration of a charitable organization if, in the Minister's opinion, any of the charitable organization's principals, directors, managers or employees referred to in section 32(1) or (2) have contravened section 32(1) or (2).

RSA 2000 cC-9 s15;2002 c32 s3;2017 c18 s1(24)

Notice to applicant

16(1) Before refusing to register or renew the registration of a charitable organization or imposing a term or condition on the registration, the Minister must

- (a) notify the charitable organization of the reasons why the registration may be refused or the proposed terms and conditions and the reasons why they may be imposed, and
- (b) provide the charitable organization with an opportunity to make representations to the Minister's designate.

(2) If, after subsection (1) has been complied with, the Minister decides to refuse to register or renew the registration of a charitable organization, the Minister must give written reasons for the decision to the charitable organization.

1995 cC-4.5 s16

Expiration of registration

17 The registration of a charitable organization is for the time period established under the regulations.

1995 cC-4.5 s17

Changes in information

18(1) A charitable organization must inform the Minister of any change in the information provided under section 14 within 30 days after the change.

(2) This section applies to changes in information occurring when the charitable organization is registered or when the registration is suspended and within 30 days after the charitable organization's registration expires or is cancelled.

1995 cC-4.5 s18

Financial year

19 For the purposes of this Act, the financial year of a charitable organization that is not a corporation is

- (a) the calendar year, or

- (b) if the charitable organization requests the Minister to establish another time period, a period of 12 consecutive months specified by the Minister.

1995 cC-4.5 s19

Fund-raising Businesses

Fund-raising business

20(1) A fund-raising business is a business that

- (a) makes solicitations on behalf of a charitable organization or manages or is responsible for solicitations made by or on behalf of a charitable organization,
- (b) provides those services for remuneration, and
- (c) is not an employee of the charitable organization.

(2) A fund-raising business includes a business that

- (a) is hired by another business to make solicitations on behalf of a charitable organization or to manage or be responsible for solicitations made by or on behalf of a charitable organization, and
- (b) is not an employee of the other business.

1995 cC-4.5 s20;1997 c19 s1(12)

Solicitations by fund-raising businesses

21 No fund-raising business may make a solicitation on behalf of a charitable organization or manage or be responsible for solicitations made by or on behalf of a charitable organization unless the fund-raising business is licensed.

1995 cC-4.5 s21;1997 c19 s1(25)

Licensing

22 A fund-raising business that wishes to be licensed or to have its licence renewed must provide the Minister with

- (a) the information required under the regulations,
- (b) the fee established under the regulations, and
- (c) a security that meets the requirements of the regulations and that is in an amount specified by the Minister.

1995 cC-4.5 s22;1997 c19 s1(25)

Grounds for refusing a licence, terms and conditions

23(1) In this section, "conviction" means a conviction for

- (a) an offence under this Act, or
 - (b) an offence under any criminal or other law in force in Alberta or elsewhere that, in the Minister's opinion, indicates that the person convicted is unsuitable to deal with contributions or to make solicitations.
- (2) The Minister may refuse to issue or renew a licence and the Minister may impose terms and conditions on a licence when issuing or renewing the licence if a fund-raising business or any of its principals, directors or managers, within the 5 years preceding the application for the licence or renewal of the licence,
- (a) is convicted of an offence referred to in subsection (1) or is serving a sentence imposed under a conviction,
 - (b) fails to pay a fine imposed under a conviction or fails to comply with an order made in relation to a conviction,
 - (b.1) is named in a certificate signed under the *Charities Registration (Security Information) Act* (Canada), or
 - (c) is subject to an order made under the *Consumer Protection Act* or a predecessor or successor of the *Consumer Protection Act*, the making of which, in the Minister's opinion, indicates that the person who is subject to the order is unsuitable to deal with contributions or to make solicitations.
- (3) The Minister may also refuse to issue or renew a licence if the Minister has reasonable grounds to believe that the fund-raising business or any of its principals, directors or managers will contravene this Act.
- (4) The Minister may also refuse to issue or renew a licence and the Minister may impose terms and conditions on a licence when issuing or renewing the licence if, in the Minister's opinion, the fund-raising business or any of its principals, directors, managers or employees has contravened section 32(3).

RSA 2000 cC-9 s23;2002 c32 s3;2017 c18 s1(24)

Notice to applicant

24(1) Before refusing to issue or renew a licence of a fund-raising business or imposing a term or condition on the licence, the Minister must

- (a) notify the fund-raising business of the reasons why the licence may be refused or the proposed terms and conditions and the reasons why they may be imposed, and

- (b) provide the fund-raising business with an opportunity to make representations to the Minister's designate.

(2) If, after subsection (1) has been complied with, the Minister decides to refuse to issue or renew a licence of a fund-raising business, the Minister must give written reasons for the decision to the fund-raising business.

1995 cC-4.5 s24;1997 c19 s1(25)

Expiration of licence

25 A licence is issued for the time period established under the regulations.

1995 cC-4.5 s25

Changes in information

26(1) A fund-raising business that has been issued a licence must inform the Minister of any change in the information provided under section 22 within 30 days after the change.

(2) This section applies to changes in information occurring when the licence is in force or when it is suspended and within 30 days after the licence expires or is cancelled.

1995 cC-4.5 s26;1997 c19 s1(25)

Security

27 A fund-raising business must stop its activities for which it is required to be licensed if the security that the fund-raising business has provided to the Minister under this Act is not in force.

1995 cC-4.5 s27;1997 c19 s1(25)

Donor list

28(1) A donor list, being a list of names of and other information about persons who have given a contribution to a charitable organization that is compiled by a fund-raising business,

- (a) is the property of the charitable organization, and
- (b) is under the exclusive control of the charitable organization.

(2) No fund-raising business that compiles a donor list for a charitable organization may use or deal with the donor list except with the written permission of the charitable organization.

(3) Where a fund-raising agreement between a charitable organization and a fund-raising business expires, is terminated or otherwise ceases to be in effect, any donor list to which that agreement relates and that is in the possession of or otherwise under the management of the fund-raising business must be turned over to the charitable organization.

RSA 2000 cC-9 s28;2003 cP-6.5 s65

Fund-raising Agreements

Duty to enter into agreement

29(1) No charitable organization may use a fund-raising business to make solicitations on its behalf or to manage or be responsible for solicitations made by or on behalf of the charitable organization unless the charitable organization and the fund-raising business have entered into a fund-raising agreement that meets the requirements of section 30 and the agreement is in force.

(2) No fund-raising business may make a solicitation on behalf of a charitable organization or manage or be responsible for solicitations made by or on behalf of a charitable organization unless the fund-raising business and the charitable organization have entered into a fund-raising agreement that meets the requirements of section 30 and the agreement is in force.

(3) In this section, references to a fund-raising business do not include a fund-raising business under section 20(2).

1995 cC-4.5 s28; 1997 c19 s1(15)

Requirements

30(1) A fund-raising agreement must be in writing and must include

- (a) all the terms and conditions between the parties respecting the fund-raising, including the duties and responsibilities of both parties;
- (b) the estimated amount of contributions to be received and an estimate of expenses and costs;
- (c) the methods of soliciting contributions to be used;
- (d) if the solicitations will involve selling goods or services, a description of the goods or services and the specific price for which the goods or services will be sold;
- (e) the location of the account of the charitable organization into which monetary contributions are to be deposited;
- (f) the charitable organization's address and the name and telephone number of the contact person for the charitable organization;
- (g) the fund-raising business's address and the name and telephone number of the contact person for the fund-raising business;
- (h) any matter provided for in the regulations.

(2) A fund-raising agreement must establish the remuneration of the fund-raising business, and the remuneration must be

- (a) a specific amount of money,
- (b) a specified percentage of gross contributions, or
- (c) a combination of a specific amount of money and a specified percentage of gross contributions.

1995 cC-4.5 s29; 1997 c19 s1(16)

Standards of Practice

Standards of practice

31(1) The Minister may establish standards of practice relating to fund-raising carried out by charitable organizations and fund-raising businesses.

(2) The Minister must ensure that the standards of practice are published in The Alberta Gazette.

(3) The *Regulations Act* does not apply to the standards of practice.

1997 c19 s1(17)

Compliance with standards

32(1) The principals, directors, managers and employees of a charitable organization whose main responsibility is to make solicitations for the charitable organization or to manage or be responsible for solicitations made by the charitable organization must comply with the standards of practice.

(2) If a charitable organization has an employee described in subsection (1), the principals, directors and managers of the charitable organization must take reasonable steps to ensure that the employee complies with the standards of practice.

(3) A fund-raising business and its principals, directors, managers and employees must comply with the standards of practice.

1997 c19 s1(17)

Part 3

Donor Fund-raisers

Meaning of donor fund-raiser

33 A donor fund-raiser is a business that makes a direct or indirect request to buy a good or service normally produced or provided by the business in which it is stated or implied that all or a portion of the purchase price will be donated to a charitable organization or be used for a charitable purpose.

1995 cC-4.5 s30; 1997 c19 s1(18)

Meaning of solicitation

34 For the purposes of this Act, the request to buy the good or service referred to in section 33 is not a solicitation.

1995 cC-4.5 s31

Duty

35 A donor fund-raiser that makes a representation that all or a portion of the purchase price of the goods or services it sells will be donated to a charitable organization or be used for a charitable purpose must

- (a) donate all or a portion of the purchase price, as the case may be, to the charitable organization, or
- (b) use all or a portion of the purchase price, as the case may be, for the charitable purpose.

1995 cC-4.5 s32

Information

36(1) Subject to subsection (2), a donor fund-raiser must provide on the request of any person the information required by the regulations relating to its donations to the charitable organization or the money it used for a charitable purpose.

(2) A donor fund-raiser may establish a reasonable fee for providing the information that is based on the cost of reproducing the information, and postage if the information is to be mailed, and the donor fund-raiser may refuse to provide the information unless the fee is paid.

1995 cC-4.5 s33

Representations

37 No donor fund-raiser may

- (a) make a representation that an individual or corporation sponsors, endorses or approves of a charitable organization or a charitable purpose unless the individual or corporation

has given prior written consent allowing the use of the individual's or corporation's name for those purposes;

- (b) make a representation that all or a portion of the purchase price of the goods or services it sells will be donated to a charitable organization or use any emblem or printed matter belonging to or associated with a charitable organization or substantively similar to such emblem or printed matter unless the charitable organization has given its prior written consent.

1995 cC-4.5 s34

Part 4 Enforcement

Inspections and Investigations

Inspectors

38 The Minister may appoint one or more inspectors for the purposes of this Act and the regulations.

1995 cC-4.5 s35

Inspection

39(1) An inspector may enter and inspect the premises of a charitable organization or a fund-raising business to ensure compliance with this Act and the regulations.

(2) An inspection under subsection (1) may be conducted only if

- (a) the charitable organization or fund-raising business is given reasonable notice of the inspection, and
- (b) the inspection is conducted at a reasonable time.

(3) When acting under the authority of this section, an inspector must carry identification and present it on request to the owner or occupant of the premises referred to in subsection (1).

(4) An inspector who makes an inspection under subsection (1) may inspect, examine and make copies of or temporarily remove

- (a) books, records or documents required to be kept under this Act, and
- (b) books, records or documents relating to the collection, expenditure and distribution of contributions, including the records pertaining to accounts referred to in section 11.

(5) When an inspector removes any books, records or documents under subsection (4), the inspector

- (a) must give to the person from whom they were taken a receipt for them,
- (b) may make copies of, take photographs of or otherwise record them, and
- (c) must, within a reasonable time, return them to the person to whom the receipt was given.

1995 cC-4.5 s36;1997 c19 s1(25)

Inspection of s7 records

40(1) A charitable organization or fund-raising business that is required to maintain records under section 7 must make the records available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

(2) An inspector has the powers and duties described in section 39(4) and (5) when inspecting records under subsection (1).

1997 c19 s1(19)

Order allowing inspection**41(1)** If a person

- (a) refuses to allow an inspector to enter the premises of a charitable organization or a fund-raising business,
- (b) refuses to produce anything requested by the inspector to assist in an inspection under section 39, or
- (c) refuses to make records referred to in section 7 available for inspection in Alberta as specified by an inspector under section 40,

the inspector may apply to the Court of Queen's Bench for an order under subsection (2).

(2) The Court may make an order

- (a) restraining a person from preventing entry by the inspector or from interfering with the inspector's inspection, and
- (b) requiring the production of anything to assist in the inspection or requiring that records referred to in section 7 be made available to an inspector for inspection in Alberta.

(3) The order may be granted without notice if the Court is satisfied that giving notice would result in the loss or destruction of evidence.

RSA 2000 cC-9 s41;2009 c53 s33

Initiating investigation

42 The Minister may on receipt of a complaint, or when the Minister considers it necessary without a complaint, direct an inspector to investigate

- (a) any matter concerning the administration of this Act or the regulations, or
- (b) the circumstances surrounding any solicitation or other matter or thing done by a charitable organization, fund-raising business or donor fund-raiser.

1995 cC-4.5 s38;1997 c19 s1(25)

Order to assist investigation

43(1) When a person is being investigated, an inspector may apply to the Court of Queen's Bench for an order

- (a) compelling the person or the person's agent to allow the inspector to enter the person's or agent's premises for the purposes of the investigation and requiring the person or agent to produce for the inspector's examination the person's or agent's books, records or documents relevant to the investigation and authorizing the inspector to copy them or remove them on such terms as the Court considers appropriate;
- (b) authorizing the inspector to inquire into and examine the affairs of the person or person's agent that are relevant to the investigation and directing the person or person's agent to co-operate with the investigation on such terms as the Court considers appropriate.

(2) The Court may grant an order under subsection (1) if satisfied on evidence under oath by an inspector that there are reasonable grounds to believe

- (a) that the person being investigated or the person's agent has not co-operated or likely will not co-operate with the investigation, and
- (b) that the order is appropriate in the circumstances.

(3) The order may be granted without notice if the Court is satisfied that giving notice could result in the loss or destruction of evidence.

RSA 2000 cC-9 s43;2009 c53 s33

Ministerial Powers

Ministerial powers

44(1) In the circumstances referred to in subsection (2), the Minister may do any or all of the following:

- (a) apply to the Court of Queen's Bench for the appointment of a receiver, receiver-manager or trustee to hold or manage all or part of the funds, securities and property of a charitable organization or fund-raising business,
- (b) direct any person having on deposit or under the person's control or for safekeeping any funds or securities of a charitable organization or fund-raising business to hold those funds or securities,
- (c) direct a charitable organization or fund-raising business or other person to refrain from withdrawing funds or securities referred to in clause (b) from any person who has them on deposit, under control or for safekeeping, or
- (d) direct a person to hold in trust any contributions or funds related to a charitable organization or fund-raising business for a receiver, receiver-manager, trustee, liquidator or other official appointed under an Act of Alberta or Canada.

(2) The Minister may exercise the powers in subsection (1) in the following circumstances:

- (a) where the Minister is about to authorize an investigation of or during or after the investigation of a person under this Act;
- (b) where the Minister is about to cancel or suspend or has cancelled or suspended a registration or a licence;
- (c) where
 - (i) criminal proceedings that, in the opinion of the Minister, are connected with or arise out of matters under this Act, or
 - (ii) proceedings in respect of a contravention of this Act, are about to be or have been initiated against any person;
- (d) where the Minister has reason to believe that the trust funds held by a fund-raising business or the funds held by a charitable organization in its accounts are less than the

amount for which the fund-raising business or charitable organization, as the case may be, is accountable.

(3) A direction of the Minister under subsection (1) must be in writing and be served on the person to whom it is directed.

(4) The Minister may amend or cancel a direction given under subsection (1) and the requirements of subsection (3) apply to the amendment or cancellation.

RSA 2000 cC-9 s44;2009 c53 s33

Injunction

45(1) Where, on the application of the Minister, it appears to the Court of Queen's Bench that a person has done, is doing or is about to do any thing that constitutes or is directed toward a contravention of this Act or that involves the misappropriation of contributions, the Court may issue an injunction ordering any person named in the application

- (a) to refrain from doing that thing, or
- (b) to do any thing that in the opinion of the Court may prevent the contravention of this Act or the misappropriation of contributions.

(2) A copy of the application and supporting material must be given to the party or parties named in the application at least 48 hours prior to the time set for the hearing unless the Court is of the opinion that the urgency of the situation is such that giving notice would not be in the public interest.

RSA 2000 cC-9 s45;2009 c53 s33

Suspension, Cancellation and Terms and Conditions

Grounds

46(1) In this section, "conviction" means a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the Minister's opinion, indicates that the person convicted is unsuitable to deal with contributions or to make solicitations.

(2) The Minister may suspend or cancel the registration of a charitable organization or the licence of a fund-raising business or impose terms and conditions on the registration or licence if the charitable organization or fund-raising business or any of its principals, directors or managers

- (a) has, in the Minister's opinion, contravened this Act,

- (b) is convicted of an offence referred to in subsection (1) or is serving a sentence imposed under a conviction,
- (c) fails to pay a fine imposed under a conviction or fails to comply with an order made in relation to a conviction,
- (c.1) is named in a certificate signed under the *Charities Registration (Security Information) Act* (Canada), or
- (d) is subject to an order made under the *Consumer Protection Act* or a predecessor or successor of the *Consumer Protection Act*, the making of which, in the Minister's opinion, indicates that the person who is subject to the order is unsuitable to deal with contributions or to make solicitations.

(3) The Minister may suspend or cancel the registration of a charitable organization or the licence of a fund-raising business or impose terms and conditions on the registration or licence if, in the Minister's opinion,

- (a) any of the charitable organization's employees referred to in section 32(1) have contravened section 32(1), or
- (b) any of the employees of the fund-raising business have contravened section 32(3).

(4) Before a registration or licence is suspended or cancelled or terms and conditions are imposed, the charitable organization or fund-raising business, as the case may be, must be given

- (a) at least 15 days' written notice of the proposed suspension or cancellation or the proposed terms and conditions, and
- (b) an opportunity to make representations to the Minister's designate.

(5) The Minister may suspend the registration of a charitable organization or the licence of a fund-raising business without notice or an opportunity to make representations if the charitable organization or fund-raising business is being investigated under this Act and the Minister is of the opinion that the charitable organization or fund-raising business has misappropriated or will misappropriate funds that were collected for a charitable organization or a charitable purpose.

RSA 2000 cC-9 s46;2002 c32 s3;2017 c18 s1(24)

Part 5 General

General prohibitions

47(1) No person may

- (a) use the fact that a charitable organization is registered or that a fund-raising business is licensed to lead any other person to believe that the registration or licence constitutes an endorsement or approval by the Government of Alberta, except to indicate that the charitable organization or fund-raising business is registered or licensed under this Act,
- (b) make a representation in a solicitation that an individual or corporation sponsors, endorses or approves of a charitable organization or a charitable purpose unless the individual or corporation has given prior written consent allowing the use of the individual's or corporation's name for those purposes,
- (c) make a representation that the person is soliciting contributions for a charitable organization or use any emblem or printed matter belonging to or associated with a charitable organization or substantively similar to such emblem or printed matter unless the charitable organization has given its prior written consent,
- (d) make a representation that contributions will be used for one or more charitable purposes when the contributions are not being provided directly to a charitable organization or are not being used for those charitable purposes, or
- (e) make a false statement of fact or misrepresent any fact or circumstance in a solicitation.

(2) No charitable organization or fund-raising business and no principal, director, manager or employee of a charitable organization or fund-raising business may give information that is false or misleading to a person who is going to use that information in a solicitation.

1995 cC-4.5 s43;1997 c19 s1(25)

False statements

48 No person may make a false statement of fact or misrepresent any fact or circumstance in any application or document submitted to the Minister under this Act.

1995 cC-4.5 s44

Complying with terms and conditions

49(1) A charitable organization must comply with the terms and conditions imposed on its registration even if the registration has been suspended or cancelled.

(2) A fund-raising business must comply with the terms and conditions imposed on its licence even if the licence has been suspended or cancelled.

1995 cC-4.5 s45;1997 c19 s1(25)

Refraining from making solicitations

50 If a person requests a charitable organization or a fund-raising business

- (a) to refrain from making solicitations to that person, or
- (b) to remove that person's name from a list of persons who may provide a contribution,

the charitable organization or fund-raising business must use its best efforts to comply with that request.

1995 cC-4.5 s46;1997 c19 s1(25)

Disclosure by Minister

51 The Minister may disclose any information obtained under this Act for the purpose of assisting the public to determine if contributions should be made to a particular person, charitable organization, fund-raising business or donor fund-raiser.

1995 cC-4.5 s47;1997 c19 s1(25)

Appealing decision of Minister

52(1) A person who is affected by a decision of the Minister under this Act may appeal the decision on a question of law or jurisdiction to the Court of Queen's Bench.

(2) An appeal under this section must be commenced within 30 days after receiving notice of the decision by filing an application that sets out the grounds for the appeal.

(3) The Court of Queen's Bench may confirm or reject the Minister's decision or make any other order it considers appropriate.

RSA 2000 cC-9 s52;2009 c53 s33

Order compelling proper use of contributions

53(1) A person who has made a contribution to a charitable organization may apply to the Court of Queen's Bench for an order described in subsection (2).

(2) If the Court is satisfied that a charitable organization is not using the contributions it receives as a result of a solicitation for the charitable purpose stated or implied in the solicitation, the Court may

- (a) require a charitable organization or any of its principals, directors or managers to return a contribution to the donor or to pay to the donor a sum equivalent to the contribution,
- (b) require a charitable organization and its principals, directors and managers to use a contribution for the charitable purpose for which it was donated,
- (c) make a declaration respecting the use or misuse of contributions by a charitable organization, or
- (d) make any other order that the Court considers to be appropriate.

(3) Before making an order under subsection (2), the Court may require the charitable organization or any of its principals, directors or managers to provide to the Court the documents or information that the Court specifies.

(4) If the Court dismisses an application made under subsection (1) and considers the application to have been frivolous or vexatious, the Court may require the applicant to pay costs as specified by the Court.

(5) Nothing in this Act affects any statutory or common law right or right in equity that a person may have in respect of a charitable organization, fund-raising business or donor fund-raiser.

RSA 2000 cC-9 s53;2009 c53 s33

Restriction on municipal powers

54 Despite the *Municipal Government Act*, a council of a municipality may not pass bylaws regulating or prohibiting solicitations made by charitable organizations or fund-raising businesses.

1995 cC-4.5 s50;1997 c19 s1(26)

Offence

55(1) A person who contravenes the following provisions of this Act or fails to comply with a direction of the Minister under section 44 is guilty of an offence:

- (a) in Part 1, sections 5 to 11;
- (b) in Part 2, sections 12, 13, 18, 21, 26, 27, 28(2), 29;

(c) in Part 3, sections 35 to 37;

(d) in Part 4, section 40(1);

(e) in Part 5, sections 47 to 50.

(2) A person who is guilty of an offence is liable to a fine of not less than \$1000 and not more than

(a) \$100 000, or

(b) 3 times the amount that the defendant acquired as a result of the offence,

whichever is greater, or to imprisonment for not more than 2 years, or both, for each day that the offence continues.

(3) When a corporation has contravened the provisions of this Act referred to in subsection (1) or fails to comply with a direction of the Minister under section 44, every principal, director, manager, employee or agent of the corporation who authorized the contravention or failure or assented to it or acquiesced or participated in it is guilty of an offence and is liable to the penalty provided for in subsection (2) whether or not the corporation has been prosecuted or convicted.

(4) A partnership is not liable as such under subsection (1), but where a partner in a partnership that is a charitable organization or fund-raising business is convicted of an offence, each partner in that partnership who authorized the commission of the offence or assented to it or acquiesced or participated in it is guilty of an offence and is liable to the penalty provided for in subsection (2).

(5) In any prosecution under this Act relating to solicitations there is a presumption, in the absence of evidence to the contrary, that the Act applies to the solicitation.

(6) A prosecution under this Act may be commenced within 2 years from the date on which the offence is alleged to have been committed.

1995 cC-4.5 s51;1997 c19 s1(23)

Compensation for loss

56(1) A justice who convicts a defendant of an offence may, on the application of a person aggrieved, at the time sentence is imposed, order the defendant to pay to the applicant an amount as compensation for loss suffered by the applicant as a result of the commission of the offence.

(2) If an amount that is ordered to be paid under subsection (1) is not paid within the time ordered by the justice, the applicant may, by filing the order, enter as a judgment in the Court of Queen's Bench the amount ordered to be paid, and that judgment is enforceable against the defendant in the same manner as if it were a judgment rendered against the defendant in the Court of Queen's Bench in civil proceedings.

1995 cC-4.5 s52

Regulations

57 The Minister may make regulations

- (a) respecting the calculation of gross contributions;
- (b) respecting, for the purposes of section 6, the information to be provided and the manner and form in which the information is to be provided when a solicitation is made;
- (c) respecting the records and documents to be maintained by charitable organizations and fund-raising businesses under section 7 and the period for which they must be maintained;
- (d) respecting, for the purposes of section 8, the requirements to be met when preparing a financial information return;
- (e) respecting the calculation of the portion of gross contributions used directly for charitable purposes under section 9(1)(b) and defining any term used in that section;
- (f) respecting the trust established under section 11;
- (g) respecting the form of and information required for the purposes of an application for registration, a licence and renewals;
- (h) establishing the fees for registration, a licence and renewals;
- (i) respecting the time periods after which registration or a licence expires;
- (j) respecting the form and terms and conditions of securities required under section 22;
- (k) respecting the terms and conditions under which a security is forfeited and the procedures to be followed for claiming on a security that has been forfeited;
- (l) respecting matters that must be included in fund-raising agreements;

- (m) respecting the information to be provided by donor fund-raisers under section 36 and the form in which it is to be provided.

RSA 2000 cC-9 s57;2014 c8 s1

Protection from liability

57.1 No action for damages may be commenced against the Minister, an inspector or any person under the administration of the Minister for anything done or not done by that person in good faith while carrying out duties or exercising powers under this Act.

2002 c32 s3

Part 6 Transitional

Transitional

58 An agreement between a charitable organization and a fund-raising business authorizing the fund-raising business to make solicitations on behalf of the charitable organization or to manage or be responsible for solicitations made by or on behalf of the charitable organization that is in force on May 1, 1995 is deemed to meet the requirements of section 30.

1995 cC-4.5 s54;1997 c19 s1(24)

Bonds

59(1) Despite the repeal of the *Charitable Promotion Business Licensing Regulation* (AR 7/90), a bond delivered in respect of a charitable promotion business licence continues to be subject to the forfeiture provisions in that Regulation.

(2) A bond delivered in respect of a charitable promotion business licence that is continued under this Act is deemed to be a bond submitted under this Act and is also subject to the forfeiture provisions established under this Act.

1995 cC-4.5 s55



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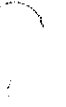
Directors and Officers Liability

Directors and officers have a duty to exercise due diligence in overseeing the management of the organization that they serve. They are required to act in good faith and in the best interest of the organization. Claims or potential claims must be promptly reported.

3 Basic Duties

Directors and officers have a duty to exercise due diligence in overseeing the management of the organization that they serve. This involves 3 basic duties:

1. Duty of Diligence (Duty of Care): Act reasonably, in good faith and in the organization's best interest.
2. Duty of Loyalty: Place the interest of the organization before your own.
3. Duty of Obedience: Act within the scope of applicable bylaws.





Considering Accepting a Directorship? Also Consider Your Liability . . .

In addition to basic duties, a director or officer may be held liable for:

1. Failure to act as stated under a statute.

For example, if a statute requires directors to file a report or maintain certain records, and these reports or records are not maintained, the director may be liable for an offence under that statute.

2. Non-compliance of the organization with a statute.

For example, directors may be liable for financial losses, wrongful dismissal, employee discrimination or failure to remediate environmental damage. Be aware that directors can be held personally liable and that:

- Ignorance is not a defence.
- Resignation is not necessarily a defence.
- Company indemnity may not be enough.

Consult a lawyer for more information on directors' and officers' legal liability. For a comprehensive review of legal liability for directors and officers of not-for-profits, review Industry Canada's Primer for Directors of Not-for-Profit Corporations.
(https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_cl00688.html)

Managing Liability Risk

Organizations with paid or volunteer boards should be aware that directors and officers have very specific duties and obligations. Directors and officers should be given all of the appropriate information that is required to perform their duties effectively.

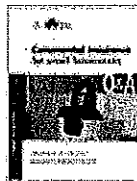
Whether your organization is creating its first board or has a long-established board, or whether you're considering becoming member of a board, learn about 11 risk management opportunities for directors and officers ([/on/business/risk-management/directors-and-officers-liability/risk-management](#)).



Emergency Preparedness for Business

Life can throw its share of curveballs so it's important to be ready for anything. And yet, a large number of small businesses don't have an emergency preparedness plan in place. This guide is intended to help you safeguard your business by preparing for the unexpected.

(<http://assets.ibc.ca/Documents/Brochures/Emergency-Preparedness-for-Your-Business.pdf>)



Commercial Insurance for Small Business – Q&A

Question to ask your insurance representative.


(<http://assets.ibc.ca/Documents/Brochures/Commercial-Insurance-for-Small-Businesses.pdf>)


Business Insurance and You

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 [Consumer Info \(/on/about-us/contact-us/contact-us-form\)](#) **1-844-2ask-IBC (tel:1-844-2275422)**
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Directors' Liability: A Discussion Paper on Legal Liability, Risk Management and the Role Of Directors in Non-Profit Organizations


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Ministry of Citizenship – Voluntarism Initiatives



Ontario

MINISTRY OF
CITIZENSHIP
AND VOLUNTARISM

According to the 2000 NSGVP, about 41 percent of Canadian volunteers serve on boards and committees. Despite their deep commitment to countless causes and organizations many board members may be unaware of the legal ramifications of their volunteer work. Personal liability has become an area of increased concern for board members of not-for-profit organizations. This important resource informs board members about their legal duties and obligations, and offers them a practical 'prevention checklist' to help minimize personal liability.

Financial support for the development of this resource was provided by the Government of Ontario through the Ontario Screening Initiative.  **Ontario**

The views expressed herein are those of the author and do not necessarily reflect those of Voluntarism Initiatives Unit, the Ministry of Citizenship or the Government of Ontario.

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1. Introduction

According to the 2000 National Survey of Giving, Volunteering and Participating, over 40 percent of Canadian volunteers hold positions on boards and committees.¹ Despite their deep commitment to the effective governance of voluntary organizations, many board members are unaware of the legal ramifications of their volunteer work. As our society becomes more litigation-oriented, the public expects non-profit organizations to be more accountable and businesslike in managing their affairs. Volunteer board members are right to be concerned about their personal liability.

Directors' Liability A Discussion Paper on Legal Liability, Risk Management and the Role of Directors in Non-Profit Organizations informs board members about their legal responsibilities and provides practical suggestions for managing risks and minimizing personal liability. Although this discussion paper contains legal information, it does not provide legal advice. Neither its authors nor Volunteer Canada are in a position to determine whether organizations or individuals have fulfilled their legal duties or satisfied the applicable standard of care in every circumstance. Individuals and organizations seeking specific advice should consult with a lawyer.

This discussion paper is not intended to deter people from volunteering as board members with their favourite voluntary organization or charity. Risk and responsibility are facts of life, and every activity we undertake involves a certain amount of risk. The volunteer director needs to understand the risks involved in the position so that he or she can act reasonably and appropriately. The purpose of this paper is to raise awareness of the legal risks facing directors, and to offer directors and organizations some practical suggestions for minimizing these risks.

2. What is an organization?

Organizations come in a variety of types and sizes, under a variety of names. In this discussion paper, the generic term 'organization' is used. Some organizations are small with no staff and no office, some have a few staff, and some are large entities with many staff and volunteers.

An organization can be 'unincorporated,' and thus have no legal status, or it can be 'incorporated' as a corporation under federal or provincial statutes. This corporation can be for-profit (that is, organized to pursue commercial objectives), or it can be non-profit (that is, organized to fulfill benevolent or charitable purposes).

A non-profit organization can be referred to as:

- a club;
- an association;
- a society;
- a corporation;
- a league, or
- a committee (as in the Canadian Olympic Committee).

¹ Statistics Canada. *Caring Canadians, Involved Canadians: Highlights from the 2000 National Survey of Giving, Volunteering and Participating* (Ottawa: Minister of Industry, 2001), p. 41. To download the full report,

3. *What is a board?*

Some organizations are governed by administrative or 'hands-on' boards while others are led by policy-governing boards. Both boards may be called a board of directors, a board of governors or a board of trustees. The responsibility of an organization's board is to:

- provide leadership and direction to the organization; and
- govern the affairs of the organization on behalf of its shareholders (in the case of a for-profit corporation) or its members (in the case of a non-profit organization).

4. *What is a director?*

A director is an individual who is a member of a governing board of an organization. Directors of non-profit organizations are volunteers and are rarely paid for their services, while directors of for-profit corporations are usually compensated. As a rule, directors are elected or appointed to their positions on the board. They may also be officers, where an officer fulfills certain corporate roles and functions (such as those duties of a 'president,' 'treasurer' or 'secretary' of the organization). Officers can also be senior staff persons, and in rare circumstances, staff persons can also be directors.

Regardless of the name, size, or type of organization, the role of the director remains fairly constant. Directors and officers of non-profit organizations are responsible for governing the affairs of the organization on behalf of its members. Directors and officers have a relationship of 'trust' with the members of the organization, and it is from this trust relationship that certain important legal duties arise.

5. *Legal duties of directors*

The basic responsibility of directors is to represent the interest of the members in directing the affairs of the organization, and to do so within the law. This legal duty is described in statutes (such as the *Canada Corporations Act*, provincial business incorporation statutes and provincial societies or non-profit organization statutes) and has been expanded and interpreted in the common law.

In representing the members of the organization and acting as their 'trustee,' directors have three basic duties:

1. The duty of *diligence*: this is the duty to act reasonably, prudently, in good faith and with a view to the best interests of the organization and its members;
2. The duty of *loyalty*: this is the duty to place the interests of the organization first, and to not use one's position as a director to further private interests;
3. The duty of *obedience*: this is the duty to act within the scope of the governing policies of the organization and within the scope of other laws, rules and regulations that apply to the organization.

It is important to note that the duties of directors of non-profit organizations are essentially no different than the duties of directors of for-profit corporations. These duties extend broadly, and are owed to:

- the organization as a whole:

- the organization's members, participants, clients, staff and volunteers;
- other directors; and
- anyone else who may be affected by the decisions of the board and the activities of the organization, including the general public.

These three duties are discussed more fully below.

5.1 Duty of diligence

Diligent directors always act prudently and in the best interests of the organization. When performing their duties as directors, they are expected to exercise the same level of care that a reasonable person with similar abilities, skills and experience would exercise in similar circumstances. If a director has a special skill or area of expertise, such as an accountant or lawyer would have, he or she has a duty to achieve a standard of care that corresponds to his or her professional abilities.

Directors have a responsibility to act cautiously and to try to anticipate the consequences of their decisions and actions before they undertake them. They are honest and forthright in their dealings with members, with the public and with each other. Directors are also well-informed about the activities and finances of the organization. They have an obligation to foresee potential risks inherent in a situation and to take reasonable steps to manage those risks.

5.2 Duty of loyalty

Directors are required to put the interests of the organization first. These interests will always take precedence over any other interest, including a director's personal interests. As well, directors who are involved in more than one organization may find that they cannot be loyal to both.

Loyal directors will avoid putting themselves in a situation of a conflict of interest. When this is unavoidable, they will act properly in disclosing the conflict and ensure that they play no part in discussing, influencing or making decisions relating to that conflict.

Confidentiality is also an important aspect of the duty of loyalty. Directors have an obligation to keep organizational business private, and to not discuss certain matters with people outside the organization. Confidential matters may include:

- information about personnel; and
- information about clients served by the organization, the organization's finances or legal matters.

A board acts as one entity. Loyal directors support the decisions of the board, even if they might not personally agree with the decisions and might not have voted to support the decisions in the board meeting.

5.3 Duty of obedience

Nearly all non-profit organizations are 'private tribunals' (that is, autonomous organizations that have the power to write rules, make decisions and take actions that affect their members and participants). Legally, private tribunals are recognized as having a contractual

relationship with their members. This relationship is defined in the organization's governing documents, which include:

- its constitution;
- bylaws;
- policies, and
- rules and regulations.

Directors have a duty to comply with the organization's governing documents, and to ensure that staff and committees of the organization do as well. Over time, organizations may move away from their legal purpose, and policies may become out of date and no longer reflect the practices of the organization. Obedient directors ensure that governing documents remain current and accurate, and oversee the process that is used to amend and update governing documents.

Directors also have a duty to obey external laws and rules that are imposed upon organizations. A wide range of laws and statutes apply to corporations and individuals: the obedient director ensures that the organization complies with these. In particular, an organization that is an employer has many statutory responsibilities to its employees. These responsibilities include:

- paying wages;
- providing paid time off for holidays;
- making deductions from wages and remitting these to the government;
- providing a safe workplace; and
- protecting employees from discrimination and harassment.

6. *Liability of directors*

A director who fails to fulfill his or her duties as outlined above may be liable. The term 'liability' refers to the responsibility of directors and organizations for the consequences of conduct that fails to meet a pre-determined legal standard. Usually, the term 'consequences' refers to damage or loss experienced by someone, and being responsible for such consequences means having to pay financial compensation.

Liability arises in the following three situations:

1. When a law (*statute*) is broken. The consequences of breaking a law are:
 - paying a fine;
 - having restrictions placed on one's rights or privileges; or
 - being imprisoned.
2. When a *contract* is breached or violated, where a contract is a legally enforceable promise between two or more parties. The consequences of breaching or violating a contract are:
 - correcting the breach through some form of performance or service; or
 - paying financial compensation.
3. When an act, or a failure to act, whether intentionally or unintentionally, causes injury or damage to another person (*tort*). The consequence of intentionally or unintentionally injuring or damaging another person is:
 - payment of a remedy in the form of financial compensation.

These three situations are discussed more fully below.

6.1 Statute

There are a variety of federal and provincial statutes that impose liability on directors in specific circumstances relating to managing the affairs of the organization. Thus, directors have specific statutory obligations relating to:

- the election and appointment of directors and officers;
- calling meetings of members;
- paying taxes to government and submitting employment-related remittances;
- keeping minutes of meetings of directors and members;
- reporting and disclosing prescribed information about the corporation to authorities;
- paying wages and salaries;
- maintaining a safe workplace; and
- activities of the organization that cause pollution or other environmental damage.

6.2 Contract

Directors are responsible for ensuring that the organization's contractual obligations are fulfilled. This includes contracts with employees and independent contractors.

6.3 Tort

Directors are responsible for ensuring that they, as well as the organization's volunteers and staff, do not behave negligently. Negligence refers to the duty that we all have to ensure the safety of those persons affected by our actions. Directors, volunteers and staff are at all times expected to act in a reasonably diligent and safety-conscious manner so that others affected by our actions (for example, fellow employees, volunteers, participants, clients, the public) will not face an unreasonable risk of harm.

The concept of negligence also applies to 'wrongful acts'—these are:

- errors;
- omissions; and
- actions or decisions that harm others, not through damaging their property or their physical person, but through interfering with their rights, opportunities or privileges.

Wrongful acts relate primarily to how directors govern the organization, manage its funds, supervise its staff and make decisions that affect members, clients and the public.

7. Indemnification

Clearly, volunteer directors take on a range of legal responsibilities and face many potential liabilities. Non-profit organizations recognize that this can be quite daunting. As a result, it is almost universal practice for these organizations to 'indemnify' their directors for liabilities that they might incur in carrying out their duties as directors. To 'indemnify' means to put someone back in the same financial position as they were in before. An indemnified director would be compensated for the following:

- legal fees:

- fines that were paid under a statute;
- a financial settlement that resulted from a lawsuit; or
- any other legal obligation that a director was required to fulfill.

Incorporated organizations are required by law to indemnify their directors for such losses. There is no such obligation imposed upon unincorporated groups, but most groups do offer indemnities because it is a good policy to do so. Just remember: the indemnification is only as good as the organization's financial ability to pay it. This is where insurance comes in (see *Directors' and officers' liability insurance* in section nine of this discussion paper).

8. *Avoiding liability through risk management*

There is risk inherent in everything we do. Volunteers, employees and directors of organizations must always be mindful of risks—this means examining situations cautiously and thinking ahead to the potential consequences of decisions and actions. Most people manage risks most of the time, and they do so instinctively. However, it is always a good idea to take steps ourselves, and to encourage others to think about risks and risk management more systematically.

The process of risk management is a simple three-part activity. It involves:

1. looking at a situation and asking what can go wrong and what harm could result;
2. identifying practical measures that can be taken to keep such harm from occurring; and
3. if harm does occur, identifying practical measures that can be taken to lessen the impacts of harm and pay for any resulting damage or losses.

The practical measures that can be taken to manage risks fall into four categories:

- assume the risk (decide that the risk is minor and do nothing);
- reduce the risk (find ways to change people's behaviour or the environment in which people work so that the degree of risk is reduced);
- eliminate the risk (choose *not* to do something); and
- transfer the risk (accept the risk but transfer the liability associated with it to someone else through a written contract).

Every organization will face different risks and will plan and implement different measures to deal with these risks. The measures that are taken to manage risks are usually those that would be taken by any other prudent and reasonable person having the same skills, knowledge and experience as ourselves. This is why the practice of risk management is based in large part on common sense and is linked to the concept of 'standard of care.' These measures will tend to revolve around:

- training and educating staff and volunteers;
- enforcing reasonable rules;
- inspecting and maintaining facilities and equipment;
- screening and supervising staff and volunteers;
- properly documenting meetings and decisions; and
- meeting all statutory reporting requirements.

The final section of this discussion paper provides some practical measures that organizations, and individual directors, can take to manage the risks and liabilities faced by directors.

9. *Directors' and officers' liability insurance*

This section deals with insurance—a common risk management measure and one that is particularly important in minimizing directors' liability. Insurance is one of many techniques used to manage risks—it involves transferring the liability associated with a risk to another party by means of a written contract. In the case of insurance, the party that the risk is transferred to is the insurance company, and the written contract is the insurance policy. Transferring risks through written contracts is a very common business practice.

Directors' and officers' insurance is like general liability insurance, and covers costs that the directors and officers of an organization might become legally obligated to pay as a result of damages to another party. However, unlike a general liability insurance policy that covers losses arising from physical injury or property damage, directors' and officers' liability insurance covers only those losses arising from a director's own 'wrongful acts.'

In such an insurance policy, a wrongful act is defined as:

- an error;
- a misstatement;
- a misleading statement, act, omission; or
- other breach of duty by an insured person in his or her insured capacity.

The purpose of this insurance is to provide the financial backing for the indemnity that the organization provides to its directors. Directors' and officers' liability insurance is a fairly recent risk exposure for many non-profit organizations. The risk is not so much that a director will be found guilty of a wrongful act, but simply that there will be an allegation of a wrongful act. Although few claims against directors are substantiated and fewer of these result in large financial awards, the cost of defending any claim can be significant. This is where directors' and officers' insurance tends to prove its value.

Directors' and officers' insurance policies vary, and there is no standard level of coverage. Importantly, many of these policies *exclude* coverage for:

- directors acting outside the scope of their duties as they are described in this discussion paper, including any actions that are dishonest, fraudulent or criminal;
- breach of contract, including wrongful dismissal of employees;
- fines and penalties under a statute or regulation; and
- complaints under a human rights code, including a complaint of discrimination, harassment or sexual harassment.

Insurance is a complex subject, and directors' and officers' insurance is especially so. For more information on this subject, consult with a lawyer or an insurance representative.

10. *Incorporation*

In this discussion paper, organizations have been described as being either incorporated or not incorporated. Many associations, societies, community groups and sport clubs are not

incorporated and thus have no legal status. Yet the legal status of an organization can have a significant effect on the potential liability of directors, as described below.

The incorporation of an organization under a federal or provincial statute establishes the organization as a legal entity (almost an 'artificial person') that exists independently as separate and distinct from its members. This legal entity can:

- own property in its own name;
- acquire rights, obligations and responsibilities;
- enter into contracts and agreements; and
- sue and be sued as if it were a real person.

An unincorporated organization is not a separate legal entity and has no legal status apart from that of its members. While carrying out their duties on behalf of the members, directors can be held personally and jointly liable for the activities of the organization. For example, an unincorporated entity cannot enter into contracts of its own, so the directors or officers who execute the contract on behalf of the organization might be held to that contract in their personal capacities. Likewise, a third party cannot sue the organization (as it is not a legal entity) but can, and likely would, sue the directors collectively and individually.

An incorporated organization offers directors the protection of what is termed the 'corporate veil.' As a separate legal entity, the organization is one step removed from the directors and members. Lawsuits must be brought against the corporation, and directors of such corporations are, to a large extent, protected from liability for actions they took in their capacity as directors.

The minor costs and inconveniences of incorporation are far outweighed by the benefits that such incorporation provides to the members and directors. Incorporation can sometimes be the best, simplest and least expensive risk management measure for an organization to take.

Incorporation notwithstanding, it must be noted that directors of corporations may be held personally liable, in their capacities as directors, for unpaid wages, holiday pay, employee benefits and taxes. This is of concern to directors of organizations who have large numbers of employees, especially if the organization is experiencing financial difficulties and may be unable to meet payroll and tax obligations.

11. Protecting yourself as a director

There is no substitute for knowledgeable governance and thoughtful risk management, and the organization that manages its affairs in a conscientious and responsible manner will reduce its directors' liability risks considerably. Nonetheless, the following practical tips will be helpful to all directors.

Before accepting a directorship with an organization, you should:

- Think about your reasons for becoming a director. Be sure you have the time, interest and commitment to do the job well.
- Learn as much as you can about the organization. What is its mission? What activities does it undertake? How is it perceived in the community?
- Ask for a written job description for the position of director.
- Educate yourself about your legal duties as a director by reading a discussion paper such as this one.

- Look at the composition of the entire board, and satisfy yourself that it can govern effectively and provide competent direction to committees, staff and volunteers within the organization.
- Confirm that the organization indemnifies its directors (either through its bylaws, through policy or by means of a written contract) and that it carries directors' and officers' liability insurance. Ask about the scope of coverage and any exclusions to this insurance.

Once you have accepted a directorship, managing your personal liability risks is an ongoing process. The following guidelines will help you to take steps to manage these risks as they relate to issues such as policy, finances, meetings, personnel, and training.

11.1 Meetings

- Attend meetings, be prepared to discuss the items on the agenda and participate fully in decision-making.
- Provide your reports to the board in written form.
- Ensure that minutes reflect abstentions from votes, votes for and votes against motions.
- If you have any real or perceived conflict of interest, declare it when the issue first arises, and do not vote, participate in or influence the decision-making process. Have your disclosure recorded in the meeting minutes.
- Do not rush important decisions. Ensure that board members receive meeting materials in ample time to digest them. If important information is lacking, postpone the decision until this information can be obtained.
- Keep your own personal copies of key documentation and minutes of controversial meetings.

11.2 Finances

- Take an interest in finances by reviewing regular financial reports, and approving and monitoring the organization's annual budget.
- Use a professional, independent accountant to perform an annual audit of the organization's finances.
- Know who is authorized to sign cheques and for what amount.
- Do not be shy about asking questions and seeking clarification on financial matters from staff.
- With the assistance of your auditor, develop a list of statutory reporting requirements and assign a staff person or director to monitor that these requirements are being fulfilled.

11.3 Contracts

- Ensure that all contracts the organization enters into are carefully reviewed by staff or by counsel.
- When the organization partners with other entities on joint projects, or enters into agreements be sure that all terms and conditions are clearly expressed in a written contract, and that risks and liabilities are appropriately shared.

11.4 Policy

- Ask for a copy of the organization's policy manual. If the organization does not have a policy manual, develop a work plan for staff (or others, as appropriate) to prepare one.
- Be familiar with the content of the organization's constitution and bylaws. If they are out of date, or no longer adequately reflect the mandate and activities of the organization, then undertake to update them.
- On important matters and for decisions that have the potential to adversely affect someone, ensure that the organization's policies are adhered to as written. If the policy is unsuitable for dealing with the particular circumstance, then take steps to change the policy for the future.
- Commit staff and volunteer time and financial resources to developing risk management policies.

11.5 Personnel

- Ensure that all staff and volunteer positions have written job descriptions.
- Insist that the organization develop a clear personnel policy and ensure that staff evaluations are performed at least annually or as required by the policy.
- Be sure that suitable screening measures are in place for those staff and volunteer positions that involve interaction with children, youth, seniors or other vulnerable persons in positions of trust.

11.6 Insurance

- Ask for copies of the organization's insurance policies and become familiar with their scope of coverage.
- Consider asking the insurance broker to meet with the board and make a brief presentation on these policies.

11.7 Training

- Support professional development for staff and training for volunteers.
- Encourage the board to engage in training. Bring in a board development instructor or a facilitator to help the board improve its effectiveness.
- Offer board members training opportunities in association with board meetings or annual general meetings.
- Commit resources to the development and updating of board and staff orientation materials.
- Leave aside a short portion of every board meeting to allow the board to evaluate its effectiveness in conducting the meeting and making governance decisions.

11.8 General

- If the organization is unincorporated, consider incorporation. As a risk management measure it is well worth the expense and inconvenience.
- If you suspect that something is not right, go with your intuition and check it out! Be curious. Remember, as a director you will be held responsible for circumstances and

situations you *ought* to have known about, whether or not you actually did know about them.

- Do not speak negatively about the organization to the public. Publicly support the board's decisions, even if you might have voted against the majority of directors.
- If the organization needs to deal with a complex matter in which staff or directors lack expertise, consider the services of an outside professional (for example, a lawyer, financial advisor, human resources consultant, risk management specialist, or engineer).

12. Summary

There are tens of thousands of voluntary organizations and charities in Canada that undertake important work in every community in the country. Volunteer board members are to be applauded and supported for their willingness to take on the responsibilities associated with directorships and the corresponding risks.

This discussion paper is meant to inform directors of the legal dimensions of their voluntary contribution. It is Volunteer Canada's view that an informed director is a more confident and competent director.

The most widely available, most effective and least expensive risk management technique is common sense. Voluntary organizations can capitalize on this common sense by:

- recruiting capable board members and well-qualified staff;
- providing an orientation program for all new people;
- putting on paper clear job descriptions and sound policies;
- supporting professional development at all levels of the organization; and
- creating an organizational culture that emphasizes and rewards risk management thinking and behaviour.

Common sense arises from a mix of knowledge and experience. Most people become directors because they have abundant experience with an organization or the cause to which it is committed, or because they feel that they can bring professional and work-related experience to a rewarding voluntary position. This experience, coupled with the knowledge that can be gained from this discussion paper, will well equip directors to perform their duties effectively and capably.

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Ontario Ministry of the Attorney General website
<http://www.attorneygeneral.jus.gov.on.ca>

United Way of Canada / Centraide Canada website
<http://www.unitedway.ca>

Voluntary Sector Roundtable (VSR) website (the VSR website is hosted and maintained by United Way of Canada / Centraide Canada—see web listing above)
<http://www.vsr-trsb.net/main-e.html>

Volunteers and the Law: A guide for volunteers, organizations and boards. (a web document prepared by the People's Law School)
<http://www.publiclegaled.bc.ca/volunteers>