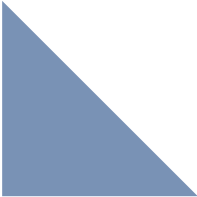






# Guidebook on the Insurance Coverages for Harbour Authorities

- Third party liability insurance
  - Directors and officers liability insurance
  - Accidental death and dismemberment, and bodily injury insurance
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Prepared by: Small Craft Harbours  
Current as of May 18, 2022



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# DISCLAIMER

This document is not intended to replace professional advice, the insurance policy, its terms and exclusions. It is purely intended as informative and could be modified as a result of a policy change.

If legal advice or other expert assistance is required with respect to a specific issue or circumstance, the services of a competent professional should be sought.

<h3>Third party liability insurance (TPLI)</h3>	<h3>Directors and officers liability insurance (D&amp;O)</h3>	<h3>Accidental death and dismemberment, and bodily injury (ADD BI)</h3>
<h4>Who is insured?</h4> <p>Harbour authorities and other organizations that have a signed lease or management agreement with Small Craft Harbour (SCH).</p>	<h4>Who is insured?</h4> <p>Directors and officers liability insurance applies to anyone who serves as a director or an officer of a harbour authority.</p>	<h4>Who is insured?</h4> <p>Class 1: All volunteers, under age 75, participating in any volunteer work or activity authorized by the harbour authority.</p> <p>Class 2: Directors and officers of the harbour authority, under age 80, regardless of when, where or how the injury happened.</p>
<h4>What is covered?</h4> <p>The policy covers third party liability (liability to others) arising out of the day to day operations of a harbour authority, more specifically for:</p> <ul style="list-style-type: none"> <li>• <b>Bodily injury and all loss of life;</b></li> <li>• <b>Personal and/or advertising injury</b> - libel, slander, defamation, wrongful eviction;</li> <li>• <b>Property damage</b> - destruction of property belonging to third parties while docking, undocking and whilst at the landing and mooring facility of the Insured or whilst otherwise in the Insured's care, custody and control.</li> </ul>	<h4>What is covered?</h4> <p>In general, claims can be made against directors and officers for performing actual or allegedly wrongful or negligent acts.</p> <p>A "D&amp;O Wrongful Act" means any actual or alleged defamation, breach of duty, neglect, error, misstatement, misrepresentation, omission or other act done or attempted by any insured in the discharge of their duties solely in their capacity with the ENTITY or any matter claimed against them solely by reason or their status as an INSURED PERSON.</p>	<h4>What is covered?</h4> <p>The accidental death and dismemberment, and bodily injury insurance covers :</p> <ul style="list-style-type: none"> <li>- Funeral expenses</li> <li>- Dread disease</li> <li>- Severe burn</li> <li>- In-hospital amenity</li> <li>- Family transportation</li> <li>- Rehabilitation</li> <li>- Repatriation</li> </ul> <p>The ADD and BI insurance also provides lump sum payment for: Loss of life, loss of limb or use, loss of hearing, loss of speech, loss of sight, fractures, burns, paraplegia, quadriplegia and more.</p>
<h4>Who manages the TPLI?</h4> <p>The Small Craft Harbours program purchases and administers this policy.</p>	<h4>Who manages the D&amp;O?</h4> <p>The Harbour Authority Corporation purchases and administers this policy.</p>	<h4>Who manages the ADD BI?</h4> <p>The Harbour Authority Corporation purchases and administers this policy.</p>
<p>For more information contact your SCH officer</p>	<p>For more information: Ron Duplessis duplessis.management@gmail.com 506-625-4556</p>	<p>For more information: Ron Duplessis duplessis.management@gmail.com 506-625-4556</p>

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# Section A: Information on third party liability insurance



## What is third party liability insurance?

Small Craft Harbours (SCH) of Fisheries and Oceans Canada (DFO) purchases third party liability insurance (TPLI) for all harbour authorities (HAs) in Canada that manage small craft harbours. The insurance provides protection to the HA if a claim is made against it for accidental loss of life, bodily injury, and/or property damage suffered by third parties.



## What is the history behind TPLI coverage for HAs?

When the HA model was put in place in 1987, in order to relieve HAs of the high cost of purchasing liability insurance, one of the provisions of this model was that the government, through the SCH Program, would fund liability insurance coverage for HAs. Providing insurance coverage to HAs also satisfies the department's safety responsibilities related to the management and operation of SCH fishing harbours by volunteer HAs.

The TPLI policy, which is renewed annually, provides protection to both the Government of Canada and HAs against potential legal or contractual claims from third parties that may arise from HA operations. This insurance does not cover third party incidents at other SCH owned harbours, namely those that are not managed by HAs. The department is self-insured at those harbours.

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## What is covered under TPLI?

The policy covers third party liability (liability to others) arising out of the day to day operations of a HA, more specifically for:

- bodily injury and all loss of life;
- personal and/or advertising injury - libel, slander, defamation, wrongful eviction;
- property damage - destruction of property belonging to third parties while docking, undocking and whilst at the landing and mooring facility of the Insured or whilst otherwise in the Insured's care, custody and control.

This policy provides:

- insurance coverage up to \$20,000,000 per accident or occurrence;
- investigation on incidents for which the insurer receive reports;
- legal representation should the HA or their employees be sued;
- payment for claims by a third party where the investigation determines that payment is warranted.

## Who is covered under TPLI?

HAs and other organizations that have a signed lease or management agreement with SCH are added as an insured party on the policy against claims made by a third party. The Government of Canada is also insured.

NOTE: This insurance covers claims filed by third parties in the event of an incident or injury. It does not cover employees and volunteers against claims which may arise from the decisions and actions taken when the HA is managing the harbour. A separate liability insurance policy is available for this coverage. More details can be found in section B of this document.

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## Should all accidents or incidents be reported?

Yes, all accidents or incidents should be reported to SCH staff, who will forward the incident report to SCH Headquarters (HQ) using the incident report template that can be found on the SCH website.

## Is the HA liable for all incidents and accidents that happen on the harbour?

When an incident occurs at a HA managed site resulting in accidental loss of life, bodily injury and/or property damage to a third party, the third party may blame the HA and submit a claim for damages against the HA. When a claim is made against the HA, the onus is on the HA to prove they are not liable by demonstrating that due diligence was exercised and that they have taken reasonable precautions to prevent injuries or accidents. The TPLI currently in place will defend the HA when claims are made, and will pay damages if the HA is found liable.

In order for the accidental loss of life, bodily injury and/or property damage to a third party be covered by the TPLI policy, it must be demonstrated that the circumstances leading up to the event could not have been reasonably known, and the HA would have had no motivation or intent to cause damage. It is ultimately the insurance company who will make the decision if the incident is eligible to be claimed under the current TPLI policy.

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As stated in the policy:

In consideration of the payment of premium, the Insurer agrees to pay on behalf of the Insured, liabilities to others which the Insured may incur as a HARBOUR AUTHORITY, a LANDLORD, a TENANT, and/or an OPERATOR, INCLUDING LOSSES CONSEQUENTIAL TO THE FOLLOWING:

i) All physical loss of or damage to vessels and/or craft including loss of use thereof, their equipment, cargo, freight, and all other interests (including the cost of or expense of or incidental to the removal of wreck of such property), the property of others while docking, undocking and whilst at the landing and mooring facility of the Insured or whilst otherwise in the Insured's care, custody and control.

ii) All other loss or damage to the property of others, arising out of the Insured's operations, including but not limited to the loading, unloading, handling, and storage of cargo.

iii) All loss of life, bodily injury, personal injury or advertising injury.

## How can a HAs demonstrate due diligence and be proactive in reducing liabilities?

- maintaining records of inspections and maintenance;
- performing regular occupational health and safety inspections;
- adopting and implementing a safety policy and best practices;
- erecting appropriate signage;
- mitigating or repairing identified hazards as soon as possible;
- requiring proof of insurance from third parties;
- having signed berthage agreements and user licenses.



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## Who manages TPLI and how does coverage work?

The SCH program manages the TPLI. Incident reports and statement of claims are sent to your SCH contact, who then forwards the information to SCH HQ. National headquarters sends all information to the TPLI broker. The broker reviews the incident report and advises if the incident falls within the TPLI policy coverage. If the incident is covered by the TPLI insurance policy, the broker sends the report to the insurance company, Continental Casualty Company (C N A). An adjuster is assigned to the claim and contacts the HA and claimant to begin the claim investigation process.

## When does TPLI coverage begin?

Once the HA or the organization has signed a lease or management agreement with SCH, it will be added by SCH as an insured party on the policy. The policy runs from April 1 to March 31 of every year and is renewed annually by SCH HQ. All HAs or organizations will be provided with a certificate of insurance confirming the coverage, usually by end of April of each year.

## How do I add a new harbour or HA to the TPLI coverage?

Once a lease is signed, an email with a copy of the head lease is to be sent by your SCH contact to SCH HQ with the new harbour's name and address. SCH HQ will advise the broker and they will provide an electronic copy of the certificate and send a paper copy to the address provided.

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## What are the key exclusions of the policy?

- **Any damage or loss to property owned, leased or occupied by the HA.**
  - HAs must purchase their own property insurance policy to cover their assets.
- **Injuries sustained by volunteers, employees, directors and officers.**
  - The Harbour Authority Corporation (HAC) (a federally incorporated body working on behalf of HAs) offers an optional liability insurance for HA volunteers, directors and officers as well as accidental death and dismemberment and bodily injury insurance (ADD/BI).
  - If an employee becomes injured while performing their duties as an employee of the HA, provincial workers compensation may be available.
- **Seepage and pollution** - except for a sudden and accidental pollution incident. (see FAQ document for *"If an HA owned fuel tank leaks, is the HA covered?"* for more details).
  - This insurance excludes bodily injury or personal injury or loss of, damage to or loss of use of property, directly caused by seepage into or onto or pollution of or contamination of air, land, water or any other property, however caused and whenever happening.
  - This insurance also excludes any liability in respect of disposal or dumping of any waste materials or substances.
- **Claims made against an outside organization using the HA property for an event.**
  - Before accepting to host or co-host an event on HA property, the hosting organization must have their own third party liability insurance. The HA must request this proof of coverage from the event organizers. The liability insurance certificate must extend additional insured status to the HA and to Fisheries and Oceans Canada, and include a provision that a notice of 30 days must be provided in advance of cancelling a policy. In case of cancellation, this notice should be given by the third party's insurer to the HA and SCH prior to the event taking place.

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## What are the key exclusions of the policy? (continued)

- **HA owned automobiles liability – this includes trailers and motorized snow vehicles**
  - HAs must purchase their own insurance policy to cover their assets.
- **For loss, damage or expense arising out of the operations of any vessel or craft owned by the HA in excess of 26 feet in length.**
  - Any vessel or craft owned by the HA in excess of 26 feet in length should have a protection and indemnity insurance (P&I).
- **Contractors hired by the HA to do work for the HA.**
  - Contractors must have their own liability insurance. HAs should request proof of third party liability insurance granting SCH and the HA additional insured status, and request the HA be advised 30 days in advance should the policy be cancelled before the expiration date.

## How do I get a copy of the policy?

The most current policy is available on the SCH intranet. Electronic copies can be provided to the HA when requested by sending an email to their SCH contact.

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# When an incident/accident occurs

## What do to in case of an accident or incident?

As soon as an incident or accident occurs, even without knowing if the third party will claim against the HA and/or the Government of Canada, the HA is to report the incident or accident by notifying their SCH contact. Their SCH contact is responsible for providing the information to SCH HQ who then informs the insurance broker. The purpose of this approach is to report the incident or accident.

**NOTE:** Although all incidents must be reported first to your SCH contact, then to SCH HQ, they may not always fall within the scope of the TPLI coverage and policy. Incident reports are sent for review to the insurance broker who ultimately decides if the incident would be covered by the TPLI. If the broker believes the incident is covered by the TPLI, they advise the insurer C N A that a claim may be submitted by a third party.

## How to complete an incident report


Incident reports can be found on the SCH website.

Incident reports should include all relevant information regarding the incident and have as much details as possible. It should also specify what is believed to be the cause of the incident. The report shall include if the HA believes the cause of the incident to the third party is a result of actions or the lack of, whilst otherwise in their care, custody and control. If photographs or videos were taken they should be sent with the incident report.

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## What is the procedure when a third party wants to submit a claim?

1. Third party claimants may and should contact their insurers. If the third party wishes to pursue a claim for damages, they should notify the HA who will then advise the third party of the process to follow. The third party shall write a statement of claim to the HA outlining the details of the claim. Such document should be elaborated by the claimants insurer or lawyer.
2. The HA will forward the statement of claim to their SCH contact and if not already done, include the incident report. They will then provide it to SCH HQ. SCH HQ, in consultation with the SCH contact, will gather as much information regarding the incident before sending it to the broker. SCH HQ will send all the information to the broker, who reviews the incident report and advises if it falls within the TPLI policy. If further information is required, the broker will advise SCH HQ, who will then communicate with the SCH contact.
3. If the incident falls within the scope of the TPLI policy, the broker sends the incident report to the insurer. The insurer assigns the claim to an adjuster who will investigate the claim. These adjusters work for our insurance company C N A. A copy of the letter addressed to the adjuster is also sent to SCH HQ along with a file number to be used in all subsequent correspondences.
4. The adjuster will contact the HA and/or the third party if necessary.
5. The adjuster will provide his final report to the insurance company C N A.



If a suit is filed against the Government of Canada, a suit for which the insurance company would have the right to defend Canada as an additional insured under the contract of insurance, the insurance company shall contact the Department of Justice Canada, by registered mail to the address below, in order to agree on the legal strategy.

Senior General Counsel  
Civil Litigation Section  
Department of Justice Canada  
284 Wellington Street, East Tower  
Ottawa, Ontario K1A 0H8

General questions or comments email: [webadmin@justice.gc.ca](mailto:webadmin@justice.gc.ca)

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## Once the claim is settled

6. Justified claims: C N A will send a cheque for the total claim amount along with a letter to the third party and/or the company that will repair the damage. A copy of this letter will also be sent to the HA and to SCH HQ. A copy of the letter will also be provided to the SCH contact for their information.

### 7. Unjustified claims

- a. The adjuster from C N A will send a letter to the third party with a c.c. to the HA and the insurance broker to inform them of the decision taken;
- b. The insurance broker will notify SCH HQ and the HA.

8. SCH HQ updates a database with the accident reports and claim requests received from the HA, the insurance broker and C N A. This database is updated regularly and as new information is received.

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## What are SCH's officers responsible for?

The insurance policy is renewed annually on April 1st of every year. SCH's officers will be asked to provide an up to date list of all HAs and the harbours to insure in the month of December. They are responsible to answer questions relating to incidents or claims and to forward them to SCH HQ if they do not know the answer. They shall review incoming incident reports provided by the HAs, and send them to SCH HQ as soon as possible.

## What is SCH HQ responsible for?

The SCH HQ program is responsible for the renewal and the general administration of this policy. SCH HQ is the liaison between the SCH officers and the TPLI broker. SCH HQ is also there to provide any information SCH officers may need and answer any questions they may have in regards to the TPLI policy or claims.



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## Procedure for special events

The HA must inform Fisheries and Oceans Canada (DFO) as quickly as possible of any special event that may take place on the site. The notice of a special event becomes what is called a material change in risk. This material change in risk requires a notice to the insurer provided by the HA seeking to host the special event. In this notice, the HA must provide specific details about the event, which are necessary to conduct an appropriate review. In order to obtain a response from the insurer in a timely manner, it is recommended that the notice be sent at least two weeks before the event is held. DFO reserves the right to refuse any activity deemed unsafe that may pose a risk to the safety of persons or facilities.

### **Steps to follow for special events hosted by the Harbour Authority:**

1. The HA must apply by completing the **Special Events Form** and sending it to their SCH contact at least two weeks prior to the event.
2. SCH Headquarters will receive the form from the SCH contact and forward it to the insurer.
3. Following the evaluation of the application, the insurer will confirm whether additional insurance is required.
4. HQ will inform the SCH contact of the insurer's response, who will in turn inform the HA.

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## Steps to follow for special events hosted or co-hosted by an outside organization (i.e. third party):

1. The HA must apply by completing the **Special Events Form** and sending it to their SCH contact at least two weeks prior to the event.
2. **Liability insurance** must be obtained by the third party and a copy is to be given to the HA prior to the event.
3. For a special event that is deemed high risk in nature, the recommended coverage level may vary (for example: fireworks, alcohol license, etc.). Events are evaluated on a case by case basis by the insurer.
  - a. The liability insurance certificate must extend additional insured status to the HA and to Fisheries and Oceans Canada, and include a provision that a notice of 30 days must be provided in advance of cancelling a policy. In case of cancellation, this notice should be given by the third party's insurer to the HA and SCH prior to the event taking place.
4. The HA must send a copy of the Certificate of Insurance to their SCH contact for review.
5. Upon receipt of both documents (Special Events Form and Certificate of Insurance), the SCH contact will send the information to HQ, which will forward it to the insurer.
6. The insurer may extend or deny coverage, or request additional information. The insurer will advise if the Certificate of Insurance is issued incorrectly, require corrections, or the limit of Insurance is inadequate for the exposure of risk.
7. The insurer's response will be forwarded to the HA through the SCH contact.
8. The HA (licensor) will need to issue a **license agreement** (User License) to the event organizer (licensee). This license agreement must be signed prior to the event.
9. HAs must send a copy of the license agreement to their SCH contact, who will in turn forward a copy to HQ. This document is filed internally and will be submitted to the insurer in the event a claim arises from the special event.

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# Section B: Directors and officers liability insurance

## What is the directors and officer liability insurance?

Directors and officer's liability insurance (D&O) serves as a risk financing mechanism to fund directors and officers liability type losses for which the directors and officers of a non-profit organization may be held liable. These losses may be due to wrongful or negligent acts or omissions made against them, from claims which may arise from the decisions and actions taken within the scope of their regular duties. Typically, the D&O policy also covers the legal fees and other costs the organization may incur as a result of such a suit.

The insurance is offered by Marsh Canada Ltd. The policies are offered in three different coverage amounts based on the individual HA's requirement : \$1,000,000.00 policy, \$2,000,000.00 policy and \$5,000,000.00 policy. This insurance coverage is optional for HAs and other organizations that have signed a lease or management agreement with SCH.

## Who is covered by the D&O liability insurance?

D&O liability insurance applies to anyone who serves as a director or an officer of an HA. The HA must be a member of the Harbour Authority Corporation (HAC), a federally incorporated corporation working on behalf of HAs so that their directors and officers are covered. Coverage may also extend in certain cases to HA employees and volunteers when a claim arises from decisions and actions taken in the context of managing the harbour. This insurance only covers "wrongful or negligent acts" listed in the section below.

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## What is covered under the D&O liability insurance?

In general, claims can be made against directors and officers for performing actual or allegedly wrongful or negligent acts. As stated in the policy:

A “D&O Wrongful Act” means any actual or alleged defamation, breach of duty, neglect, error, misstatement, misrepresentation, omission or other act done or attempted by any insured in the discharge of their duties solely in their capacity with the ENTITY or any matter claimed against them solely by reason or their status as an INSURED PERSON.

## What are the duties of directors and officers?

Directors and officers have a duty to exercise due diligence in overseeing the management of the organization that they serve. This involves 3 basic duties:

- Duty of diligence (duty of care): act reasonably, in good faith and in the organization's best interest;
- Duty of loyalty: place the interest of the organization before your own;
- Duty of obedience: act within the scope of applicable bylaws.

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## What are the roles and responsibilities of directors and officers?

The fundamental duty of directors is the duty to manage. In most cases, the Board has the sole responsibility for the management of a non-profit organization. Generally, this includes the duty to supervise management staff, provide guidance and policy development, and acquire an adequate knowledge of the business and functioning of the organization. The directors must also comply with legal requirements such as properly maintaining the books, records and minutes, enacting bylaws, ensuring the proper election of officers, and appointing an auditor. The directors will have an obligation to ensure the preparation and approval of annual financial statements and to submit those financial statements to the members.

In undertaking the duty to manage and the duty to invest (where the fund is substantial), the directors of a non-profit corporation must meet the standard of care, which is established under Common Law or Civil Code. The reasonably prudent person is expected to exercise common sense; practical wisdom and informed judgment; and, to act deliberately and cautiously while endeavoring to foresee the considerations of his/her decisions.

## What are some personal liabilities facing directors and officers?

Subject to certain exceptions, the general rule is that any liability incurred by a non-profit corporation does not extend to its directors, officers, employees, volunteers or members. Because a corporation can only act through them, directors and officers are subject to a number of Common Law/Civil Code and statutory duties to ensure appropriate fulfillment of all the responsibilities of a non-profit corporation to its members, employees and the community at large.

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## Who manages the D&O liability insurance?

The D&O policy is purchased and administered by the HAC, a federally incorporated body working on behalf of HAs. SCH provides a financial contribution to the HAC to cover a portion of the premiums for HAs.

For more information on the D&O policy, please contact the HAC by email at [duplessis.management@gmail.com](mailto:duplessis.management@gmail.com) or by telephone at 1-506-625-4556.

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# How can directors and officers protect themselves?

Protection for directors and officers can come from several avenues:

## **(1) Reducing liability exposure:**

It is essential that directors and officers of HAs work hard to reduce liability exposure. Due diligence on the part of directors and officers remains the best protection against liability. This can include the proper selection and training of officers and directors, good governance, attention and active participation, knowledge of other people's activities and performance monitoring (ex: employees), risk management and ethical behaviour.

Helpful resources include:

- (a) *The Primer for Directors of Not-for-Profit Corporations*, a bilingual document produced by Industry Canada;
- (b) *Directors & Officers Liability Loss Prevention Guide* that was prepared by Dan A. Bailey of Arter & Hadden for Chubb Group of Insurance Companies (1988);
- (c) ENCON's Loss Control Bulletin # 16 of February 2002 "*Directors & Officers – Building a Stronger Boards: A Modest Proposal*".

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## How can directors and officers protect themselves? (continued)

These resources provide directors and officers of all corporations, including not-for-profit corporations, with guidance that both alerts them to their basic legal rights and obligations and provides them with some simple tools to help them exercise those rights and obligations.

### **(2) Federal or provincial corporations acts:**

HAs are either incorporated provincially or federally (or, at times, both). Therefore, their respective *Not-for-profit Corporations Act* which outlines their personal liabilities, will apply to them and may offer certain protections. There may be differences between federal and provincial legislation. For example, new rules to protect volunteer boards were introduced in Saskatchewan in May 2003. Specifically, amendments to this provincial Act in June 2003 help protect people who serve as volunteer board members of non-profit corporations from personal liability for acts done in good faith.



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# What liabilities does the D&O liability insurance cover?

In general, a D&O liability insurance policy provides coverage for:

- **Damages**
- **Settlements and costs**
- **Judgments**
- **Costs of investigation**
- **Amounts incurred in the defense of legal actions, claims or proceedings and appeals**

More specifically, D&Os liability insurance can generally provide non-profits with coverage for:

**Employment-related claims:** these include wrongful termination / dismissal of employees;

**Discrimination:** discrimination (based on age, race, sex, etc.) involving employment, non-hiring, or potential membership;

**Investigation & defense:** investigation and defense against (unfounded) allegations of illegal acts (It is impossible to purchase insurance for illegal acts);

**Harassment:** sexual harassment or verbal abuse (not for physical abuse);

**Certain third party damages:** third party financial damages and other claims not covered under general TPLI liability insurance;

**Non-compliance/non-delivery:** failure to deliver some services or failure to comply with regulatory requirements;

**Defamation:** libel, slander, or defamation of character;

**Out of scope actions:** acts beyond granted authority;

**Negligent acts:** the consequences of negligent acts.

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# What are examples of wrongful or negligent acts for which the coverage might apply?

The following are some specific examples of “wrongful or negligent acts” for which directors and officers can be found personally liable:

1. **Conflict of interest:** Primarily self-dealing, namely, receiving personal gain while performing as a director or officer.
2. **Debts:** Failing to pay corporation debts in a timely manner.
3. **Failure to meet statutory or regulatory requirements:**
  - There are many statutes that impose liability upon directors and officers for a variety of defaults on the part of the corporation. Examples are the failure to ensure statutory liabilities are paid, such as Employment Insurance (EI), Canadian Pension Plan (CPP), and Income Tax, or failing to pay the wages of employees, according to the *Labour Standards Act*.
4. **Prudence / fiduciary responsibilities:**
  - failing to discharge their responsibilities in a way that a prudent and reasonable person would in similar circumstances;
  - improper management resulting in losses;
  - ignorance of corporation books and records;
  - failure to verify content of official documents before signing;
  - failure to make decisions based on adequate information and advised judgment;
  - carelessness in conducting business or legal matters;
  - insufficient oversight or supervision of officers or employees;
  - leaving the board with less than 3 members for more than 6 months.

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## What are examples of wrongful or negligent acts for which the coverage might apply? (continued)

### 5. Out-of-scope activities:

- Allowing an organization to act beyond the scope of its authority, such as the failure to obey governing documents of the corporation.

### 6. Employment practices:

- wrongful termination of an employment contract;
- discrimination or harassment adversely affecting any employee of or applicant for employment with the organization;
- wrongful deprivation of career opportunity or failure to employ or promote;
- wrongful discipline of employee or infliction of emotional distress;
- negligent evaluation of employees;
- employment related misrepresentation;
- employment related defamation;
- retaliatory treatment against an employee of the organization on account of such employee's exercise of his/her rights under law;
- discrimination or harassment with respect to any past, present or prospective customers or clients of the organization; and
- breaches of employment contract.

The personal liability is driven by the “Joint and Several” liability principle. Accordingly, liability can lie with a single Board member, or with the whole Board (and perhaps with the non-profit organization itself). Liability can arise from an individual Board member's actions or inaction.

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## What are the key exclusions of the D&O policy?

Intentional illegal acts or illegal profits are typically not covered under D&O insurance policies; coverage would only extend to "wrongful acts" as defined under the policy, which may include certain acts, omissions, misstatements while acting for the organization. Due to exclusions and as a matter of public policy, coverage is not provided for criminal fraud. Coverage does not include fraudulent, criminal or intentional non-compliant acts or cases where directors obtained illegal remuneration, or acted for personal profit.

In general, D&O liability insurance does not provide coverage for:

**Illegal acts:** Losses incurred from deliberate, illegal actions (dishonesty, fraud, willful violation of laws or statutes, theft, blatant disregard for employees' rights, illegal profit, etc.) are never covered. A final adjudication establishing dishonesty or fraud is required, so there will be defense costs covered until that time. However, the insurer may seek reimbursement if guilt is established.

**Previous claims:** Claims arising out of litigation which was pending before the company first obtained D&O liability insurance with the particular insurer, claims addressed by an earlier D&O liability insurance policy, or claims covered by other D&O liability insurance policies.

**Internal claims:** Claims brought by the non-profit corporation itself (or any director or officer) against one of its directors or officers. This exclusion is known as the "Insured vs. Insured" exclusion.

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## What are the key exclusions of the D&O policy? (continued)

**Other coverage:** Claims that need to be covered by other insurance policies are excluded, including:

- **Professional services:** Liability associated with the provision of professional services (outside of the role of director or officer). Separate professional indemnity insurance is needed to cover service-providers under these circumstances.
- **Pollution:** There is a standard D&O liability insurance exclusion for loss arising out of pollution. Limited coverage may be provided for defense costs in defending such claims.
- **Physical harm:** Claims arising out of bodily injury, sickness, disease or death are excluded.

**Illegal profit:** Claims arising out of the gaining by the director or officer of a personal profit or advantage to which he or she was not legally entitled. A court ruling is usually needed.

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# Section C: Accidental death and dismemberment, and bodily injury insurance

## What is accidental death and dismemberment, and bodily injury insurance?

ADD/BI insurance provides financial assistance and support for all volunteers, including members of the Board of directors, in the event of bodily harm or loss of life as the result of an accident. The insurance is provided through AIG Mercers Insurance Ltd.

## Who administers the ADD/BI insurance?

The HAC manages and administers the ADD/BI insurance. SCH provides a financial contribution to the HAC to cover a portion of the Class I coverage. Class II insurance is also available, and provides additional coverage to directors and officers. Class II is 100% funded by the HAC. For more information on the ADD/BI policy, please contact the HAC by email at [duplessis.management@gmail.com](mailto:duplessis.management@gmail.com) or by telephone at 1-506-625-4556.

## Who is covered under ADD/BI insurance?

All volunteers, under age 75 and directors and officers of the HA, under age 80, are covered under the ADD/BI insurance policy. The policy provided to the HAs is separated in two classes. Depending on their role, volunteers, directors and officers will be covered by Class I or Class II. Below, is a brief summary of the ADD/BI for your convenience and ease of understanding.

	<b>CLASS 1</b>	<b>CLASS 2</b>
<b>Eligibility</b>	All volunteers, under age 75, while they are performing any task for or on behalf of the HA.	Directors and officers of the HA, under age 80.
<b>Coverage</b>	Injuries sustained by a HA volunteer while participating in any volunteer work or activity authorized by the HA.	Directors and officers of the HA are covered 24 hrs./day for accidental death and dismemberment and bodily Injury, regardless of the nature of the accident, and regardless if they were performing a task for the HA at the time of incident
<b>Policy limit</b>	\$50,000 loss of life	\$150,000 loss of life
<b>Additional information</b>		Class 2 also includes all coverage from Class 1.

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## What are the key coverages under the ADD/BI insurance?

- Funeral expense - \$5,000
- Dread disease - \$5,000
- Fracture reimbursement - \$1,000
- Severe burn - \$10,000
- In-hospital indemnity - \$1,000 per month
- Home alteration and vehicle modification - \$10,000
- Seat belt – 10%
- Family transportation - \$10,000
- Rehabilitation - \$10,000
- Repatriation - \$10,000
- Weekly accident indemnity - Employed: 75% of earnings to a weekly maximum of \$750, after a 3 day waiting period, for a maximum of 52 weeks
- Weekly accident indemnity - Not employed: \$150 per week, after a 3 day waiting period, for a maximum of 52 weeks
- Accident medical - \$10,000
- Accident dental - \$2,000

The bodily injury insurance also provides lump sum payment for: loss of limb or use, loss of hearing, loss of speech, loss of sight, fractures, burns, paraplegia, quadriplegia and more.

- Lump sum payment for volunteers under Class I – \$50,000
- Lump sum payment for officers and directors under Class II – \$150,000





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