

Risky Business

**An Exploration of Risk and Liability Issues
Facing Volunteer Programs in the
North Okanagan**

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Social Planning Council for the North Okanagan

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The logo for Canada, featuring the word "Canada" in a serif font with a small maple leaf icon above the letter "a".

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Risky Business: An Exploration of Risk and Liability Issues Facing Volunteer Programs in the North Okanagan

1. Introduction

Issues of risk and liability may be the most difficult of the many challenges facing nonprofit organizations that operate volunteer programs. Over the past two years, the restructuring undertaken by the government of British Columbia has resulted in curtailment or elimination of government support in many areas, such as childcare subsidies and home supports for seniors. Increasingly, volunteers have been asked to fill the gap.^{1, 2, 3}

The Social Planning Council for the North Okanagan (SPCNO) is the host agency for the Vernon and District Volunteer Bureau (VDVB) in British Columbia. Over the past three years, SPCNO has heard a growing number of concerns from nonprofit organizations registered with the VDVB. Their concerns are with regard to the increased responsibilities they are being asked – explicitly or by default – to take on in response to cutbacks in government funding for income, health, and other community support services. Concern has also been

expressed about the increased levels of risk – physical, emotional, and legal – that may be faced by organizations that use volunteers to provide enhanced levels of service.

In 2004, the Social Planning Council for the North Okanagan conducted research into issues of liability and risk vis-à-vis volunteer programs in the North Okanagan. The project gathered information from those most affected by these concerns such as:

- nonprofit organizations that operate community service volunteer programs
- insurance industry representatives
- legal sector representatives
- public sector representatives, and
- volunteers.

The research revealed a somewhat troubling situation. Overall, the nonprofit organizations that participated in this research expressed little or no concern about the effect of government restructuring, nor did they express concern about their ability to assess and manage risk within their volunteer programs. Insurance and legal sector representatives were much less sanguine about the extent to which nonprofit organizations understand risk and liability issues, and the degree to which they have taken adequate measures to assess and manage risk. Perhaps of greatest concern were the responses

¹ See First Call BC, *Early childhood development in BC: First Call's framework for action*, March 2003.

² See Holland, W. *The impact of provincial government cuts on seniors*. BC Old Age Pensioners Organization. Retrieved March 2003 from <http://www.vcn.bc.ca/srsnetbc/ben/cutbacksfeb1502.html>.

³ Information for Change: Youth Services. United Community Services Co-op of BC. Last retrieved June 15, 2005 from www.infoforchange.bc.ca/uploads/400/121/YOUTH_SERVICES.pdf

of volunteers themselves. Volunteers felt that government restructuring had had a great influence on volunteer programs, and were concerned about how well risk and liability were being managed by the agencies for which they volunteered.

Findings from this research were used to develop recommendations for action by the voluntary sector, the insurance industry, the legal sector, the public sector, and volunteers themselves.

We know from anecdotal information that previous shifts in government funding policies have had severe effects on nonprofit organizations. For example, two years ago the provincial government placed new restrictions on the type of clients who could be served by one of its contractors, a major youth-serving organization in the city of Vernon. Subsequently, the demand for services at another volunteer counselling organization in the city (which operated under fewer restrictions) skyrocketed, resulting in huge waiting lists for its programs. In another example, the closure of the Community Law Office in Vernon two years ago, because of withdrawal of provincial funding, resulted in increased demands on other nonprofit organizations to help clients navigate the legal system.

From 2003 – 2004, members of the North Okanagan Non-profit Administrators' Network (a group chaired by SPCNO that meets monthly to share information and discuss common concerns) expressed anxiety over the increasing numbers of people they are seeing who are in absolute poverty. Because of reductions in income assistance, benefits, and other cutbacks in government supports, less people are eligible for *Employment Insurance* or *EI* compared to previous years. Many of those ineligible for EI show

up desperate and hungry for counselling, employment assistance, food programs, and other services.

The nature and extent of the issues faced by these clients often render volunteer programs ineffective, and overload their capacities and resources that are designed to run, or assist in running, those services.

In addition to increased demand for service and the increasingly serious problems of clients, nonprofit organizations are dealing with heightened concerns over potential liability. This is because one of two high profile, Supreme Court of Canada cases dealing with the issue of nonprofit organizations and vicarious liability originated in a youth service agency in the North Okanagan's largest city, Vernon.⁴ Given this, one might expect that organizations in the region would be particularly sensitive to the issue of volunteer liability. Nonprofit organizations are expected to defend their clients and themselves from the consequences of unethical or illegal behaviour by their volunteers, e.g., taking money and/or other goods from vulnerable seniors, or sexual abuse of children. At the same time, many organizations must also deal with the effects of budget cuts that affect their programs and core operating costs. Clearly, the issue of liability in the face of reduced funding is on the minds of nonprofit organizations in the region. For example in February 2003, SPCNO hosted two facilitated discussions on volunteer management with funding from the Community Volunteerism Initiative (CVI). Although the primary focus of the discussions was the recruitment and retention of volunteers, the twenty-two participants were also invited to suggest topics for future exploration. In each session, growing liability concerns and skyrocketing insurance rates were cited as key areas for attention.

⁴ See Voluntary Sector Forum, *Liability in the voluntary sector*. Last retrieved June 15, 2005 from website: www.voluntary-sector.ca/eng/liability/bkgd.cfm

Research Project

Government restructuring has presented organizations with a troubling dilemma: How to increase the capacity of their volunteer programs to meet community needs, while at the same time dealing with the complexity, ambiguity, and cost of managing the risk that is inherent in an expanded role for volunteers.

We conducted our research to explore the possible effects of this dilemma in the North Okanagan region of British Columbia.

In developing our project, our research team made the following assumptions, based on the input of nonprofit organizations in the preceding two years:

1. government restructuring over the past two years has increased the demands on volunteer programs by reducing the level of publicly-funded services available to area residents;
2. increased demands have led to increased liability concerns for voluntary sector organizations; and
3. increased demands on volunteers have raised questions about the ethical limits of the risk, inherent in certain activities, to which organizations can or should expose their volunteers.

These assumptions are based on a range of sources noted above, including the Non-Profit Administrators' Network, the VDVB members, and the CVI facilitated discussions on volunteer management. Information was also gleaned from ongoing formal and informal discussions among nonprofit organizations and churches in the region. The assumptions were subsequently supported by material uncovered during the project literature review, which indicated

that the Canadian voluntary sector as a whole is under significant pressure resulting from changes in government and non-government funding regimes.

Based on the above, we developed four key questions to be addressed by this research project:

1. To what degree, if at all, has government restructuring since May 2001 increased the demands on volunteer programs?
2. What liability issues have the increased demands created for nonprofit organizations that use volunteers to deliver programs in whole or in part?
3. What are the ethical limits to the degree of risk that is assumed by, or imposed upon, volunteers?
4. What strategies can nonprofit organizations use to reduce the risk and liability associated with their volunteer programs?

Volunteer programs involve many parties. As such, this research focused on five separate but interrelated interest groups: nonprofit organizations, insurance agencies, government agencies that contract out services to the nonprofit sector, lawyers, and volunteers.

2. Methodology

The study team used an action research approach to clarify the issues of increasing nonprofit risk and liability arising from provincial government cutbacks. Action research provides a process for collaborative inquiry by all groups with a vested interest in a given topic. In this study, the collaboration involved researchers, members of nonprofit organizations, volunteers, insurance agents, lawyers, and government representatives.⁵ The objective of using this approach was to encourage participants to share information, experiences, and perspectives on risk and liability for nonprofit organizations. The research resulted in this report and in the development of a guide, *Developing a Risk Management Strategy: Five Steps to Risk Management in Nonprofit and Charitable Organizations*

The research involved the following steps:

1. Establishing a Project Steering Committee

The project steering committee was central to the project's development. This committee provided feedback on the research methodology, the literature review, and data collection protocols. It also gave advice on the interpretation of results and assisted in connecting the research team to their professional knowledge networks, which included colleagues and associates with expertise in the subject area. The committee was formed through targeted recruitment of individuals with established knowledge of the nonprofit sector and/or liability issues. It met regularly

throughout the course of the research and served a dual role: It made suggestions about the directions the researchers should take and it reviewed research instruments, documents, and other tools as they were developed.

2. Conducting a Literature Review

A literature review explored risk and liability issues facing nonprofit organizations using the four key research questions as the basis for the search. We distributed the literature review to the project steering committee for review and commentary. Literature review findings helped guide the development of protocols for subsequent research tools by defining an initial list of liability and ethical concerns, and highlighting prominent risk management issues faced by nonprofit organizations.

There were challenges in conducting a literature review in a relatively small urban centre such as Vernon. Physical distance precluded an extensive review of non-Internet based resources, although efforts were made where possible to obtain such material (e.g., through the existing resources of the Vernon and District Volunteer Bureau and requests to contacts throughout the province). However, given the range of material available on the Internet, the research team believes that the material cited in the report is adequate to provide a picture of the current situation vis-à-vis the research topic.

⁵ The research adhered to the Tri – Council Policy Statement: Ethical Conducts for Research Involving Humans. Last retrieved June 27, 2005 from Government of Canada website: www.pre.ethics.gc.ca/english/

3. Surveying Nonprofit Organizations

The voluntary sector encompasses a range of organizations, including those focused on arts, recreation, sports, and health.⁶ In the initial stages of the project, the steering committee narrowed the project's area of interest to what it termed the community social services sector. This includes organizations that provide a range of supports and services to people facing socio-economic disadvantages. The steering committee further limited the research to those organizations that used volunteers for direct delivery of programs to clients.

The steering committee also decided to include churches in the study because (a) volunteerism tends to be an important component of many church operations, (b) churches form a large and active component of life in this region, and (c) previous research has not explored how potentially high-risk activities undertaken by church-led volunteers are managed.

The primary tool used to gather information from nonprofit organizations was a survey distributed in April and May 2004. The research questions were designed to gather information in four key areas:

1. the type of volunteer programs being offered;
2. the risk management practices employed for those programs;
3. the insurance coverage for those programs; and
4. information on the organizations themselves.

The survey was drafted, pre-tested with three organizations, revised, and subsequently distributed to 104 nonprofit organizations and churches in the region. The organizations tested the survey indicated that they found it very valuable in 'flagging' areas to which they needed to pay more attention. The distribution list for the main survey was drawn from the database of the VODVB, with a focus on organizations known to run volunteer programs with a social service component. Of the 104 surveys distributed, 27 completed forms were returned (22% response rate). The survey included a brief background on the research project and a series of questions about volunteer activities, risk management tools, and liability concerns.

Limitations of the Survey

Although the survey instrument was pre-tested with three organizations, all of which gave positive feedback, the survey produced a low (22%) response rate. As such, our analysis must be viewed with caution, as it is possible that results are skewed based on uneven representation of the nonprofit organizations in this region. For example, as is noted in the report, there appears to have been somewhat of a bias in the responses toward larger and better-resourced agencies. This may be because small organizations did not have the time, resources, or knowledge to complete the survey. As well, some of the smaller organizations that did not respond were local branch offices of national organizations. In cases where these branch offices were run entirely by volunteers, there may have been no volunteers who felt that they had the authority to complete this type of questionnaire.

⁶ "Voluntary sector" refers to the governance model shared by nonprofit organizations, i.e., volunteer boards of directors. Our project focused on a sub-set of the voluntary sector: organizations that use volunteers to deliver programs and services.

4. Interviewing Key Informants

We conducted key informant interviews with representatives of three key sectors: the insurance industry, the legal profession, and the public (government) sector.

Insurance Industry

The five representatives of the insurance industry who participated were self-selected, i.e., based on the recommendation of steering committee members and other nonprofit organizations, the research team contacted insurance agencies in the region and asked them to participate in the study. Of the 11 insurance industry representatives who were initially contacted, five agreed. This low response rate may be a result of recent changes in the insurance industry. There is now significantly more work required per insurance application than was the case three years ago, and agents may not be able to justify allocating time to a survey on the needs of the nonprofit sector.

Interviews with representatives from the insurance sector focused on the following issues:

- current protocols and key considerations when reviewing insurance applications by voluntary sector organizations;
- current and future trends in the insurance industry regarding liability coverage in the voluntary sector; and
- feedback on risk management strategies suggested by the research thus far.

Legal Profession

We contacted nine lawyers who had been suggested by nonprofit organizations and other lawyers. Five of the nine agreed to be interviewed.

The interviews with lawyers focused on the following issues:

- their experience both as volunteers and as legal counsel;
- current legal environment vis-à-vis the voluntary sector and use of volunteers; and
- assessment of the effectiveness of common risk management strategies used by nonprofit organizations in their volunteer programs.

Public (Government) Sector

To determine the degree to which volunteer liability is discussed at the government level, we conducted telephone interviews with five representatives from four provincial and federal government departments: the BC Ministry of Children and Family Development, the BC Ministry of Finance, the BC Interior Health Authority, and Human Resources and Skills Development Canada. The four departments were chosen based on the degree to which they are involved in funding voluntary sector activities in the North Okanagan. Interviewees were asked four questions:

- Has the issue of volunteers and liability been discussed in relation to the nonprofit organizations with which you contract for services?
- What supports does your department offer to help nonprofit contractors deal with liability issues?
- Do you require nonprofit contractors to provide risk management plans for contracted services delivered in whole or in part through volunteers?

-
- What types of service does your department consider to be appropriate for delivery by volunteers?

Limitations of Key Informant Interviews

When drawing conclusions from key informant interviews, it is important to keep in mind that this information came from a very small number of insurance representatives, lawyers, and public sector personnel who were willing to take the time to participate in the interviews. It was difficult to recruit key informants for interviews, and the research team was unable to further screen those who elect not to participate. However, given that the key informants who participated were suggested to the research team by nonprofit organizations, steering committee members, or others based on their perceived experience and knowledge of the subject area, we are confident that the information they provided is valid.

5. Conducting a Focus Group with Volunteers

The research concluded with a focus group composed of ten volunteers. Participants were solicited through letters of invitation to key nonprofit organizations in the region, which we invited to send one or more of their volunteers to the session. The focus group was facilitated by Paul Cabaj, lead researcher for this project, and Michele Blais, executive director of the North Okanagan Family Resource Centre, which hosts one of the largest volunteer peer counselling programs in the province. The facilitators led participants through an exploration of their experiences and concerns about risk and risk management in their volunteer activities. Participants were also asked to provide feedback on the findings of the agency survey and the key informant interviews.

Limitations of the Focus Group

The research team decided to recruit focus group participants from selected agencies in order to ensure that participants were able to speak from extensive experience. Although participants were assured that their responses would remain confidential, there is always the possibility that feelings of loyalty or fear that information would get back to their host agencies may have led them to be less forthcoming than volunteers recruited at random. Also, because focus group participants all came from the same small community (and an even smaller volunteer community), they may have hesitated to be completely open in their comments.

Summary of Research Methodology

The project employed a number of tools – a literature review, a written survey, key informant interviews, and a focus group – to develop a rounded picture of the status of risk and risk management in volunteer programs in an era of government cutbacks. Despite the limitations already noted, the project research team and steering committee is confident that the study presents a valid indication of issues and trends in risks facing volunteer programs in the North Okanagan. While extrapolating findings from the local to the national situation is always risky, the findings from this study have relevance to volunteer programs across Canada.

3. Summary of Literature Review

We undertook a literature review to identify existing research and other materials that might provide insight into the four research questions that guided this project. This section of the report summarizes the results of this literature review.

Question 1: To what degree, if at all, has government restructuring since May 2001 increased the demands on volunteer programs?

The available literature speaks to the experience of the Canadian and American nonprofit sectors as a whole with regard to reductions in funding or restructuring of funding approaches over the past decade.

The Canadian Council on Social Development (2003) produced a detailed report on the pressures faced by nonprofit organizations as they respond to the new funding regime of the last decade.⁷ Of the many effects of restructuring identified in the report, the two that may have the most impact on the demands facing volunteer programs are:

- *Increased targeted or restricted funding that focuses on bricks and mortar instead of programming or administration, and that favours well-established organizations.*

The move from non-restricted to more directed funding has placed extreme pressure on many nonprofits. It may have pushed many off mission as they scramble to modify programs so that they can continue with less staff support or introduce

new programming that will qualify for new funding. This, in turn, has implications for the nature and level of activity that volunteers may be asked to undertake (e.g., are volunteers being asked to take on stronger advocacy roles and/or are they being pushed into activities that were once the responsibility of paid staff?).

- *The continued perception – by the public and by many funders – that nonprofit organizations are largely voluntary enterprises, and therefore are able to maintain operations while chronically underfunded.*

Related to this is the perception that there is an abundant supply of volunteers who can carry out work for no compensation and therefore, it is not necessary to fund services or programs adequately. Further, there may be a notion that nonprofit organizations can compensate for reductions in funding by leveraging additional financial and in-kind support (including volunteers) from the community: *“The assumption is that nonprofit agencies can do more with less by recruiting more volunteers to pick up the slack....”* (Roberts 1998).

Some effects of government restructuring may have been masked by the willingness of the voluntary sector to rally forces and exert itself to address new challenges. Looking at Ontario, where drastic cuts to both the voluntary and social service support sectors were made in the 1990s, Statistics Canada (2000) found that approximately six out of every ten agencies had volunteers who worked directly with clients. It appears that nonprofit organizations, and their staff and volunteers, will push the limits of their resources to meet their missions and address community needs.

⁷ Funding Matters report.

This raises the question of whether we can assess if organizations have over-extended themselves.

Question 2: What liability issues might the increased demands have created for nonprofit organizations that use volunteers to deliver programs in whole or in part?

Although literature looking at this question in British Columbia is scant, there is a reasonable amount of literature that discusses liability for organizations using volunteers to deliver programs outside the province. This issue is complicated by the fact that the law on volunteers and general liability, and on volunteers and vicarious liability in particular, is evolving on a case-by-case basis.⁸ What is clear is that nonprofit organizations cannot rely on any special treatment under the law for the actions of their volunteers.⁹ The courts are applying rulings on standards for employee risk management and volunteer risk management.

Two 1999 rulings by the Supreme Court of Canada that involved charities and vicarious liability brought the issue to national prominence. For the first time, the courts imposed vicarious liability on a nonprofit organization for the actions of its employees:

“The Foundation [one of the organizations being sued] argued that where charitable organizations work with volunteers, it would be unfair to hold them vicariously liable for

the volunteers’ actions. The Court rejected this argument...it is not suggested that nonprofit organizations do not have a duty to screen or supervise those whom they entrust with their important work. Accordingly, the same considerations of fairness and deterrence arise, whether the organizations is nonprofit or commercial.”
(Personal communication from Edmonton Federation of Community Leagues).

Difficulties in obtaining adequate liability insurance, due to high costs and the reluctance of insurance companies to provide coverage for what they consider a high-risk sector, is frequently cited in the literature (e.g., Volunteer Canada, 2003; Volunteer Canada, 2004; People’s Law School, 2000). The complexities of liability insurance also present challenges, with some literature suggesting that many organizations are unclear about the types of activities and situations covered by their policies (Goldberg, 2002).

What may be most relevant to this research is the degree to which funding cuts may have decreased staff in nonprofit organizations and increased reliance on volunteers, severely limiting the ability of organizations to adequately manage potentially risky situations. Nonprofit organizations are in a vicious cycle – in the face of diminishing resources – they require volunteers to run their programs (Hall, 1998). At the same time, proper management of volunteers requires additional resources.

⁸ Vicarious liability is the liability of an employer for the conduct of an employee that results in harm to another person in circumstances in which it is deemed to be appropriate to impose liability on the employer (Cassels Brock & Blackwell LLP (n.d.).

⁹ Cassels Brock & Blackwell LLP (n.d.). *Vicarious liability in the non-profit sector.* [http://strategis.ic.gc.ca/epic/internet/incilp-pdci.nsf/vwapj/vicarious_en.pdf/\\$FILE/vicarious_en.pdf](http://strategis.ic.gc.ca/epic/internet/incilp-pdci.nsf/vwapj/vicarious_en.pdf/$FILE/vicarious_en.pdf)

Question 3: What are the ethical limits to the degree of risk that is assumed by, or imposed upon, volunteers?

The question of ethical limits, regarding the degree of risk to which volunteers can be subjected, is not well addressed in the literature. This question was implied in discussions on volunteerism with the focus tending to be on workers, organizations, and civil society in general rather than on volunteers. But as suggested by the following quote, the ethical limits to risk translates into a critical public policy issue that requires extensive scrutiny and open public debate:

“The question that arises for me as I observe the shifts in volunteerism over the last century, compared to shifts in volunteerism taking place right now is this: to whose ends?...Here we are, struggling to promote volunteering with too few resources. Politicians and other funders cut budgets year after year. They push agencies into ever-greater reliance on volunteers...”(Graff, 2003, p. 3).

There has been little analysis of the trend toward relying on volunteers to fill the gaps left by funding cutbacks, and nothing was uncovered about the increased liability assumed by volunteers who take on expanded responsibilities. As one study notes,

The assumption is that non-profit agencies can do more with less by recruiting more volunteers to pick up the slack....The expectations

and role of the voluntary sector in providing social services in a civil society needs to be more carefully examined...there has been very little discussion on the nature and limits of volunteer activity.
(Roberts 1998, p. 2).

While there is a reasonable amount of literature on changes in government funding mechanisms and philosophies vis-à-vis the voluntary sector, there is little discussion of the effects of government restructuring on the philosophy of voluntarism itself or the role of volunteers. Arai (1999) points out rather than being valued as a dynamic and critical component of a democratic society, increasingly the *value* of volunteerism is defined by the money that governments can save by having volunteers rather than paid employees deliver programs and services. This fits well with the agenda of fiscal reform adopted by many Canadian governments since the 1990s, which often view contracting out of public services to nonprofit organizations as attractive on a number of counts, including low pay rates in nonprofits, the use of volunteer labour, and the ability of nonprofits to raise money privately to offset government expenditures. The danger in this approach is that the focus on *saving money* can mask legitimate discussion of the appropriateness, or lack of appropriateness of using volunteer labour to deliver certain kinds of services.

Roberts (1998) called for more research into, *“the role nonprofit organizations have played in mitigating some of the effects of government cutbacks in social services and how this has made the true impact of cuts invisible to the general public”* (p. 9). A growing trend is to use volunteers to deliver home care

services (e.g., delivery of meals, feeding, and transportation to appointments) which may inadvertently block the shift in public health funding away from institutional care to community-based health models. As long as nonprofit organizations are willing to marshal volunteers to deliver home-based services, health authorities can continue to focus their financial resources on institutional care settings (Volunteer Canada, 2003). As will be seen in the results of our study, what makes this situation even worse is that there is reason to doubt whether organizations and volunteers themselves are fully aware of the risks they may be assuming in these and other roles.

As Roberts (1998) points out, the appropriateness, capacity, availability, dependability, and costs of volunteers to provide social services will need to be publicly examined. Volunteers are not free labour and may not have the capacity, time, and training to provide consistent professional social services and may also be unwilling to do so, according to Roberts. In fact, it must be questioned whether some fields of work are appropriate for volunteers at all.

Ultimately, the voluntary sector as a whole needs to have more discussion about the ethical limits of using volunteers in roles that entail greater risk and that may skew the design/redesign of publicly supported services.

Question 4: What strategies can nonprofit organizations use to reduce the risk and liability associated with their volunteer programs?

“Purchasing insurance has often been the sum total of the risk management effort of many nonprofits, but this approach is too

limited. Consider risk management to be an entire system of ways of dealing with risks, of which insurance makes up only one component.” (Denton & Lally, 1998, Part 2)

However, nonprofit organizations’ knowledge of and ability to implement risk management strategies appears to be uneven at best. An extensive survey of risk management and liability insurance among nonprofit organizations in British Columbia found that examples of risk management policies, practices, and procedures abound but that many organizations are not aware of or have not implemented these policies or practices (Goldberg, 2002). It appears the degree to which nonprofit organizations have addressed risk and liability issues is a function of their size and financial capacity. This is not surprising when one considers that risk management is a complex, ongoing, and labour-intensive process. Small organizations, including those run entirely by volunteers, are often focused on getting the task done. They may not have the institutional capacity or, in the absence of a provincial or national parent organization, the framework for managing risk. Even where manuals and online training resources exist, organizations may not have the time, energy, technological capacity, or administrative structure to access that material. As well, the move from program or core funding to project funding (as discussed earlier) means that organizations tend to have less access to the discretionary funds that would allow them to address this and other organizational capacity issues.

Leaving aside for a moment the issue of time and resources, the substantial body of literature on risk management (Carter, & Connor, 2003; Denton & Lally, 1998; Graff, 2003; Jackson, 2003; Nonprofit Risk

Management Center, n.d.) provides clear guidelines for establishing an effective risk management strategy.¹⁰ The recommended approach can be broadly summarized as follows:

1. The single best way to protect an organization from liability is to have a proactive and preventative risk management strategy in place.

One way to frame the risk management process is by establishing the context (e.g., what barriers exist to implementing a strategy, who will manage it, and how will it be staffed?), identifying the risks, evaluating and prioritizing the risks, and selecting and implementing the appropriate risk management strategy.

Establishing a risk management system involves a number of sequential steps. These are:

- set goals, objectives, etc. for a volunteer program;
- decide what activities are needed to achieve these goals;
- identify the specific risks or liability issues that might be associated with those activities;
- identify risks and liabilities that are shared in common by different activities within the program;
- design a system of protection to reduce these general and specific risks and thus the likelihood of being liable for damages; and
- decide on costs for putting a protection strategy in place.

2. Risk management is not a one-shot deal that is undertaken when a risk management program is started or a new volunteer is recruited. It is an ongoing process that requires continual supervision, review, assessment, and adjustment when necessary. This, in turn, means that organizations must have adequate and consistent resources to monitor and evaluate their program's risks on a continual basis.

3. Risk must be assessed on two levels: that is risk of injury to volunteers and risk of injury caused by volunteers.

The literature expresses some concern that voluntary sector organizations do not fully realize the liability implications of the actions of their volunteers. They focus solely on injury that may happen to their volunteers rather than the potential risk to the individuals with whom their volunteers are interacting.

4. Comprehensive liability insurance, while essential, is not in and of itself sufficient as an overall risk management strategy.

As noted, there is a risk that organizations will rely solely on insurance to protect themselves from liability. Not only is insurance alone an extremely ineffective strategy, the literature shows that organizations are often not fully aware of the limits of their insurance policies. Goldberg (2002) found that 13% of the organizations surveyed were not sure whether they needed general insurance and 23% were not sure whether they needed to get Directors and Officers Liability Insurance.

¹⁰ The Nonprofit Risk Management Center allows access to risk-management, information videos and training tools once you have registered. Last retrieved June 15, 2005 from Nonprofit Risk Management Center website: www.nonprofitcares.org/login/

As well, it is unclear whether increased insurance costs have been recognized and compensated for by funders or if they are viewed as core operating costs and therefore seen as ineligible for funding. If the latter is the case, then organizations may be forced to find ways to compensate for these costs. There is also growing concern about the cost of insurance, specifically liability insurance. This problem is international in scope. A 2003 study commissioned by the British Home Office details a host of insurance issues facing the nonprofit sector that also have relevance to groups in British Columbia.¹¹ Issues include the cost of premiums, a lack of insurance industry awareness of the voluntary sector, and an increasingly litigious society in which people are much more inclined to sue in order to redress real or perceived wrongs.

Conclusion to the Literature Review

In summary, although many nonprofit organizations continue to experience reductions in government funding, the scope of their responsibilities and resulting exposure to potential risk, appears to be increasing. At the government and public policy level, there appears to be an implicit assumption that the increased use of volunteers to deliver a host of community services is a legitimate expectation of government, and an acceptable means of reducing government costs. However, this assumption has been made in the absence of solid research on the potential effects on volunteers and volunteer programs. At the level of the courts, the risks assumed by volunteers are seen as indistinguishable

from those of paid staff who have similar responsibilities and tasks in the private sector. But many nonprofit organizations appear to be preoccupied with finding new funding sources and with meeting the growing needs of their communities and client bases. Consequently, they may not be aware of or have time to explore and implement appropriate risk management tools.

To some extent, the confusion surrounding liability and the use of volunteers is indicative of the general lack of clarity about the role of the voluntary sector in general. Although reports such as the National Survey of Giving, Volunteering, and Participating¹² indicate broad public support for the sector, decisions at the public policy level often appear to be made without understanding the effect that they may have on organizations and individuals on the ground. Many nonprofit organizations are often forced to expand and/or redefine their mandates in response to changes in public policy and frequently find themselves in crisis mode, with no time to examine the implications of any additional responsibilities they may be asked to take on or their capacity to manage those responsibilities. This may extend to managing risk in their volunteer programs, a question we will be exploring in this report.

¹¹ Alison Millward Associates with Rawlings Heffernan Consultancy Services and Lucas Fettes (2003). *Research into insurance cover for the VCS in England* Birmingham, UK: Alison Millward Associates. Last retrieved June 15, 2005 from British Home Office website: www.homeoffice.gov.uk/docs2/icwg_report.pdf

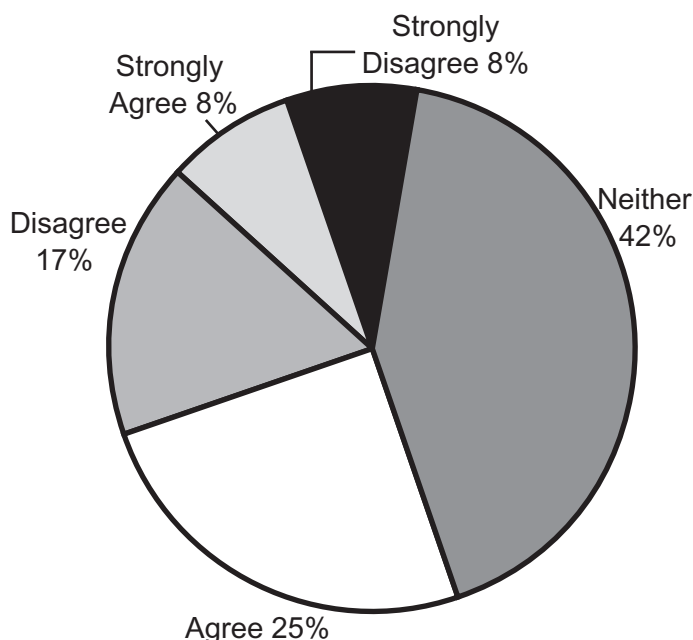
¹² Hall, M., McKeown, L. & Roberts, K. (2001). *Caring Canadians, involved Canadians: highlights from the 2000 National Survey of Giving, Volunteering, and Participating*. Ottawa: Statistics Canada. Last retrieved June 15, 2005 from Giving and Volunteering website: www.givingandvolunteering.ca/reports/2000_NSGVP_highlights.asp

4. Findings About Nonprofit Organizations

Survey of nonprofit organizations in North Okanagan

One third (33%) of the nonprofit organizations that responded to the survey agreed or strongly agreed with the following statement: “Government ‘restructuring’ and changes in funding have placed greater pressure on our organization to have volunteers perform functions that are beyond the scope of our mandate.” (See Figure 1)

Figure 1: Organization Responses to Impact of Government Restructuring on their Activities



The most common changes identified by those who agreed with this statement included increased reliance on volunteers and increased pressure to have volunteers conduct activities beyond their skill levels. Of the 15% of organizations that either disagreed or disagreed strongly with the statement, several noted an increase in demand for volunteer

services. However, they did not believe that they had gone beyond their mandates in response to this increased demand.

Organizations were asked about any changes in their involvement of volunteers over the past three years. Nine organizations (33%) reported that they have increased their use of volunteers. Of these, five organizations reported that they had increased their use of volunteers because they had established new volunteer-run programs. Three said that they were increasingly using volunteers to complement the work of paid staff, and one noted that volunteers were now doing work that had traditionally been done by paid staff. Other reasons given for the increased use of volunteers (each cited by one organization) included increased demands by clients; an increase in the number of clients accessing pre-employment and other related programs as a result of “back to work” measures implemented by the British Columbia Ministry of Human Resources; and an increased use of volunteers for special events and fundraisers.

Organizations were asked whether compared to three years ago, liability concerns had made it more difficult to recruit volunteers. Approximately 40% responded that concerns about liability had made it *somewhat more difficult* to *much more difficult*. Organizations were also asked to identify the three most common liability concerns relating to volunteers that had been raised by staff or volunteers. Of the 14 responses to this question:

- five organizations cited personal safety;
- three cited confidentiality issues;
- three cited the need to do criminal record checks as deterring some prospective volunteers; and
- two cited child safety and security.

Organizations were asked if they had stopped performing any activities because of liability concerns for volunteers. Only three organizations (11%) reported that they had done so. These organizations had limited contact between volunteers and clients in a needle exchange program, eliminated field trips in youth programs, and stopped using volunteer drivers.

Organizations were asked if there were any activities that volunteers had been asked to perform by community members or clients that caused concern about liability and risk management. Twelve organizations (44%) answered yes. Activities that they identified as being of concern included transportation of non-ambulatory individuals, driving, private tutoring in the home, counselling and intervention, and requests for services that volunteers believed went well beyond the original boundaries of their volunteer positions.

When asked about their insurance coverage, virtually all of the organizations (89%) that responded to the survey reported that they either had their own Comprehensive General Liability Insurance or were covered under another policy. When asked if they were confident that this type of insurance was adequate for their risk management needs, 21 organizations (78%) reported that they were confident. However, when asked if this insurance offered specific coverage for the activities of their volunteers, just over half (14 organizations or 52%) reported that it did. Only six organizations (22%) had discussed the situation with their insurance agents

We also asked about what other insurance organizations had. Thirteen organizations (48%) reported that they had Directors and Officers Liability Insurance. Five (19%) were unsure what this was.

Six respondents (22%) had Professional Errors and Omissions liability insurance. Two (7%) were unfamiliar with this type of insurance.

Organizations were asked about the costs of and funding for various types of insurance. Fourteen organizations (52%) reported an increase in the cost of Comprehensive General Liability Insurance in the past three years, with increases ranging from 10% to 140% (the median increase was 50%). Fewer than half reported that they were able to increase their funding sources to compensate for higher insurance costs. Thirteen organizations (48%) reported increases in the cost of Directors and Officers Liability Insurance of between 10% to 57% (the median increase was 20%) in the past three years.

Summary and interpretation of the survey of organizations

Overall, although the results from the survey indicate some concern about the impact of liability on volunteer recruitment and the rising cost of insurance, respondents expressed a relatively low level of concern about the general issue of volunteers and liability. At first glance, one might conclude that:

- nonprofit organizations are for the most part well aware of, and comfortable with the levels of risk incurred as a result of using volunteers;
- nonprofit organizations are familiar with, and have taken steps to implement a range of risk management tools; and
- for the most part, volunteer programs have not been affected by funding or other regulatory changes of the past three years.

However, the sources of information used to define the research questions suggest that these conclusions would be simplistic and an inaccurate reading of the true situation for nonprofit organizations in the North Okanagan.

More than half of the agencies that participated in this survey reported annual gross revenues over \$500,000; six had annual revenues over \$1,000,000. Although no comprehensive data are available on the financial resources of nonprofit organizations in the North Okanagan, the experience of the Vernon and District Volunteer Bureau is that the majority have annual revenues well under \$100,000. Statistics Canada (2004) has cited a number of differences between large and small organizations as measured by their total annual revenues and with regard to volunteer management, which includes the degree of difficulty in recruiting, training, and managing volunteers.

Based on feedback in follow up calls to organizations that did not respond to the survey, it appears that many small organizations (or small local offices of large organizations) were unwilling to assume responsibility for completing the survey. They were either unsure who was responsible for risk management or believed that it was an issue more appropriately dealt with by their regional offices. Some small organizations reported that the length of the survey (six pages) deterred them from completing it. Small, under-resourced organizations are also more likely to be affected by reductions in government funding as they are already working on a 'shoestring' budget. As such, they have less capacity to respond to increased need on the part of clients or to reductions in funding.

The steering committee, many of whose members are themselves representatives of nonprofit agencies, also suggested the following possible reasons for the relatively low response rate to the survey, and for survey results:

- Many of the government cutbacks that were announced two or more years ago are only now beginning to take effect. Therefore, it may be too early for organizations to have felt the full impact of these cuts. If similar research were undertaken two years from now, the impact might be clearer.
- Nonprofit organizations are cautious about making causal links between funding cuts and impact on programs for fear of reprisal by funders. In a relatively small nonprofit community such as the North Okanagan, this fear may be compounded.
- There may have been a degree of stigma or shame attached to admitting that the organization was not on top of risk management issues. Thus, even though respondents were not required to provide identifying information, they may have been reluctant to reveal anything that might reflect negatively on their operations.

Based on feedback from other research participants, which is presented in the next sections of the report, there is evidence to suggest that the liability picture in the region is not as problem-free as may be suggested by the survey of nonprofit organizations. Organizations may have overestimated the degree to which they are adequately meeting the risk management challenges associated with their volunteer programs.

5. Insurance Sector Findings

Four insurance agents provided the findings for this section in response to three groups of questions covering 1) general aspects of insurance pertaining to the nonprofit sector, 2) insurance coverage, and 3) volunteer risk management practices. As well as answering specific questions, the insurance agents made general comments that provided background detail. Each section of the findings incorporates a mix of the specific questionnaire answers and general comments. The findings for (1) and (2) have also been combined below in the section called Insurance and the Nonprofit Sector on page 17.

Agents' experience in the nonprofit sector

The four insurance agents who participated in this study had experience in providing insurance to nonprofit organizations to cover activities in the areas of sports, recreation, social services, and arts and culture. One agent gave advice on insurance to all sizes of nonprofit organizations from large (annual budget of \$500,000 or more) to small (annual budget of \$100,000 or less). Two agents focused on medium-sized organizations (annual budget of \$100,000 to \$500,000) and only one agent assisted only small organizations.

Insurance and the nonprofit sector

Agents offered the following answers and observations about insurance and the nonprofit sector:

- 1. Organizations' knowledge and understanding of insurance:** Out of the four agents, three said that voluntary sector organizations are no different from organizations outside the sector with regard to general knowledge of insurance. One disagreed and said that nonprofit organizations were less knowledgeable, particularly with regard to the specific content of their policies and coverage.
- 2. Organizations' concerns regarding risk and liability:** The voluntary sector has specific concerns about liability issues associated with being a board member, liability for volunteer activities, and the costs of coverage. The latter has become the largest economic concern for nonprofit organizations that are seeking adequate insurance coverage.

Directors and officers liability issues are also a major concern for the nonprofit sector, which puts greater emphasis on Directors and Officers Liability Insurance than does the private sector. Although the risks of both sectors are considered to be equal when carrying out similar work, the limited resources of nonprofit organizations tend to place nonprofits directors and officers at greater risk of being personally affected by litigation.

3. Insurance environment for the voluntary

sector: When agents were asked about what changes they had seen in insurance environment for nonprofit organizations over the past three years, they identified the following issues:

- **Cost:** Liability and other forms of insurance for volunteer activities have become more expensive (4 responses). Part of the expense is due to underwriters becoming more aware of risk in the nonprofit sector. As a result, they ask for more detailed information, and applications for insurance policies have become longer.

In addition, policy rates have increased significantly over the last three years as a result of 9/11.¹³ Comprehensive General Liability Insurance has increased by 95% on average, Professional Errors and Omissions Liability Insurance by 75%, and Director and Officers Liability Insurance by 73%.

One agent noted that the cost of insurance policies for specialty markets and events (e.g., athletic-based fundraisers, concerts) has increased dramatically.

All of the agents said that many organizations have stopped using volunteer drivers because the cost of additional insurance to cover occasional driving has become prohibitive, and few volunteers are willing to bear the cost on their own. Blanket insurance that would provide coverage for volunteer drivers is not available for most nonprofits.

- **Finding insurance:** It is more difficult to find insurance companies willing to cover volunteer programs and activities (2 responses). As mentioned earlier, underwriting insurance for nonprofits can be a lengthy process. As one agent commented, the returns for this effort and the potential likelihood of a claim may deter many companies.
- **Liability issues:** The number of liability issues related to volunteer activities has increased (1 response). This has led to rising awareness among insurers of the potential risk of volunteer activities and has contributed to insurance carriers being reluctant to provide cover.
- **Litigation:** Society is becoming more litigious and settlements in law suits are increasing (1 response). This may be because the Canadian society is influenced by the United States where people are more likely to sue.
- **Lack of specialized insurance:** All agents commented that they knew of no insurance policies or guidelines that are geared primarily or exclusively to nonprofit organizations. Insurance pricing and rates are based on the type of activity, not on the type of organization (i.e., whether it is nonprofit or for-profit). This is a major problem that limits the options for the voluntary sector and raises the cost of their liability insurance.

¹³ That is, the destruction of the World Trade Center in New York City on September 11, 2001.

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- **Impact of provincial government restructuring:** The agents generally agreed that there has been pressure on voluntary sector agencies to expand their activities beyond the limits of their mandates and to provide services previously provided by government, such as personal care services for seniors, first response emergency services by volunteer fire departments, and community-based health promotion programs. They also reported that although nonprofit organizations are increasingly aware of the risks involved in their volunteer activities, they need more help in developing volunteer policies and procedures, and risk management strategies.

Volunteer risk management practices

When asked what they look for when reviewing an organization's application for insurance, the agents said:

- the range of activities that organizations undertake;
- the potential risk associated with each activity;
- the organization's understanding of the risk associated with its activities;
- the organization's understanding of risk management as a system of strategies, insurance being only one of many that are needed to manage their risk;
- the organization's management and decision-making capabilities; and
- whether directors and officers observe the organization's laws etc.

Agents were asked to identify the relative importance of some common risk management tools in approximate order of importance. (Table 1).

The agents placed a strong emphasis on background checks of volunteers (reference checks and criminal record checks), and well-organized and supervised volunteer programs that addressed the potential risk in the program activities (e.g., ensuring that clients and volunteers signed waiver forms and that volunteers had thorough training). The agents commented that many organizations encounter problems in creating good risk management practices because of poor understanding of risk (particularly at board level), lack of staff resources, and lack of time.

Summary and interpretation of insurance agent's interviews

The insurance industry does not differentiate between the voluntary sector and other sectors in assessing liability for insurance purposes. Although insurance agents emphasized the need for Directors and Officers Liability Insurance, none of them described specific insurance application protocols or insurance coverage that would address the needs of agencies that use volunteers to deliver programs. Insurance rates for volunteer programs are determined based on the type of activity and the degree of risk inherent in the activity. While some insurance agents described how they personally modify insurance applications and coverage content for nonprofit organizations, they reported that they did this as part of their community service rather than as standard industry practice.

Table 1: Insurance Agents' Rating of Risk Management Tools

Risk Management Tool	Rating		
	High	Medium	Low
<i>Volunteer screening</i>			
<i>1. Reference checks</i>	4		
<i>2. Personal interviews</i>	1	3	
<i>3. Criminal record checks</i>	4		
<i>Formal risk assessment of volunteer programs</i>	3	1	
<i>Volunteer supervision guidelines</i>	3	1	
<i>Volunteer waiver / informed consent forms</i>	3	1	
<i>Client / informed consent waiver forms</i>	3	1	
<i>Volunteer orientation / training</i>	3		1
<i>Accreditation specific to the volunteer activity required</i>	2		2
<i>Peer mentoring / buddy program</i>	1	1	2
<i>Ongoing training opportunities</i>		2	2
<i>Trial period for volunteers</i>		2	2

Note: The numbers in the table refer to the number of agents, out of a total of 4 who rated each tool as *high*, *medium*, or *low*.

Overall, insurance agents painted a more problematic picture of volunteer programs and liability than did representatives of nonprofit organizations. For example:

- **Lack of general knowledge concerning the liability and risk associated with volunteer programs and activities:** Although the nonprofit organizations that responded to the survey indicated that they were well-versed in insurance

needs and coverage, the insurance agents did not agree. The insurance agents reported that their nonprofit clients focused on cost rather than on understanding the extent and particulars of the coverage provided by their policies. In general, nonprofit organizations tend to ask few questions about the details of their insurance.

- **Insurance protection for senior volunteer staff and board members:** The insurance agents indicated that it was important for nonprofit organizations to place greater emphasis on Directors and Officers Liability Insurance, but less than half of nonprofits surveyed reported that they had this type of insurance.

These differences in responses appear to indicate that nonprofit organizations in the North Okanagan need to be better educated about the need for and the complexities of liability insurance.

6. Legal Sector Findings

Four lawyers provided the findings for this section in response to three groups of questions covering 1) their experience of the voluntary sector, 2) volunteer programs and liability, and 3) volunteer risk management practices. As well as answering specific questions, the lawyers made general comments that provided background detail. Each section of the findings incorporates a mix of the specific questionnaire answers and general comments.

Lawyers' experience in the nonprofit sector

The four lawyers had the following experience :

- **Practical experience of the nonprofit sector:** All four lawyers had worked as volunteers and in a professional capacity with nonprofit organizations.
- **Experience of risk and liability as a volunteer:** Three lawyers mentioned that they had experienced risk with regard to a) provision of services, b) the operation of nonprofit boards, and c) activities involving minors and dependents.

- **Experience of risk and liability as legal counsel:** The main areas, in which the lawyers in their role as legal counsel had identified and encountered risk or potential risk for nonprofit organizations, were sports, childcare, transportation, and delivering of social services.
- **Perception of the voluntary sector's knowledge of liability:** The lawyers presented mixed views. Two stated that the nonprofit sector's understanding of risk and liability was no different from that of other sectors; one said that the nonprofit sector's understanding was worse; and one that it was better.

Lawyers comments on volunteer programs and liability

- **Key legal issues and concerns specific to the voluntary sector:** When asked to identify the key legal issues or concerns that are unique to nonprofit organizations, the four lawyers raised a variety of issues. These were:
 - the need for volunteers to raise their awareness of liability issues;
 - the poor understanding of directors and their boards about their personal and legal liability if they do not act in accordance with their bylaws;
 - the risk of volunteers providing services that would normally be performed by a professional; and
 - the need for better managerial skills by staff in the voluntary sector.

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- **Changes in the legal environment:** When lawyers were asked about what changes they had seen in the insurance environment for nonprofit organizations over the past three years, they identified the following issues:

- liability has increased for volunteers (2);¹⁴
- the number of volunteer activities have increased for many organizations (2);
- the legal issues relating to volunteer programs and activities have become more serious and complex (2); and
- the pressure by funding agencies to encourage nonprofits to adopt risk management plans is increasing (1).

- **Liability issues that are becoming increasingly important:** When asked which liability issues they thought would become most pressing in the future, the lawyers identified the following:

- **Creation of contractual rights:** Organizations need to be particularly aware that in cases where there is any exchange of value such as a requirement that an individual be a member of an organization to receive services, this formal relationship can create contractual rights and obligations, and may be dealt with by the courts if legal issues arise.
- **Transfer of liability:** Recent Supreme Court rulings on the fiduciary responsibility for youth in native residential schools may have a profound impact on volunteer programs. Although the native residents were recognized as wards of the state, these rulings have

effectively transferred liability for these relationships from government to the churches that operated the schools. The churches were found liable for putting the residents into dependent relationships without adequately supervising those relationships. These rulings have two significant implications for volunteer programs:

1. First, as this transfer of liability continues to gain precedence in other residential school rulings, there is increased potential for these claims to be applied to other government services that are contracted to third-party agencies, including those provided by the voluntary sector. It can be expected that governments wishing to offload risk will increasingly establish funding arrangements that distance themselves from risk by stipulating full transfer of liability to the contracting agency.
2. Second, this means that nonprofit organizations must pay particular attention to adequate supervision of volunteers who are working with minors, seniors, and those with disabilities. Unfortunately, there is no legal definition of adequate supervision. The lawyers suggested that a minimum standard would be to ensure that there are one or more witnesses present in any situation where services are being provided to vulnerable clients (e.g., have volunteers provide home care services in pairs).

¹⁴ Numbers in parentheses refer to the number of lawyers who made this point.

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- **Specific legislation or statutes of relevance to the voluntary sector:** When asked to name specific statutes or legislation that is relevant to the nonprofit sector, lawyers identified the following :

- **The Criminal Code:** This has recently been amended through Bill C-45 to include workplace safety liabilities, which can also be applied to volunteers. Bill C-45, which took effect March 31, 2004, effectively makes corporations and other organizations criminally liable for failing to ensure a safe workplace. Nonprofit organizations that fail to provide a safe environment for their volunteers could be subject to criminal charges.¹⁵

In addition, the potential for personal injury, particularly as a result of vehicle accidents, poses the highest risk of litigation. Given the recent history of personal injury settlements, one of the lawyers who participated in this research recommended that vehicle liability insurance coverage should be in the range of 10-20 million dollars if the vehicle transports groups of people.

- **The BC Personal Information Protection Act (BCPIPA)** has implications for the gathering, storage, and release of information. BCPIPA treats volunteers and employees in the same way, i.e., personal information collected from a volunteer is subject to the

same rules under BCPIPA as that collected from a paid employee.¹⁶

- Under the law nonprofit organizations have fiduciary responsibilities to volunteers, staff, clients, and donors.

Lawyers' comments on risk management practices

The lawyers who participated in this research were asked to rate the effectiveness of some common risk management practices (Table 2).

Supervision of volunteers and client informed consent forms were considered the best ways to reduce risk and liability.

However, the lawyers believed that all of the risk management practices were effective in reducing risk and in demonstrating the care an organization takes in implementing its programs. They had mixed feelings about whether a volunteer waiver/informed consent form was useful. All agreed that a client waiver/informed consent form is essential. Particular mention was made of the responsibility of agencies to do regular risk management reviews of their activities and of the methods they use to monitor those activities.

¹⁵ Last retrieved June 16, 2005 from Canadian Centre for Occupational Health and Safety website: www.ccohs.ca/headlines/text120.html that provides a link to the Justice Department document at Website: http://canada.justice.gc.ca/en/dept/pub/c45/CCL_english.pdf

¹⁶ Last retrieved June 16, 2005 from British Columbia Home Ministry website www.qp.gov.bc.ca/statreg/stat/P/03063_01.htm

Lawyers' comments on the impact of provincial restructuring on the voluntary sector

Three of the four lawyers agreed that there has been pressure on voluntary organizations to perform functions that are beyond their traditional scope.

Particular mention was made of the degree to which the changes in rules on access to funds from gaming in British Columbia are forcing nonprofit organizations to explore alternate sources of revenue, including undertaking project activities which may lie outside of their normal scope of operations.

Table 2: Lawyers' ranking of the effectiveness of different risk management tools

Risk Management Tool	Rating		
	High	Medium	Low
<i>Volunteer supervision guidelines</i>	4		
<i>Client / informed consent waiver forms</i>	4		
<i>Volunteer screening:</i>			
1. Reference checks	2	2	
2. Personal interviews	2	2	
3. Criminal record checks	2	2	
<i>Accreditation specific to the volunteer activity required</i>	2	2	
<i>Formal risk assessment of volunteer programs</i>	2	2	
<i>Volunteer orientation / training</i>	2	1	
<i>Peer mentoring / buddy program</i>	2	1	1
<i>Trial period for volunteers</i>	2	1	1
<i>Ongoing training opportunities</i>	1	2	1
<i>Volunteer waiver / informed consent forms</i>	1	1	2

Note: The numbers in the table refer to the number of lawyers, out of a total of 4 who rated each tool as *high*, *medium*, or *low*. Sometimes not all lawyers gave a rating.

Summary and interpretation of interviews with lawyers

Survey responses from nonprofit organizations suggested that they were on top of risk and liability issues, but responses from the lawyers who participated in the research suggest that volunteers are at risk. Although it is dangerous to draw broad conclusions based on responses from a relatively small number of interviewees, there are two primary areas where the lawyers' responses differed starkly from nonprofit respondents. These are worth noting.

1. The lawyers perceived that nonprofit directors have a poor understanding of liability, including the implications and applicability of their organization's bylaws and constitutions. This is of particular concern in light of insurance agents' comments about the increased liability risks that directors of nonprofit organizations face compared to directors of for-profit corporations, i.e., that the limited resources of nonprofit organizations make directors and officers vulnerable to litigation.

Nonprofit boards also need to be aware that there is no legal difference in the standard of care required of volunteers and paid staff in carrying out their respective duties. Liability is defined by the degree of risk inherent in the service provided, not by whether the service is provided by volunteers or paid staff.

2. The lawyers believed that particular attention should be paid to areas in which volunteers are providing services commonly performed by professionals. Although nonprofit respondents cited numerous examples of such services being provided by their volunteers (e.g., care of children,

seniors, and people with disabilities), only six of the 27 organizations surveyed carried Professional Errors and Omissions Insurance.

The findings from the lawyers who participated in this research highlight significant social policy issues for volunteer programs that provide direct services to clients. Because there are indications that these types of programs may be on the increase, particularly in health and social services, there is need for greater clarity about the risks inherent in such activities, with particular emphasis on adequate supervision. Finally, the Supreme Court rulings on residential schools may have ramifications for nonprofit organizations that provide services on behalf of government.

7. Public Sector Findings

The responses of the five public sector representatives varied significantly. Their general message was that volunteers are considered a key part of the services funded by the government, however issues of risk and liability have not been addressed in a comprehensive and coordinated manner.

According to an interviewee from the British Columbia Ministry of Finance, the provincial government established its Master Insurance Program in 1988 to assist its contracted agencies, which were either unable to find an insurance carrier or faced up to one thousand percent increases in their premiums. The Master Insurance Program provides both general liability and accidental death and dismemberment insurance coverage for those who volunteer directly for the government. But other than the coverage provided by this Master Insurance Program, the provincial government does not have any policies or

the resources to help contracted agencies develop risk management strategies.

A representative from Human Resources and Skills Development Canada (HRSDC) did not see the issue of risk management for volunteers as part of that ministry's mandate. Management of programs was considered the responsibility of the contracted agency and not HRSDC. Issues of volunteer liability were only of concern to HRSDC when they involved activities performed by individuals who receive Employment Insurance, Income Assistance, or disability pensions (e.g., Canada Pension, Workers' Compensation). These individuals could have their benefits terminated if, because of their volunteer activities, they were deemed capable of working rather than receiving some form of financial assistance.

The public sector representatives raised some other issues in their interviews:

- Where does liability rest in cases where clients fall ill while in the care of volunteers?
- Many clients of programs funded by the Ministry of Children and Family Development (MCFD) are considered wards of the state, therefore MCFD has to act as the parent. This led the ministry to set up the Master Insurance Program, but has not resulted in a comprehensive review of the implications of their parental role for these children.
- Liability concerns have been raised about residential programs for vulnerable populations and whether or not organizations are taking adequate steps to prevent abuse. For example, there have been high-profile cases of sexual

abuse in the last few years in institutions like the Jericho School for the Deaf. However, these cases mostly involve with paid staff rather than volunteers.

- There is a need to ensure that nonprofit organizations have adequate insurance coverage for volunteer drivers.
- Who owns the records pertaining to volunteers (e.g., personnel records, files, and other records dealing with administration and delivery of programs, etc.) and are these records subject to Freedom of Information legislation?

Two public sector respondents raised the issue of the perception versus the reality of volunteers being a high-risk for liability. One commented that claims arising from the actions of volunteers are infrequent, despite the vulnerable populations that many government programs serve. The influence of the United States – with its much more litigious environment – was felt to be partly responsible for influencing people's perceptions. Another respondent pointed out that insurance is a "fear-based business": the more that insurance brokers are able to instil fear of litigation, the greater their profits will be.

Public sector representatives noted a change in volunteer roles over the past several years. One respondent believed that increased liability concerns have made it more difficult for their contracted agencies to recruit volunteers, and that the value-added quality volunteers give to contracted services has been eroded.

Summary and interpretation of interviews with public sector representatives

Representatives from the public sector had more varied responses than those from other sectors. Responses ranged from the perception that volunteer liability has not been adequately addressed to a feeling that the actual degree of risk involved in volunteer programs has been exaggerated in order to sell more insurance. The most notable finding is that despite the expectation that volunteers should help to deliver contracted services, there is no government-wide strategy to manage the risk inherent in volunteer programs. In the words of one provincial government representative,

“We would love to work with contracted agencies to develop risk management strategies, but we simply don’t have the resources to do so. We do provide risk management consulting to schools and hospitals, but even that stretches our resources.”

8. Volunteer Focus Group Findings

When volunteers who participated in the focus group were asked to describe jobs they have done that made them feel uncomfortable (from a personal safety or ethical point of view), they gave the following examples:

- **Human services:** Volunteers felt uncomfortable performing service activities such as peer counselling, alcohol and drug treatment, and

working with people with severe learning disabilities.

- **Private spaces:** Participants expressed concern about activities performed in clients’ homes, such as meal preparation and home safety checks.
- **Working alone:** Several volunteers mentioned that, because of a shortage of volunteers, they have to do activities alone that should be performed by two people.
- **Increased workload:** Volunteers reported that their workload had increased due to lack of volunteers, staff, or other resources.
- **Working with money:** Volunteers were concerned about working with large amounts of money because of the potential for theft.
- **Working with agitated clients:** One participant reported that,

“Clients sometimes have lost government funded services and expect the same from volunteers, so they are disappointed or angry when told that the services they want are outside our mandate.”

When asked about specific activities added to their volunteer roles since the last round of government cutbacks, volunteers described the following:

- **Staff substitution:** Volunteers gave examples of activities they were now performing that were once the domain of staff. One volunteer described this as a gradual process, with small jobs creeping into her duties as paid staff became unavailable.

Other examples included being paired up with a staff member to fulfil a function that was once conducted by two staff members and taking on greater responsibility for volunteer recruitment and training, including risk management training.

- Fundraising: Volunteers cited increased pressure to become part of fundraising initiatives to such an extent that it replaced activities to which they were originally assigned.
- Greater client need/expectations: Volunteers reported that the needs of clients have become more diverse and that clients have unrealistic expectations about what the volunteers can provide. Those working in social service areas such as alcohol and drug counselling, food banks, and crisis lines began noticing an increase in client demands after changes to income assistance regulations came into effect in April 2001. Those changes included reductions in shelter assistance, tougher controls on eligibility, three-week waiting periods for assistance, and other measures that adversely affected clients' abilities to cope.
- Reduced number of volunteers: Volunteers reported that although their workload has increased, the number of new recruits has not kept pace. They are expected to do more with less.

Given that the focus group participants were recruited through the organizations for which they volunteered, it is not surprising they reported feeling supported by their organizations. However, this support was usually informal rather than part of a structured volunteer management strategy.

When asked what additional supports would improve their sense of safety and/or reduce their organizations' liability risks, volunteers identified the following needs:

- More training to be able to refer clients to other community services for issues with which they were not prepared or able to deal.
- Clearer job descriptions and policies and procedures for dealing with difficult or dangerous situations.
- Improved communication on issues of risk. Several volunteers said that formal evaluations and feedback from staff could provide opportunities to discuss individual safety concerns and to review volunteer capacity in this area.
- Policies that stipulate that volunteers who provide direct service to clients should work in pairs. This would alleviate safety concerns.
- Well-designed office spaces that provide a degree of protection from agitated clients and a panic button to press in case of emergencies.

Summary and interpretation of focus group findings

The focus group with volunteers revealed marked differences in the perspectives of volunteers and representatives from nonprofit organizations. These differences were vis-à-vis the impact of government funding cuts, especially with regard to the increasing scope of activities that volunteers are being asked to carry out. Volunteers made the strongest link between government cutbacks and increased pressure for agencies to use volunteers to perform functions that

are beyond their traditional scope. This suggests that volunteers are feeling stretched both by the transfer of duties and by the pressure to take on additional responsibilities. Although much of this increase in duties consists of administrative tasks, there also appears to be some transfer of direct service responsibilities to volunteers, an area that raises particular concerns for legal representatives. If reductions in government services and funding continue, these additional responsibilities, and their associated risks, are likely to increase.

9. Qualitative Assessment of the Components of a Risk Management System

As part of the interview process, representatives from the insurance and legal sectors were asked to review a list of risk management tools that were identified in the literature review and through agency surveys. They had to rate the effectiveness of each tool as either high, medium, or low (Table 3, Page 30).

Because of the small number of respondents, the information presented in this table should be viewed with caution. However, in areas where both lawyers and insurance agents agreed, comparisons can be made between recommended risk management strategies and actual use by volunteer agencies. Based on this table, the research team identified two areas of disparity between recommended and actual practice:

1. The effectiveness of conducting formal risk assessments of current volunteer programs was rated as *high to medium high* by insurance agents and lawyers. But only 33% of the nonprofit organizations that responded to the

survey reported that they did such assessments. Conducting a formal risk assessment is a key indicator that a nonprofit organization is adequately addressing and managing its risks. These assessments are not complicated and should be required for any new volunteer program.

2. The effectiveness of client consent and waiver forms was rated as high by insurance agents and lawyers, but only 52% of nonprofit organizations reported using them. For programs that provide direct service to clients, client consent and waiver forms need to be developed and used consistently.

10. Conclusion

Nonprofit organizations are being asked – explicitly or implicitly – to assume increasingly greater responsibility for delivering vital services. Although the voluntary sector as a whole has moved to meet the challenge, often through increased reliance on volunteers, many organizations find it difficult to do so in a safe and ethically defensible manner. Many are struggling with rising insurance rates and a lack of time, money, and other resources to develop and implement risk management systems.

Despite the key role that volunteer programs play in our society, there are no legal or insurance standards and practices that recognize and cater to the nonprofit sector's unique nature. This study has revealed gaps in nonprofit agencies' awareness of the levels of risk they are assuming, and their knowledge and capacity to address those risks. These gaps are perhaps best illustrated by the apparent differences in the perceptions of organizations and their volunteers: the

former viewed themselves as adequately addressing risk, while the latter reported risk is increasing.

Public policy support for the voluntary sector is lagging far behind the needs of the sector. Governments at both the provincial and federal levels – which are increasingly dependent on the voluntary sector and on volunteer programs to deliver needed services – have not taken steps to ensure

that adequate supports exist to help the voluntary sector manage risks. Broad-based dialogue is needed on the acceptable range of activities that volunteers should be expected to perform. A key part of that discussion should be defining the level of government involvement in supporting risk management strategies, (e.g., through providing support such as the Master Insurance Program).

Table 3: Perceived Effectiveness of Risk Management Tools¹⁷

Risk Management Tool	% agencies who use the tool (as reported by agencies)	% agencies who use tool (according to volunteers)	Average effectiveness (rated by five insurance agents)	Average effectiveness (rated by five legal agents)
<i>Volunteer screening: reference checks</i>	55	60	High	Medium High
<i>Personal interviews</i>	85	80	Medium	Medium High
<i>Criminal record checks</i>	77	90	High	Medium High
<i>Accreditation specific to the volunteer activity required</i>	30	40	Medium	Medium High
<i>Conduct formal risk assessment of our volunteer programs</i>	33	30	High	Medium High
<i>Volunteer orientation / training</i>	70	60	High	Medium High
<i>Peer mentoring / buddy system required</i>	67	60	Medium Low	Medium High
<i>Volunteer supervision guidelines</i>	67	80	High	High
<i>Ongoing training opportunities</i>	70	80	Medium Low	Medium
<i>Volunteer waiver / Informed consent forms</i>	48	10	High	Medium Low
<i>Client / informed consent waiver forms</i>	52	30	High	High
<i>Trial period for volunteers</i>	26	20	Medium Low	Medium High

¹⁷ The table has more than 3 categories for assessing the effectiveness of the tools for a risk management system. This is because the interviewees thought that using the rankings *high*, *medium*, and *low* were too restrictive.

11. Recommendations

Based on the findings of this study, we make the following recommendations:

Nonprofit Organizations

Recommendation 1: Nonprofit organizations should collaborate on a project to devise ways of measuring and sharing information on the potential impacts of government cuts.

Reductions in government-sponsored support programs appear to have increased the range of client needs and demands on voluntary sector services, which in turn appears to have increased the risk for volunteers who work with vulnerable populations. Nonprofit organizations should collaborate on a project to develop benchmark measurements to assess the impact of cuts to government-funded programs on clients.

Recommendation 2: The voluntary sector should work to develop mechanisms to assess both the mandate and the capacity of organizations to expand existing programs or to take on new programs.

It appears that nonprofit organizations and their staff and volunteers are pushing the limits of their resources to meet their missions and address community needs. This raises the question of how to assess whether organizations have taken on work beyond their abilities and/or have exceeded the ethical limits of using volunteers to fill gaps created by cutbacks (e.g., by developing volunteer programs to provide services such as home care and counselling that were previously provided by paid staff). The

voluntary sector should develop ways to assess this issue.

Recommendation 3: Nonprofit organizations should protect their volunteers by reviewing and amending their policies, procedures, and insurance coverage to ensure they are addressing the full range of liability issues, particularly as they relate to their directors.

There appears to be good reason to question the level of knowledge and awareness of the voluntary sector as a whole when it comes to protecting volunteers and themselves from liability. Nonprofit organizations should adopt standard risk management practices such as conducting systematic annual risk assessments of their volunteer activities and developing client waivers/consent forms for programs that provide direct services to clients.

Legal Profession

Recommendation 1: The legal profession should consider playing a more active role in addressing nonprofit organizations' gaps in knowledge of liability issues by holding workshops and information sessions on liability and risk management.

The legal profession has the knowledge and experience to help nonprofit organizations understand the complexities of the law as it relates to volunteers and liability. Rather than dealing with organizations or incidents on a case-by-case basis, members of the legal profession could, through their local bar associations or community law offices, host regular (possibly annual) information sessions or workshops on liability and risk management.

Recommendation 2: The legal profession should consider joining with the voluntary sector to advocate for public policy changes that could mitigate the risk involved in volunteer activities.

The current way in which law respecting voluntary sector agencies and liability is evolving, leaves the sector vulnerable. Jurisdictions in the United States and Nova Scotia have recognized the importance of the role of the voluntary sector in civil society by enacting Volunteer Protection Acts that provide limited protection from civil lawsuits for volunteers working with nonprofit organizations. The Canadian Bar Association could consider advancing the need for such legislation nation wide.

Recommendation 3: As a step toward developing a body of law specific to volunteers and volunteer activities, the Canadian Bar Association and the nonprofit sector should collaborate on an initiative to amalgamate and clarify the statutes and precedents affecting the volunteer sector.

This initiative could, for example, investigate the ramifications of Residential School rulings and clarify the definition and standards of adequate supervision.

Insurance Industry

Recommendation 1: The insurance industry should consider developing an industry-wide response and standards (e.g., through the Insurance Bureau of Canada) to the insurance issues affecting volunteer agencies.

Insurance industry professionals are experts in their field. They could help nonprofit organizations by developing standard protocols and education

resources that insurance agents could use when dealing with voluntary sector clients.

Recommendation 2: The insurance industry should consider measures to change the attitudes of insurance agents and brokers toward the voluntary sector.

Insurance agents and brokers do not always understand nonprofit organizations. Two initiatives that the industry could consider to improve understanding are incorporating training on the unique nature of the voluntary sector into insurance agent training programs and licensing exams and developing reward and recognition programs for agents and brokers who develop services that support the voluntary sector.

Government

Recommendation 1: The British Columbia government should take the lead in convening policy discussions among federal and provincial ministries that contract with agencies whose services are delivered by volunteers.

Given the essential role of the voluntary sector in providing government-funded services and the expectation that this role may be increasing, the BC government should convene discussions with other governments on topics such as reviewing the risk management supports that government provides, establishing clear limits on the range of services that volunteers can be expected to provide, and developing a scheme for compensating organizations for increased insurance premiums.

Recommendation 2: The federal government should establish a national insurance program for voluntary sector agencies to manage costs associated with liability insurance.

The voluntary sector is a critical component of Canadian society. As such, it needs effective public support to continue to fulfill that role. A national voluntary sector insurance plan, based in part on programs like the Master Insurance Program, offered by the British Columbia Provincial Government, should be implemented and extended to include Comprehensive Liability Insurance, Professional Errors and Omissions Insurance, and Auto Insurance.

Volunteers

Recommendation: The nonprofit sector should undertake larger-scale research to identify how changes in government support have affected the services provided by volunteers and to identify changes that would enhance the safety and support of volunteers.

Of all the groups surveyed in the research, volunteers made the strongest link between government cutbacks and increased pressure for agencies to use volunteers to carry out tasks that are beyond their traditional scope. Responses suggest that volunteers are feeling stretched both by the transfer of duties and by the pressure to take on additional responsibilities. These include the direct delivery of services, which is of particular concern from a liability perspective. All sectors – government, voluntary, legal, and insurance – should devise mechanisms to capture feedback from frontline volunteers, who are the best placed to identify any changes.

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Notes

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