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## **VOLUNTEER AGREEMENTS: MANAGING VOLUNTEER RELATIONS AND REDUCING RISK**

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*By Terrance S. Carter and Barry W. Kwasniewski\**

### **A. INTRODUCTION**

Creating, implementing, and using volunteer agreements is emerging as a key part of effectively managing volunteer relations and reducing the risks associated with charities and not-for-profits working with volunteers. The recent rise in importance of volunteer agreements is part of a natural evolution in the risk management process for these organizations. A volunteer agreement is a consensual agreement that sets out the nature of the volunteer relationship and articulates the respective roles and responsibilities of both the volunteer and the organization. Since charities and not-for-profits are generally either directly or vicariously liable for harm caused by or to volunteers acting within the scope of their authority and duties, a well drafted volunteer agreement can be essential to limiting potential liabilities. This *Charity Law Bulletin* provides an overview of how volunteer agreements can help address liability and risk management issues associated with working with volunteers.

### **B. WHO IS A VOLUNTEER?**

Volunteers are integral contributors in the charitable not-for-profit sectors. Statistics Canada research shows that volunteers devoted almost 2.07 billion hours to volunteer activities across Canada in 2010, a

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volume of work equivalent to almost 1.1 million full-time jobs.<sup>1</sup> Volunteers are defined by *Black's Law Dictionary* as people “who give their services without any express or implied promise of remuneration.”<sup>2</sup> Additionally, the United Nations has described volunteer activity as activity that is not undertaken for financial reward, that is undertaken voluntarily, and that benefits someone other than the volunteer.<sup>3</sup>

At law, volunteers are generally treated as agents when they are authorized to act on behalf of an organization in some way. However, volunteers are not employees, because they do not receive compensation, and nor are they interns, who are generally understood to be individuals receiving training for a position for which they would then expect to receive pay. Employers can be liable to pay interns at least minimum wage unless the intern meets the statutory exceptions outlined in the Ontario *Employment Standards Act, 2000*.<sup>4</sup>

Directors and officers are a special category of volunteers with roles that require distinct risk management and insurance considerations outside of the scope of this *Bulletin*. However, if a director or officer also has a separate volunteer role, then he/she can fall into the category of a general volunteer. Organizations must remember to adjust how they approach and supervise different volunteers depending on the volunteer's special role, nature, and abilities.

### C. VOLUNTEER LIABILITY

Charities and not-for-profits are not entitled to special treatment regarding vicarious liability. In the leading decision of *Bazley v Curry*, the Supreme Court of Canada (SCC) dismissed the notion that charities and not-for-profits should be exempt from vicarious liability because they provide needed services or because they are less able to supervise volunteers.<sup>5</sup> The SCC firmly held that charities and not-for-profits have the same duty to screen and supervise volunteers as commercial enterprises do in regards to paid employees.

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<sup>1</sup> Mireille Vézina and Susan Crompton, “Volunteering in Canada” (Ottawa: Statistics Canada, April 16, 2012), online: <<http://www.statcan.gc.ca/pub/11-008-x/2012001/article/11638-eng.pdf>>.

<sup>2</sup> *Black's Law Dictionary*, 9th ed., (St. Paul: Thomson West).

<sup>3</sup> *Assessing the Contribution of Volunteering to Development, Handbook for UN Volunteers, Programme Officers and Managers* (UN Volunteers, August 2011), page 9, online at: [http://www.unv.org/fileadmin/docdb/unv/pdf/UNV%20Assessing\\_web%20version.pdf](http://www.unv.org/fileadmin/docdb/unv/pdf/UNV%20Assessing_web%20version.pdf).

<sup>4</sup> For more information on unpaid interns see Charity Law Bulletin No 339, “Unpaid Internships under Ontario Ministry of Labour Scrutiny”, available online at: <http://www.carters.ca/pub/bulletin/charity/2014/chylb339.htm>

<sup>5</sup> [1999] 2 SCR 534, 1999 CanLII 692 (SCC).

## 1. The Nature of Liability Involving Volunteers

Charities and not-for-profits can be directly as well as vicariously liable for harm caused either by or to a volunteer. If a volunteer causes injury to another volunteer, an employee, or a client in the course of his/her duties vicarious liability will generally result. For example, a claim could be made against an organization on the basis that a volunteer responsible for sexual abuse of children should have been screened for a possible previous criminal record of child abuse. Organizations are expected to reasonably foresee and address the risks associated with using volunteers.

An organization can be liable for a volunteer's actions on an organizational basis, and its directors and officers can be liable on a personal basis for failing to properly supervise the volunteer. In addition to monetary loss, organizations can face loss of reputation, loss of funding sources, and deterioration in the volunteer or client base. Consequently, liability risk must be properly managed with the oversight of the board of directors. As well, if an organization enters into partnerships or joint ventures to deliver programs or activities with another organization, it could be found liable for the actions associated with the volunteers of that other organization.

## 2. Risks Involving Social Media and Volunteers

Social media, such as personal social network pages and blogs, are often open to public viewing. Volunteers may not consider the ethical consequences of what they post in terms of the reputation of the charity or not-for-profit. Consequently, volunteers may reveal confidential or proprietary information in doing so either intentionally or inadvertently. As well, information and communication from social media sites can now be used as evidence in litigation. As a result, reference to the organization in social media use by volunteers must be carefully controlled.

### **D. RISK MANAGEMENT AND VOLUNTEERS**

Risk management is a proactive approach to avoid or reduce the risk of injury and damage caused by or to volunteers. Risk reduction involving volunteers includes exercising due diligence by:

- Requiring volunteers to sign a volunteer agreement (the content of which is discussed below),
- Properly screening volunteers;
- Appropriately training all volunteers, particularly those in leadership roles;
- Developing and implementing internal policies (e.g. for child protection and sexual abuse);

- Developing clear role descriptions reflective in a volunteer agreement;
- Creating a social media policy;
- Consistently monitoring and evaluating the organization's volunteer programs;
- Requiring a reference and/or criminal record check for each volunteer where appropriate, and
- Securing appropriate liability insurance that reflects the volunteer activity and its associated risks.

Additionally, volunteer agreements can help with risk transfer by (1) having volunteers in positions involving greater risk acknowledge and assume such risk involved in their position as part of their volunteer agreement, and (2) having volunteers sign a release and waiver of liability form for all damages and/or injuries incurred while volunteering.

## **E. INSURANCE CONSIDERATIONS**

It is essential to know the type of insurance an organization has and whether the insurance covers the risks associated with volunteers. Such risks include those caused to clients and third parties by volunteers, including quasi-professional liability, like counselling, as well as physical, sexual, and emotional abuse caused to the volunteer by clients and third parties, as well as and health and safety risks. Charities and not-for-profits need to communicate to their volunteers what type of insurance the organization has, how this insurance protects the volunteers, and what protection is not available to the volunteer. When volunteers agree to perform services for an organization, both they and the organization need to know the risks and whether or not there is insurance available to cover those risks should they occur.

Charities and not-for-profits should be aware that not all general liability insurance covers volunteers. Policy endorsements may need to be added to existing insurance policies to ensure that volunteers receive the same protection as employees or others who serve the organization. As well, charities and not-for-profits should also be aware that general liability insurance often excludes coverage for abuse of any kind, including the failure to prevent abuse from happening. Organizations should ask their broker or insurer whether their errors and omissions insurance also covers volunteers, as some volunteers may be involved in quasi-professional types of activities, such as counselling.

## F. DEVELOPING AND USING VOLUNTEER AGREEMENTS

Once the board of directors and/or managers of a charity or not-for-profit have considered the organization's liability and risk management concerns, it should become clear that a well drafted volunteer agreement is a key part of properly addressing risk issues associated with working with volunteers.

### 1. The Purpose of a Volunteer Agreement

A volunteer agreement can serve several purposes. It can educate volunteers about the organization by making volunteers aware of organizational decision-making and governance systems. Additionally, a volunteer agreement can help to clarify communication between volunteers, members, donors, employees, and the board. A volunteer agreement can also be used to set out the required standards of conduct and any limitations on volunteer activities. As well, a volunteer agreement can also address issues such as confidentiality, conflict resolution, dismissal, expenses, insurance, and liability. A volunteer agreement therefore can enhance an organization's credibility to the public, its members and donors.

### 2. Content of a Volunteer Agreement

A volunteer agreement should address risk issues by clearly describing a volunteer's status, roles, and duties; by requiring volunteers to agree to policies and procedures, release liability, and waive claims; and by referring to the organization's insurance coverage and to what extent the volunteer is covered. The agreement should contain general provisions as well as specific provisions that may apply to higher risk volunteer situations:

- a) General provisions to consider
  - The terms of becoming a volunteer and the duties to be undertaken by the volunteer;
  - A summary of the training and supervision available, including the lines of authority;
  - A description of any limits on the volunteer's authority and ability to do certain jobs;

- A clear statement that there is no financial compensation or benefits associated with the position;
  - A clear statement that the volunteer is not an intern, i.e. not a person in training;
  - A requirement that volunteers abide by the organization's rules of conduct, policies, regulations, and, where applicable, a volunteer code of conduct;
  - Social media provisions, i.e. not speaking on behalf of the organization on social media;
  - Copyright assignments and waiver of moral rights;
  - A description of how the relationship can be terminated;
  - Confidentiality requirements and a conflict of interest protocol;
  - An explanation that most volunteers are not covered under the Ontario *Workplace Safety and Insurance Act, 1997*;
  - A media release granting the organization interest in all recordings and images of the volunteer;
  - An explanation of the risks insured and an associated release of liability and waiver of claim; and
  - A medical authorization and release, if applicable.
- b) Provisions that may apply to higher risk volunteer situations include the following:
- Criminal record checks and/or driver's record checks if the volunteer is working with vulnerable persons (minors, disabled people, or the elderly);
  - Disclosure and assumption of risks, e.g.
    - Travel and foreign country risks,
    - Government of Canada travel warnings,
    - Health risks, such as contagious diseases,
    - Limitations of health care in foreign countries,
    - Threat of terrorism and kidnapping,
    - Lack of insurance coverage;
  - More extensive and robust release and waiver of claims;
  - Possible indemnification provision for volunteers working with vulnerable people or in foreign locations; and

- A warning that the volunteer is waiving certain legal rights, and advising the volunteer of his/her right to seek legal advice before signing.

## G. CONCLUSION

Volunteer agreements have emerged as a key part of effective risk management for charities and not-for-profits. This development has occurred because of the increased understanding about how charities and not-for-profits can be directly, as well as vicariously, liable for harm caused either to or by a volunteer within the volunteer's scope of authority. Volunteer agreements can address liability risks associated with volunteers, and are an essential part of a proactive risk management system, as they are one way to manage and transfer organizational risks. Consequently, these agreements, when combined with risk management strategies, such as insurance and internal policies, can effectively serve charities and not-for-profits by lessening the risks associated with working with volunteers.