

Mental Health Policies & Procedures: A Manager's Toolkit

Risk & Liability- Fact Sheet

Important Note: The information in this Toolkit and fact sheet is provided for your educational use only. It is not legal advice. Always consult a lawyer if you have a legal problem or question.

“The Supreme Court of Canada has ruled there are no special exemptions available to charities for liability. Charities are held accountable in the same manner and to the same extent as for-profit organizations.”

~ Mervyn F. White, B.A., LL.B.

Targets to meet, reports to write, budgets to calculate and so much more take up our time as busy managers in the not-for-profit industry. Rarely do we have a moment to consider organizational risk and liability...until it's too late. This fact sheet will help you understand the basics, and importance, of risk and liability for your organization.

What is Risk? It is the possibility that something harmful or undesirable may happen. This could include harm, injury, or abuse to your organization's clients, volunteers, Board members, employees, property, or reputation.

What is Risk Management? It is the term for the procedures that an organization follows to protect itself, its staff, its clients, and its volunteers. It is an ongoing process.

Source: http://library.imaginecanada.ca/files/nonprofitscan/kdc-cdc/guide_kowalski_risk_eng.pdf

No one can eliminate all risk! Your responsibility is to demonstrate that you have recognized the risks involved in your programs and have taken reasonable precautions to prevent them from causing harm. Below are some examples of risk strategies for you to consider for your staff and organization:

- Have staff meet clients in public places, not in homes; let another colleague know of the location
- Have windows on doors wherever vulnerable clients might be meeting with staff
- Create a secret code to let another colleague know help is needed
- Don't allow staff to drive clients in their own cars
- Update criminal record checks regularly
- Do not allow private meetings with children; always have two adults present
- Obtain and call references for all new hires
- If operating a program involving children, limit access to the children; have all visitors sign in/out of the facility
- Limit third party use of all of your unit/facility
- Ensure policies & procedures are in place and enforced; continually communicate with staff
- Act on all complaints
- Review insurance coverage
- Include volunteers, managers and Board members when considering risk issues, not only frontline staff
- *What other strategies might work in your organization?*

What is vicarious liability?

It is the legal principle whereby one person (e.g. employer) is held responsible for the conduct of another (e.g. employee) regardless of personal blame or fault.

Example: If your employee is discriminating against a client, the organization may also be found guilty of discrimination! In simple terms, wrongful acts of employees while "on duty" are the responsibility of the employer!

Are your staff/volunteers/Board members avoiding risky behaviours?

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10 Steps to Managing Organizational Risk

- 1. Align *all* activities with your organization's mission and goals**
Do not allow staff to engage in activities that don't fit or are outside of funding parameters.
- 2. Establish clear boundaries**
Ensure staff knows what are appropriate behaviours/activities and have a clear understanding of their responsibilities.
- 3. Perform a legal risk audit**
Use the checklist in this Toolkit. Create a plan of action to implement risk strategies.
- 4. Establish clear policies & procedures**
Use the sample in this Toolkit. Include Human Resource policies related to hiring the right candidate (to avoid risk in the first place) and keep current with police checks, etc.
- 5. Train your staff**
Update the training every year.
- 6. Enforce policies & procedures**
From a legal point of view, it's not enough to have written policies. You must prove you are enforcing them.
- 7. Discipline staff if necessary**
- 8. Plan for crisis**
Use the information in this Toolkit. Train all staff, volunteers, students, etc.
- 9. Communicate**
Ongoing, not a one-time event.
- 10. Evaluate**
Revisit your plans, strategies and risk audit on a regular basis. Assess and make changes.

You're being sued!

What a manager can expect your employee's lawyer will argue against your organization:

- Non-existent or inadequate screening/hiring policies
- Non-existent or inadequate supervision procedures
- Lack of policies and procedures
- Failure to implement or act on policies and procedures
- Failure to investigate a complaint of suspicious conduct (properly or at all)

Source: Mervyn F. White, B.A., LL.B. www.carters.ca/pub/checklst/opriskman.pdf

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Learn More:



Volunteer Lawyers Service (VLS) offers free legal support to eligible charitable & nonprofit organizations in Ontario that otherwise could not afford the services of a lawyer.

www.volunteerlawyers.org

Charity & Not-for-Profit Law

www.charitylaw.ca

www.canadiancharitylaw.ca

Risk Management by Position Design

<http://volunteer.ca/files/RiskEng.pdf>

CLEONet (legal fact sheets)

<http://www.cleonet.ca/>