



## **POLICY 111**

### **Director Liability Policy**

As a director of a non-profit corporation, a director has duties and responsibilities which a director must discharge honestly and in good faith. These obligations are created by virtue of The Non-Profit Corporations Act and from a special fiduciary relationship existing between a director and the corporation he or she serves.

A director has an obligation to disclose in writing to the corporation if the director has a conflict of interest, including where the director is a party to a contract with the corporation and where the director may benefit from a contract (see Policy 110, Conflict of Interest Policy).

A director and officer of a corporation will not be personally liable for actions taken on behalf of the corporation if he or she:

- Acts honestly, in good faith and in the best interests of the corporation;
- Puts the interests of the corporation before his or her personal interests or the interests of others;
- Exercises the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The Non-Profit Corporations Act provides liability protection so that a director is not liable in a civil action for any loss suffered by any person if the director was acting in good faith at the time of the act or omission, and if the loss did not involve fraudulent or criminal misconduct of the director.

Examples of where a director may be personally liable:

- Misusing the corporation's property;
- Condoning illegal or improper acts of employees, officers or other directors;
- Unpaid wages of employees up to a maximum of 6 months if the wages were incurred while the director was on the board;
- Deductions and premiums such as employees' income tax, unemployment insurance and workers' compensation; and
- Unpaid taxes such as income tax and GST.

The corporation will indemnify a director if he or she acted honestly and in good faith with a view to the best interests of the corporation and in the case of a criminal or administrative action, he or she had reasonable grounds for believing that his or her conduct was lawful and a court upholds those grounds.

Montessori School of Regina ("MSR") has director's liability insurance, with \$1,000,000 coverage, to protect directors from liability. The insurer agrees to pay, on behalf of directors, for any loss for a wrongful act which a director is liable to pay.

"Wrongful act" includes actual or alleged negligence, errors, omissions, misstatements, neglect or breach of duty in the discharge of the director's legal duties. The costs which are covered include damages, judgments, settlements, costs and the cost of defending the action. The policy does not apply to some things. For example, it does not cover fines or penalties imposed against the corporation and its directors, actions for slander or defamation, wrongful dismissal actions or an action arising from a "fungi or spore" or a nuclear incident. All directors should review the directors' liability insurance so the director is familiar with the coverage and which items are not covered.

MSR also has general liability insurance (\$1,000,000) which provides coverage for bodily injuries or property damage, separate property insurance (\$75,000) and automobile insurance for vehicles not owned by the insured (\$1,000,000). The general liability insurance does not apply to pollution, nuclear energy, professional, terrorism, fungi or asbestos liability.

The insurance will only cover a director who has acted in good faith. For example, a director cannot be indemnified by the corporation with respect to illegal or dishonest acts.

### **Criminal Liability of Directors and Officers**

Directors and officers can be held criminally liable for any criminal offences they commit in the course of their duties.

*This summary is not an exhaustive review of liability and is intended as general information only. It is not a statement of law. If you are uncertain about any of your activities as a director or officer of a corporation, you should seek the advice of independent legal counsel.*