This section highlights some of the serious legal liabilities and risks that can face community literacy agencies. Because volunteer management is a relatively new field, consistent principles and standards have yet to be adopted.

Although many non-profit agencies have perhaps long been mindful of the risks and hazards of their work, most problems have been handled informally. The current climate in the volunteer sector and society at large make it desirable to formalize practices for managing liability and risk. These should be documented in writing. As you sort through your responsibilities and risks, you can start by developing policies. Share your experiences and concerns with colleagues in literacy but also reach out to those in the broader non-profit sector who are grappling with similar issues.

This section is presented as information only. Seek legal advice as necessary.

See also Section 9, Policies for Screening.

**Topics in This Section**

8.1 Protecting Individuals and Your agency  
8.2 The Liability of Volunteers  
8.3 The Liability of Board Members  
8.4 The Liability of the Agency  
8.5 Safe Practices  
8.6 Insurance  
8.7 Your Turn  
8.8 Tips and Resources  
8.9 For Reference  
8.10 Appendices for Section Eight  
8.10.1 Checklist for Responsible Management  
8.10.2 Important Sources  
8.10.3 Not-for-Profit Alert

**Connection to Volume One**

See also: Roles and Responsibilities of Board Members, page 61  
Policies that Apply to Board Members, page 70  
Policies on Policies, page 57  
Other Administrative Policies, page 92

*This information is no substitute for legal and/or professional counsel. You are urged to seek qualified and current advice for matters related to your agency.*
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

8.1 Protecting Individuals and Your Agency

The information presented here is not intended to scare people away from literacy volunteering by listing everything that may go wrong in your agency.

MTCU (LBS Program Guidelines, 1999) requires us to have “a system for assessing and contributing to the safety of learners, staff, volunteers and others involved in the LBS Program while at program sites.” However, community-based literacy agencies struggle like the rest of the voluntary sector with outdated and inappropriate legislation. Several recent reports, such as the Broadbent Panel on Accountability and Governance, have suggested changes in the legislation, the voluntary sector and society at large to ensure safe, meaningful and responsible volunteer management practices. Progress in federal and provincial laws may soon change the uncertainties in liability and risk management for non-profit organizations. You are encouraged to stay current.

Unlike business corporations, there is no specific section of the Corporations Act which applies directly to non-profit agencies (even incorporated non-profit agencies.) Thus we fall back on “common law.”

Red Tape Alert. In the spring of 1999 the Ontario government updated and streamlined a number of corporate maintenance requirements for not-to-for-profit corporations in Ontario. The simplification and updating were part of the government’s red tape reduction initiatives. Please see Appendix 8.10.4 at the end of this section.

All organizations and individuals are expected to provide a standard of care. This means reasonable care must be taken to avoid risks

C which are likely to occur
C which are easily eliminated
C which have caused previous injury
C which are well-known
C which can be dealt with using common practices.

Although we are fearful to impose too much bureaucracy in a volunteer agency, both individuals and agencies must be aware of their legal responsibilities in order to fulfill their obligations. Knowledge and understanding are the best defence. Clear communication helps everyone understand the reasons for taking precautions. The development of both general and specific policies and procedures is just one thing we can do to reduce the gaps and risks in volunteer agencies.
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

**Basic Legal Concepts** for Voluntary Organizations

**Liability:**
- condition of being actually or potentially subject to an obligation;
- condition of being responsible for a potential or actual loss, penalty, evil,
- expense or burden which creates a duty to perform an act immediately or in the future;
- all character of debts and obligations;

**Negligence:**
- the omission to do something which a reasonable person, guided by those ordinary considerations which would ordinarily regulate human affairs would do;
- doing of something which a reasonable and prudent person would not do;
- the failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

**Intentional:**
- knowingly, with criminal intent;
- purposefully, not accidentally;
- the intent to do that which the law prohibits.

**NOTE:** You can be liable for both intentional and negligent acts.

**Duty:**
- legal or moral obligation;
- the obligation to conform to a legal standard of reasonable conduct in light of apparent risk;
- standard of conduct for protection of others against unreasonable risks.

**Risk:**
- hazard, danger, peril, exposure to loss, injury, disadvantage or destruction, and comprises all elements of danger;
- in insurance law, the danger or hazard of a loss of the property insured.

**Fiduciary Duty:**
- the highest standard of duty implied by law (e.g., trustee, guardian);
- duty to act primarily for another’s benefit involving good faith, trust, special confidence and candour;
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK


8.2 The Liability of Volunteers

There is a duty for volunteers to uphold a standard of care toward those clients who respect or trust them. This obliges everyone (agencies, staff, board members, volunteers, learners) to take care not to injure or harm anyone who might reasonably be foreseen as affected by the action.

What standard of conduct can legally be expected from volunteers? A volunteer’s actions “are measured against those of a reasonable person with similar ability and experience.” (Public Legal Education Society, Volunteers and the Law, People’s Law School, B.C., 1992) Volunteers with special skills or training will be held to a higher standard of care. A tutor who is also a doctor would be expected to apply her medical skills if her student suddenly became ill or injured, whereas another volunteer would have no such obligation.

Volunteers, particularly in community literacy agencies, may develop a close relationship with the people they work with. They may receive personal or private information which they must avoid revealing, except in special case where there is a legal reason to do so. Some learners may consider even the public disclosure of the fact that they are receiving literacy training to be a breach of confidentiality. Sometimes, however, the duty to report things such as child abuse is greater than the promise of confidentiality.

Volunteers have a duty to be careful with what they say to others, especially if giving information or advice. They can be considered negligent if a client takes their advice and then harms himself or others, but usually only when one or more of the following conditions are present:
- the volunteer is working in the context where advice is given
- the volunteer has the appearance of being skilled
- the volunteer might foresee that the other person could rely on the advice
- the volunteer gives advice which causes loss or damage to the client.

There are two other areas where volunteers may be considered liable for another’s injury or loss. Defamation is a false statement written or spoken in public (to one or more other persons). Assault is the act of threatening or acting as if one is about to strike another person. This includes verbal attacks. Battery is the act of actually striking someone. Obviously the extent of the volunteer’s liability in these cases will depend on the degree to which they used force and the degree to which the act was provoked. Although such incidences are rare indeed, any abuse of power or authority by the volunteer is a particularly serious matter.

Volunteers working with those who are disabled or infirm are expected to exercise a greater duty
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

of care. If clients are less able to protect themselves, the volunteer assumes a supervisory role even if his primary purpose is to offer literacy or numeracy tutoring. Legal suits in this realm are quite rare.

A volunteer’s best defence is to fully understand and follow the policies and procedures and to stay within the limits of the job description.

Even if found to be liable for causing loss or injury to someone else, a volunteer may not always have to offer compensation. A volunteer may be protected from this if:

- it is determined that the injured person was partly or entirely responsible
- it is determined that the injured person knew what they were getting into
- it is determined that the voluntary organization was partly or entirely responsible
- there is an exclusion form to protect them from claims
- there is insurance coverage (either through the agency or a personal plan.)

A volunteer (or agency) may be protected from legal responsibility by an exclusion form, sometimes called a waiver (or release or consent form). Since a waiver is defined as the “voluntary, intentional relinquishment of a known right,” (Black’s Law Dictionary, Sixth Edition 1990), the signer must fully understand the form and its consequences. Also remember that formal legal advice is required to determine whether your waiver form is likely to be accepted by a court.

The clients (or learners) are asked to sign a form which states that they “... agree to release the voluntary organization, its officers, directors, agents, servants and volunteers from any or all causes of action...” But remember that courts will not accept the form unless the form is fair and the signer understood the legal consequences of signing it. (Public Legal Education Society, Volunteers and the Law, People’s Law School, B.C., 1992)

A volunteer should always find out if volunteers are protected in the agency’s insurance coverage. If so, what type of liability does it cover and under what circumstances? Do volunteers have to pay anything to be covered by the agency’s insurance plan?

8.3 The Liability of Board Members

Board members are a very specific subsection of volunteers. While all of the legal responsibilities that apply to other volunteers also apply to board members, there are special obligations that need to be highlighted.

Board members must act in the best interests of the organization as a whole. This is called the fiduciary duty. They are expected to manage the agency’s funds in a trustworthy manner, to act honestly, loyally,
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

and in good faith and to put the best interests of the organization ahead of their own. Financial management is an especially serious matter as board members may be liable for unpaid wages and agency debts. Since the greatest proportion of most literacy agency budgets go to salaries, this is an important responsibility.

By setting and implementing policy the board must ensure that agency objectives are carried out responsibly. The extent of personal liability of a board member will be influenced by the legal status of the organization, such as whether it incorporated or has charitable status.

<table>
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<tr>
<th>No Excuse. A board member cannot be protected from charges of negligence with excuses such as:</th>
</tr>
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<tbody>
<tr>
<td>- carelessness</td>
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<tr>
<td>- lack of knowledge</td>
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<tr>
<td>- failure to act</td>
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<tr>
<td>- being well-intentioned</td>
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<tr>
<td>- being unpaid.</td>
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<tr>
<td>Resignation will not avoid the problem either.</td>
</tr>
</tbody>
</table>

Volunteer board members are expected, and indeed required, to perform the duties of care and diligence in their responsibilities. This involves being familiar with their own roles and functions, understanding how the agency operates and knowing about the financial health of the organization. The duty of skill also requires board members to act with the skill of a “reasonably prudent person.” If they have special expertise or professional ability, they are required to fulfill their duties with the same standard as a “reasonably prudent” person in a similar profession. For example, an accountant on the board would be expected to examine financial statements with greater expertise than another board member who had no accounting training. The accountant would be expected to perform to a higher standard even if she was not the designated Treasurer.

The duty of prudence requires that board members be cautious and careful in anticipating the consequences of their decisions. Board members are expected to avoid taking risks and to act in the best interests of the agency. Risk management is the systematic analysis of hazards that could occur and the strategies to reduce or alleviate those potential problems. It is up to the Board of Directors to consider possible risks to volunteers, learners, the agency, the board, the public and even to property. The development and enforcement of policies and procedures are one way for the board to demonstrate that they have anticipated and taken precautions for, the risks of the agency’s operations.

Board members must be careful to avoid conflicts of interest (apparent or actual) and to avoid any personal gain from their position. When a conflict occurs the board member must disclose it
immediately. In some cases, profits made by a board member through association with the agency must be accounted for and paid back. Remember to watch for working relationships that can give rise to opportunities for short-term work. If you sit on the board of a literacy organization, such as OLC, LLO, CLO or regional networks, which sometimes hire people to do projects or short-term work, you have to declare your conflict of interest as soon as possible.

The duties of care, diligence, skill, trustworthiness, and prudence are essential since board members could be liable for the following:

< activities which go beyond the organization’s purpose
< criminal activity which was approved by the board
< losses caused by a breach of duty
< repayment of the agency’s debts.

Liability is not limited to these. Common sense and foresight in planning and developing policies and procedures, directors’ responsibilities can be managed and their liability reduced.

Volume One contains further information on the roles, responsibilities, duties and code of conduct for board members. Please see pages 62, 102, 103.

8.4 The Liability of the Agency

Depending on its legal status (how or if it is incorporated), the agency will have different limits of liability. These are outlined in the constitution and by-laws. Like individuals, the organization is subject to the duty of care, whereby it must avoid injuring or harming anyone through actions which were foreseeable.

The agency can be held responsible for the actions of its volunteers, including board members, if the volunteer was performing tasks as requested by the agency and following proper procedures. Thus, it is the responsibility of the agency to make sure that volunteers are:

< properly selected,
< working in safe places,
< working with proper equipment/resources/support,
< adequately coordinated, trained and supervised.

The organization has a responsibility to maintain a safe building whether the agency owns, rents or uses it for only one event. The agency may be liable for damages or injury to both people and property.

Under the Ontario Human Rights Code, discrimination based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap, is not permitted as a basis for hiring, selection or offering services and/or
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

products. If a charge of discrimination can be proved, the agency may be liable to compensate the complainant. Only bona fide criteria can be used in the selection of staff, volunteers or learners. You should consult the Human Rights Code to clarify the legal elements of your selection and eligibility criteria. Again, one of the agency’s best defences is to develop and follow written policies and procedures.

The organization’s liability for some of the above legal obligations may be reduced or limited if:
- it is found to be following the standard practices of other voluntary organizations;
- it can show that the injured person was partly or entirely responsible;
- it has an exclusion form to protect it from claims (see box above);
- it has insurance coverage;
- it is determined that the injured person knew what she was getting into.

8.5 Safe Practices

Part of managing liability is to assess and mitigate the risks to individuals and the agency. Putting your policies in the positive context of safety rather than the negative light of unpleasant consequences will better help people to understand and comply. Special effort is needed to make safety and security procedures known to all volunteers, learners and staff who come and go frequently and who meet at different times and locations as is common in literacy agencies. These procedures should be designed with the specifics of each role in mind. How does your agency communicate safety and security information on the following?
### Safety Checklist

**Facilities/property/site**
- Fire safety
- Accidents/injuries
- First aid kit
- Fire extinguishers
- Maintenance and cleaning
- Snow and ice removal
- Reporting damages
- Fire/police/ambulance contacts
- Emergency exits
- Kitchen safety
- General cleanliness

**Work Environment**
- Lighting/heating
- Working in isolation or in public places
- Keys and security
- Alarm systems
- Shared systems (in situations of co-location)

**Communication**
- Informing people (volunteers and/or staff members) of your whereabouts
- Access to telephone (or pager, cell phone) while on agency business
- Emergency contacts (after hours)

**Personal Safety and Comfort**
- Appropriate behaviour
- Knowing relevant medical information or health conditions of those with whom you work
- Disruptive and offensive behaviour
- Maintaining an atmosphere of mutual respect
- Foul language
- Appropriate time and place for tutoring and/or meetings
- Violence, assault and threatening language
- Violent language
- Release of personal information
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

When a serious incident does occur, it is important that the facts be recorded as soon as possible while details can still be remembered. A basic Incident/Accident Report Form can be developed to ensure a consistent response. The form could contain sections to record the who, what, when, where, how and why of what happened. If these forms are to be forwarded to senior staff or the board, there must be some assurance that corrective or preventive follow-up action will be taken. Ideally, there could be a “guaranteed” response time to deal with incidents or complaints.

8.6 Insurance

People differ widely in their views on insurance for non-profit groups. Some argue that precautionary measures can adequately offset the element of risk. Some feel that the degree of protection available to non-profit groups, from insurance coverage, is not worth the cost. Community literacy agencies should consider both risk management and some form of insurance coverage.

There are many types of insurance available. You are advised to consult an insurance professional for detailed information.

Unfortunately, neither individual insurance companies, nor the industry as a whole, produce informative guides or resources with an overview of products available to non-profit agencies. Companies prefer to handle inquiries on an agency by agency basis. You will have to do your own research.
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

**Comprehensive General Liability Insurance**: This coverage provides protection for the organization from claims made against it for injury or damage to other people or property. This is the basic general insurance to consider.

**Non-owned Liability Insurance for Vehicles**: Voluntary organizations that use the cars of their staff and volunteers to transport people should consider this type of insurance. This does not protect the volunteers themselves, just the organization if it is sued.

**Special Excess Third Party Liability Insurance**: This is similar to non-owned third party liability, but it extends to the voluntary organization’s officers, board members, employees and volunteers who use their own cars.

**Malpractice and Professional Liability Insurance**: If the voluntary organization offers advice or counselling, it should consider this type of insurance to cover any errors, omissions, or negligence. Both the volunteer and the voluntary organization are protected.

**Directors’ Liability Insurance**: This type of insurance protects the directors of the voluntary organization from liability for their actions if they are sued. This insurance will not cover any breach of the board member’s duties when he or she is acting against the interests of the organization (e.g., fraud, bad faith, dishonesty).

**Insurance Protection for Injured Volunteers**: Consult the appropriate Workers Compensation Authority to see if coverage would be applicable to your volunteers.

(Public Legal Education Society, *Volunteers and the Law*, People’s Law School, B.C., 1992)

The above list highlights the insurance coverage most commonly required in the non-profit sector, but you don’t have to understand everything about insurance before you enter the insurance marketplace. Plan with your own needs and terms in mind.

1. Establish your requirements for selecting an insurance provider. Consider any or all of the following:
   - an insurance broker who is referred by another non-profit agency
   - an insurance company with significant experience in working with non-profit agencies
   - a firm that is pleasant and informative in providing clear information in your initial inquiries over the phone
   - a broker who is willing to take time to explain things using clear language
   - a firm/broker that is reputable in the community
   - an agent who is willing to come and do a presentation and answer questions
   - an agent who is accessible and takes the time to answer your calls
   - a firm with the cheapest rates
   - a firm that supports literacy.
### An agent versus a broker?

<table>
<thead>
<tr>
<th>Insurance agent:</th>
<th>Insurance broker:</th>
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<tr>
<td>Ç employed by an individual insurer</td>
<td>Ç represents various companies (but be sure to find out which companies he represents and where he places most of his business)</td>
</tr>
<tr>
<td>Ç knowledgable about the specific products and services of the company he or she represents</td>
<td>Ç able to “shop around” different groups of companies for you</td>
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</table>

According to the Insurance Bureau of Canada, it can pay to consult both brokers and agents. And remember to compare service as well as quotations and coverage.

2. Delegate someone to make preliminary inquiries to insurance providers. A staff person or board member, or even a small team of two or three, can do the research and report back on their findings. When calling with questions, they should have a brief outline of the organization and its insurance needs. If necessary consult with your legal counsel to help you understand who and what needs to be insured.

3. Invite one or two of the brokers to come and speak to the entire board or a designated search committee.

4. Don’t be bowled over by the sales pitch. Present your needs based on your own agency profile and statistics, such as:
   - Ç number of volunteers
   - Ç number of board members
   - Ç total budget
   - Ç nature of services provided
   - Ç number of clients served
   - Ç number of staff
   - Ç structure and operations
   - Ç areas of risk
   - Ç different insurance needs for different groups in your agency (staff, board members, learners, volunteers).

Check with your insurance agent/broker and your accountant to determine whether your insurance could be considered a taxable benefit for your personnel.
5. Prepare and ask your questions. Keep asking until you have answers. Get the answers in writing. You will want to understand what is covered and particularly what is NOT covered in order to make plans to reduce your exposure to risk.

Coverage for people:
- Who is covered? Under what circumstances? (injury, malpractice, negligence, errors, breach of duty)
- Who is not covered? Under what circumstances?
- What is the length of time to respond to claims?
- What is the process for making claims?
- “What If?” (possible or likely scenarios for your agency)
- What would disqualify an individual or agency from insurance protection?
- What is the extent of the protection (e.g., are drivers covered?)

Coverage for property:
- What property is protected? What is not covered?
- How is replacement value arrived at?
- What is the deductible?
- What is the process for making claims?
- What is the length of time to respond to claims?
- Is there coverage for business interruption? For contractual obligations?

The cost:
- What are the insurance options and their costs?
- What are the payment plans, if available?
- Are there standards and practices that could reduce our rates?
- Are we likely to face sudden price increases?

6. Collect and summarize the facts. Remember that insurance brokers cannot give you legal advice, so involve your legal counsel if necessary, before you make a decision about which company and coverage to go with.

7. Circulate the highlights of the insurance coverage to everyone in the agency. You need to explain the scope and limitations of the insurance coverage in clear language. You may even want to recommend options for individuals to check with their own insurer.

8. Based on the coverage you have purchased, determine implications for policy. You may need to develop new policies to reduce risks not covered by the insurance, or you may need to ensure certain practices are in place in order not to be disqualified from coverage. For example,
if the organization will not be responsible for staff or volunteer vehicles, tutors may not be permitted to drive learners on any agency business unless they have written documentation of appropriate personal coverage.

Liability insurance may not cover libel, slander, dishonesty, illegal activities, failure to maintain insurance for the organization’s property, or improper reimbursement. Sometimes you can purchase this additional coverage on a rider.

9. Set a date each year to review insurance needs, well in advance of the renewal date. Keep in touch with your insurance broker throughout the year. Let her know about any changes in your location or operations. Ask for updates in non-profit insurance. Invite the agent or broker to attend important functions, to support literacy or even to volunteer. Send her the Annual Report. And don’t forget to share your insurance tips with colleagues through AlphaPlus discussions.

Although currently there is no specific legal requirement for non-profit agencies selecting and purchasing insurance, MTCU requires that literacy agencies have a minimum of one million dollars comprehensive general liability insurance. Each agency must choose the right insurance for its needs.

8.7 Your Turn

 Liability and Risk Management
   - All staff, volunteers and learners are required to understand and sign a waiver to protect themselves and the agency from claims.
   - We fully explain the waiver that learners are required to sign when they start with our agency.
   - Our agency has legal counsel.

 Confidentiality
   - All staff, learners and volunteers are asked to respect the privacy and confidentiality of personal information.
   - All financial records are kept in the main office where board members can inspect them at any time.
   - We have clear policies on discrimination and confidentiality which are explained to all staff learners and volunteers.

 Board Liability
   - Board members review the financial statements on a regular basis.
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

- An information package is sent to the board members prior to the board meetings.
- Our agency has regular audits by reputable chartered accountants.
- Our board and committee minutes as well as monthly staff reports are circulated to board members; copies are also available for viewing at the office.
- We have orientation for board members, staff, learners and volunteers.

Safety Procedures
- We have a list of safety and emergency procedures.
- We have developed a reporting system to record any accidents or safety incidents.
- We have a written safety procedure which is distributed to all employees and volunteers.
- We have a plan for dealing with emergency situations.
- The fire safety procedures are communicated to all staff, learners and volunteers.

Insurance
- We have clear guidelines on who and what is covered by our insurance policy.

8.8 Tips and Resources

Brainstorm among staff, board members and/or a mixed focus group (with learners, volunteers and staff) about the realistic potential for problems in your agency. Remember that if an occurrence is foreseeable, you might be held liable for not taking appropriate preventive action.

What a volunteer will want to know:
1) Can you provide me with a complete job description that includes a list of the responsibilities of the position I’m interested in?
2) Who is my supervisor? Who is that person’s supervisor?
3) Please give me a complete list of safety procedures and people to contact.
4) Please let me know how to report any incidents or loss or injury.
5) Please explain the type of insurance carried by this agency and whether it covers me.

Take this seriously Do your duty to protect yourself, your agency and others. See the checklist in Appendix #8.10.1 at the end of this section.

Duty of Care video. This short 15-minute video is ideal to show to staff and board members as it provides an overview of screening as a part of managing risks. It can be ordered from Volunteer Canada at 1-800-670-0401, for a cost of $15. A local volunteer centre or library may also have it available to borrow.
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

Legal links. The Insurance Council of Canada has a thorough listing of various legal sources on the Internet. The Council has selected some frequently-used sites in legal research, mostly Canadian. Each comes with a brief annotation about the content covered. Go to www.insurance-council.ca/Legal/English/Public/LegalLinks.htm.

Legal services at your service. The up-to-date information you are looking for may already be available for free. The Volunteer Lawyers Service offers legal services at no charge to charitable and not-for-profit community organizations. Pro Bono Students Canada is a network of law schools and community organizations that matches law students who want to do pro bono work with public interest and community service agencies. They both produce informative fact sheets on current topics. See Where to Turn for Further Support in the Supporting Documents section of this Guide.

8.9 For Reference

The following sample policy statements are presented as examples of different sense, style and wording you can adapt in your own policy development. You can then develop procedures to outline how the policy will be implemented. The statements are presented under several subheadings, which follow the general sequence of information in the foregoing text.

Volunteer Management

The volunteer is not expected to perform tasks beyond the job description unless the request comes from his immediate supervisor.

The tutoring relationship will be terminated without delay when there has been a deliberate breach of policy which puts the learner or the volunteer at risk.

It is the policy of this agency that no one will ever knowingly be put at risk in the performance of her duties.

Violence, assault, discrimination, threatening or harassing behaviours are grounds for immediate dismissal.

The Coordinator of Volunteers is expected to conduct a risk assessment for each tutoring situation.

Board Responsibilities

See also Policies that Apply to Board Members, Section Three, Volume One.

Board members receive a meeting information package well in advance of all board meetings.
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

Board members receive the minutes and committee and staff reports in a timely manner, as agreed upon.

Board members receive regular financial statements, as agreed upon.

Minutes and financial statements are kept in the main office for board members to review.

Only people with designated signing authority can sign contracts on behalf of the board.

Our board members have an obligation to stay informed of agency business and finances.

Safety

All volunteers and learners will receive emergency contact information with procedures to follow in case of problems or accidents while on agency business.

All accidents or safety problems related to agency business will be reported to the person’s immediate supervisor within 24 hours of their occurrence.

This agency is committed to ensuring that people using the office/classrooms after hours have a safe environment. Staff will not be expected to work alone after hours.

This agency is committed to ensuring that all sites for tutorial meetings are comfortable, safe learning environments.

Tutoring hours are to be scheduled at the centre, or at a public place (church, school, library). This agency does not permit students and tutors to meet in private homes.

This agency will not be held responsible for incidents occurring to tutors and learners who choose to meet outside the designated tutoring locations.

Students and tutors agree to meet in safe, mutually convenient locations.

No files containing personal information on learners, volunteers or staff shall be removed from the premises.

Volunteers and tutors are not to exchange telephone numbers and last names for the first few lessons until they feel comfortable about sharing that personal information.
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

The first tutor-learner meetings will always take place at the office. No personal information is to be revealed until the tutor and volunteer exchange it voluntarily.

Our organization will not tolerate any threat (actual or perceived) to the personal safety of others on its premises. Aggressive behaviour must be reported immediately to the Executive Director, who is authorized to respond as appropriate, which may include removing the person from the program or calling in the police.

Emergencies

All volunteer or learner accidents shall be reported to the Student-Tutor Coordinator within 24 hours. All staff accidents shall be reported to the Executive Director within 24 hours. The details will be recorded on the agency’s Accident Information form and forwarded to the Executive Director for appropriate action.

All accidents involving paid employees will be reported to the Workplace Safety and Insurance Board (formerly the Workers Compensation Board) within the mandatory period allowed.

All occurrences of allegations and/or accusations against the agency, the staff, the learners or the volunteers will be reported to the Executive Director, who will inform the board executive, in order to take immediate, appropriate and effective action.

Any unexpected and abnormal incidents that arise will be reported to the Executive Director within 48 hours. Incidents and accidents including natural disasters, criminal activity and inappropriate behaviour will be documented and kept on record.

Health and Medical Issues

All staff, learners and volunteers should be prepared to disclose serious health conditions or allergies for their own health and safety and that of others.

Those contagious diseases are required to cease their duties for as long as it takes to recover.

Smoking is not permitted during meetings or lessons in our facilities.

Insurance

This agency will maintain appropriate insurance coverage, which will be reviewed annually.
SECTION EIGHT: POLICIES FOR MANAGING LIABILITY AND RISK

Personal cars driven on agency business are not covered by the agency’s insurance.

Our insurance policies are communicated to and understood by everyone in our agency. A summary of who and what is covered is distributed annually and is posted in the office.

Our insurance coverage will be reviewed annually to ensure that it is still adequate for our needs.

Liability and accident insurance is provided to all volunteers while on agency business. Specific information on the coverage is available from the Coordinator of Volunteers.

Liability and accident insurance will not be provided for any volunteers even during agency business. Volunteers are encouraged to consult with their own insurance agents regarding the extension of their personal insurance to include community volunteer work.
APPENDICES FOR SECTION EIGHT

8.10 These appendices contain documents which support the content of Section Eight.

8.10.1 Checklist for Responsible Management
8.10.2 Important Sources
8.10.3 Not-for-Profit Alert
Appendix # 8.10.1:

CHECKLIST FOR RESPONSIBLE MANAGEMENT

No one can have “perfect knowledge” on everything there is to know and do. You do the best you can to take responsibilities seriously without becoming overwhelmed with the risks and liabilities. Here are some steps which can be taken to reduce your liability and exposure to risks.

Everyone associated with your agency:

ē Common sense and taking time to think things through.
ē Act with reasonable care and diligence

The Volunteers (may depend on their position):

ē Need to insist on a clearly defined job description.
ē Need to understand the importance of confidential, privileged and sensitive information (when information is protected and when it must be reported.)
ē Need to ask for clarification and support when needed.
ē Need to follow the agency’s policies and procedures.
ē Need to avoid talking, gossiping or speculating about the learners with whom they work.
ē Need to take care in offering “advice” to clients or learners who often see the volunteer as a believable and authoritative source for information (should admit if they are not sure, encourage client to verify the information, etc.)
ē Need training in all of the above.

The Board Members:

Regulatory
ē Need to ensure that the organization is operating within its “objects” (legally stated purpose) at all times.
ē Need to know and understand the organization’s by-laws, letters patent and articles of incorporation, by-laws and constitution.
ē Need to regularly review and amend the constitution and bylaws to keep them up-to-date.
ē Need to know duties and obligations under corporate law, common law and other legislation.
ē Need to be sure that organization is fulfilling all aspects of its non-profit and tax exempt status.
ē Needs to ensure that all the statutory requirements of being a non-profit are met.

Behaviour and actions
ē Need to be familiar with the functions and actions of the board and its officers.
ē Need to ask for explanation, help, and training when issues are not clear.
ē Need to ask questions and keep asking until answers are provided.
ē Need to avoid taking any unnecessary risks.
Need to always act in the best interests of agency.
Need to be loyal to the agency.
Need to act honestly, and in good faith.

Meetings and minutes
Need to keep all minutes and board documents in a file or binder for easy reference.
Need to hold and attend regular meetings
Need to thoroughly review and approve all minutes and reports.
Need to arrange for the timing and scheduling to receive regular written staff and committee reports.
Need to read any background information provided before meetings.
Need to have adequate time to consider important matters.
Need to seek qualified professional advice as needed (insist that it be provided in writing.)

Board structure and decision-making
Need to ensure that all board members are familiar and comfortable with the board decision-making process.
Need to understand issues before voting.
Need to record any objections in the minutes if you disagree with a motion.
Need to declare any conflict of interest, in writing, immediately (no matter how small or direct.)
Need to ensure that your declaration of conflict is recorded in the minutes.
Need to forbid borrowing, misappropriating or misusing agency funds or any criminal activity.
Need to monitor the activities of the Executive to make sure they do not overstep their authority.

Agency Operations and personnel relations
Need to understand the activities and operations of the agency and the people involved.
Need to undertake regular evaluations of board, staff and agency performance.
Need to insist that consistent policies and procedures are followed.
Need to select competent employees.
Need to ensure that the organization is adequately insured, including board “directors and officers” coverage and liability as requested by the funder.
Need to ensure that contracts in order and up-to-date (with funders, landlord, staff, etc.)

Financial management
Need to know who is authorized to sign cheques and in what amount.
Need to read and understand financial statements (or request training.)
Need to regularly receive financial statements which cover revenues, assets, liabilities, expenses, amount of reserve.
Need to be certain that agency records are audited by a reputable firm of chartered accountants.
Need to confirm that employee deductions and other statutory remittances have been paid and are up-to-date.
Need to ensure that creditors are paid in a timely manner.
Need to ensure that annual tax returns are prepared and filed.
Need to vote against making expenditures if funds are not available to cover the item.

Need to avoid personal gain at agency’s expense (must not vote on transactions which would create a personal profit.)

Need to have selection and screening criteria for those individuals who will be working with agency funds.

Need to engage a reputable bookkeeper, accountant and/or treasurer.

Need to watch for suspicious transactions and seek explanations

The Agency:

Needs to have clear and detailed job descriptions for all positions.

Needs to have appropriate and documented screening and hiring procedures which are justifiable and legal.

Needs to ensure that there is adequate support and supervision for volunteers and staff.

Needs to create positions with tasks that are realistic and manageable.

Needs to provide training for those who will be working with learners who have special needs.

Needs to establish a buddy system or supervision close at hand.

Needs to provide consistent training for staff and volunteers.

Need to ensure that only designated people sign contracts or order supplies on behalf of the agency.

Needs to take immediate action on problems or issues.

Needs to ensure that regular maintenance checks of facilities and equipment are done.

Needs to have written safety procedures which emphasize prevention practices.

Need to ensure that policies and practices are communicated to all concerned.
Appendix #8.10.2

IMPORTANT SOURCES

Go right to the source for your legal information. Consider having actual copies of the most recent acts and regulations which apply to your agency. Reviewing your collection and updating it on a regular basis, would make an excellent volunteer or summer student position. A current legal dictionary may also be a good investment for your reference shelf.

Provincial Regulations and Requirements

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<tr>
<th>Source</th>
<th>Description</th>
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<tr>
<td>The Ontario Corporations Act from the <strong>Ontario Ministry of Consumer and Commercial Relations</strong>. Call 1-800-361-3223 (Companies Branch) or call 1-800-387-9080. The Public Accounting Act and the Charities Accounting Act stipulate how statements are to be prepared and filed for the specific organizations.</td>
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<tr>
<td><strong>Information and Privacy Commissioner</strong> (at 1-800-387-0073) for information on public records, release/consent forms.</td>
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<tr>
<td>LBS Funding and program requirements from the Literacy and Basic Skills Section of the <strong>Ministry of Training, Colleges and Universities</strong>. Call 416-326-5482 (general inquiries)</td>
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<tr>
<td><strong>Ministry of Labour</strong> for the Employment Standards Act and the Occupational Health and Safety Act (and a Guide to the Employment Standards.) This department is also responsible for occupational health and safety issues. Call 1-800-531-5551 or try online at <a href="http://www.gov.on.ca/LAB/es.introe.htm">www.gov.on.ca/LAB/es.introe.htm</a>.</td>
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<tr>
<td>Employer Health Tax (a payroll tax which may be required to be paid by the employer) from the <strong>Ontario Ministry of Finance</strong>. Call 1-800-465-6699 for up-to-date information on whether this applies to your organization.</td>
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<tr>
<td><strong>Workplace Safety and Insurance Board</strong> (a crown corporation) may require the employer to pay a payroll health tax. Call 1-800-387-5540 to assess your status.</td>
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<tr>
<td>Human Rights Code, OHRC, including legal guidelines and plan language information, go to the <strong>Ontario Human Rights Commission</strong>. Call 1-800-397-9080 or check the website at <a href="http://www.ohrc.on.ca">www.ohrc.on.ca</a>. Not to be confused with the Canada Human Rights Code which applies to federal government departments and companies with a national scope (such as airlines.) For information on the CHRC.</td>
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Note: Ontario government documents are often distributed through Publications Ontario by calling 416-326-5300 or toll-free 1-800-668-9938. You can also search online for information at [www.gov.on.ca](http://www.gov.on.ca).
Federal Regulations and Requirements

Income Tax Act and Charitable Status requirements from the Canada Customs and Revenue Agency (CCRA). Call the business services division at 1-800-959-5525 (to be connected with the closest office for your dialling area) for information about GST, EI, payroll deductions. Ask also for the Pensions Legislation. For the Charitable division, call 1-800-267-2384. The CCRA website is at www.ccra-adrc.gc.ca.

Human Resources Development Canada has information on the Canada Pension Plan (1-800-277-9914) while Employment Insurance and other inquiries can be handled from your local HRDC office (see telephone blue pages.)

And don’t be afraid to seek out free expert advice from legal counsel, insurance advisors, government departments, human resource professionals, public relations firms, other community service agencies and even colleges and universities that offer inexpensive or free consulting services.
Appendix 8.10.3

NOT-FOR-PROFIT ALERT
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LEGALESE

Meetings of Directors and Members
The meeting requirements for both directors and members have been simplified.

Now, a resolution to the Board of Directors which is signed by all the directors is as valid and effective as if passed at a meeting of the directors duly called and held for the purpose of passing the resolution. Likewise, a resolution of the members which is signed by all the members is as valid and effective as if passed at a meeting of the members duly called and held for that purpose.

The actual meeting procedure for directors has also been streamlined by allowing meeting by telephone, electronic or other communication facilities so long as all persons participating in the meeting are able to communicate with each other simultaneously and instantaneously. The electronic meeting must be consented to by all participating directors and not specifically prohibited by the by-laws of the corporation.

Rotation of Directors
The general rule is that the election of directors must take place annually with all directors retiring each year but eligible for re-election for a further year. Before the amendments, if a corporation wanted to elect it directors in rotation (e.g directors elected for staggered two year terms), the authority to do that had to be included in the Letters Patent or Supplementary Letters Patent of the corporation.

Now, the provision for election of directors in rotation may be authorized in the by-laws of the corporation. In other words, there is no longer a need to apply for Supplementary Letters Patent when a corporation wishes to introduce or modify such an election procedure. However, there remains the requirement that if directors are to be elected in rotation, no director may be elected for a term of more than five years and at least three of the directors must retire from the office in each year.

These changes parallel changes that were made for “for profit” corporation years ago and are a welcome updating of corporate maintenance requirements for the not-for profit sector. Further information may be obtained from the Companies Branch of the Ministry of Consumer and Commercial Relations (1-800-361-3223).

Peter Graham, Lawyer