

Please see below for compiled answers to Newcomer Club Questions regarding the new insurance policies. Answers are differentiated by shading/non-shading. Questions are not included if the answer includes the question indirectly (rephrased or paraphrased).

It should be noted that the General and Directors & Officers liability insures distinctly different types of liability claims.

Firstly, the General Liability insurance will respond to claims or lawsuits that arising from the activities and operations of your club that cause or are alleged to have caused third party bodily injury and/or property damage that are unintended or unexpected. These types of claims can arise from your meetings, the service of food and liquor, etc. The coverage applies to whatever location your club may hold a function.

Typical claims are slips and falls, getting sick from food, damage to premises you may occupy, etc.

Directors & Officers liability will respond to claims or alleged claims arising from decisions and actions made or taken, or inaction that someone claims has harmed them in some way, usually financially. It should be noted that decisions and actions taken by a board of directors or managers are intentional acts. In other words, someone claims against a club for actions taken, decisions made or the lack thereof that had allegedly harmed them. Typical claims for clubs arise from wrongful dismissals, mismanagement of funds, inappropriate expenditures, failure to manage/supervise. It should be noted that the D&O liability specifically excludes claims where coverage is provided by the General Liability. The General Liability likewise excludes claims that are insured by the Directors & Officers liability coverages.

Without this type of insurance, each director/manager of the club is putting their personal assets at risk should there be a lawsuit. It is worth noting that some personal insurance such as homeowners' policies will defend a claim where a volunteer is sued as a result of their involvement with a non-profit. I know that our homeowners insurance does provide this type of protection. I am not certain as to whether other insurers do as well. Certainly, it is recommended that individuals check their own homeowners insurance to see whether or not the coverage is provided or excluded. If excluded, they may wish to think twice as to whether the D&O Liability is worthwhile.

This is a very brief overview of liability insurance. I can provide a far more extensive description if you wish. I can say this that the D&O coverage we are offering at a price of \$350 is extremely good value.

However, that being said, not all clubs or organizations need or want Directors & Officers liability insurance.

Your club must decide whether or not to purchase and whatever the decision that authorization to purchase be stated in the minutes or the decision not to insure be registered in the minutes either way.

Attached is an extensive look at the legal duties and responsibilities of a non-profit organization in Canada (see Carters, Summary A).

Also attached are actual claims that have been brought against non-profits (see Carters, last page).

Your questions seem to be framed in the belief that your club cannot be sued because you are either too small, don't do very much or it is someone else's responsibility. If I read your comments correctly, your club does not and likely has not carried any insurance. Should I also assume that the club is not a registered society?

Having society status provides a legal entity from which the organization can protect itself and its members. Without any form of legal status, any and all members of the club could be sued as individuals. Without any club insurance, it is the individual member who will bear the costs should there be a claim or lawsuit brought. I would suggest each member check their homeowners or whatever personal insurance they carry to see whether or not that insurance would respond to a liability claim arising from a lawsuit where they volunteer and are members, otherwise it is the member's personal assets that are at risk.

Some clubs have taken a measure of risk control by utilizing waivers. Waivers are a legal document that supposedly releases another party from liability and thereby prevents another person from suing where damage or injury has resulted. While they are a useful form of risk management, they are not "bulletproof" Anyone can sue where they believe someone else is at fault in causing the injuries or damages they have incurred.

Even though an event, meeting or social function takes place on someone else's premises does not mean that as a result of an event where someone is injured or the property is damaged, that your club and its members cannot be sued. The majority of lawsuits name anyone and everyone who had anything to do with an event or function whether or not you are negligent in having caused the damage. It takes a legal process to extract a defendant from a lawsuit which always incurs legal costs.

Yes the restaurant will have insurance for food and liquor service. And the individual will have homeowner's liability insurance. Still this does not mean that your organization could not be sued. If so, without any insurance available, the organization and its members (personally) will be at risk for any legal expenses and court awards.

The simple fact that your organization holds a meeting, function or social event at whatever location presents a certain amount of liability risk to the club and its members. See the following description called "Our Legal Responsibilities."

If as a club you believe this risk is so small that it does not merit purchasing insurance to protect the club and its members against the cost of defending a claim, then that is a decision that should be made and voted upon. The vote should be noted in the minutes of the organization.

The major benefit of liability insurance is that in the event that a claim or lawsuit arises from the activities, operations, meetings and functions of a club is that we as the insurer are responsible by contract to provide and pay for a defense against those claims and if necessary pay the court award should there be a determination of negligence against the club, up to the limit on the policy. I can tell you that the terms at which this insurance is being offered is extremely good value for the money spent.

Our Legal Responsibilities

Our laws state that we have a legal obligation to:

- Be aware of the losses we cause
- Compensate those who suffer as a result or consequence of our activities

We are therefore liable for our actions or inactions that cause damage or injury to others. Those who undertake an enterprise are required to take all reasonable means to reduce the risk of loss by others arising from that enterprise.

This is only one part of due diligence. Due Diligence in this context means:

- Effort made by an ordinarily prudent/reasonable party to avoid harm to others
- Demonstrate an ability and attempt to manage their risks
- Failure to make this effort is considered negligence

Due Diligence originates from and is ultimately the responsibility of the Board of Directors. As a director of a board, due diligence requires specific levels of performance, such as:

- Duty to act cautiously
- Must be seen to attempt to anticipate consequences of decisions or actions
- Obligation to foresee potential risks and take reasonable action to manage them
- Failure to perform these duties can lead to a finding of negligence

Negligence is based on legal concepts of fault or who is to blame. It often means that someone either failed to do something they should have or did something they should not have. Negligence is determined by our courts who examine various factors such as:

- Was the danger was foreseeable
- Was the conduct within acceptable standards
- Was a management process in effect and used
- Did danger exist for an unreasonable time
- The ease of preventing the danger

These are standards of behaviour/performance, when met or exceeded will receive a judgment of not guilty. Failure to meet these standards receives a judgment of guilty by reason of negligence.

The real value of Insurance is it pays for the financial consequences of negligence, i.e. legal costs when defending against a lawsuit. Insurance should be considered the last line of defence from the risks that any organization must manage.

The insurance offering for the Newcomers Club within Canada is an optional program. It was however developed on behalf or and for the benefit of Newcomers Club because of the real concerns that Newcomers Clubs operated without the benefit of insurance.

1. If a member holds an event at her home, would this policy cover her for any liability claim (assuming that her homeowner's insurance is exhausted first)? If there are outings such as hiking in a park/forest/etc., and a member sues for injury, etc., would the Club be covered?

The General Liability, Tenants Legal Liability and if chosen Directors & Officers liability applies to any location, indoor or outdoor, used by a club within Canada.

If a member chooses to sue a club for injuries, that is an individual decision. The liability policies would first respond by providing a defence to those allegations and if needed take the process to court to enable a decision to be rendered.

Liability claims usually utilize a method of suing everyone who had everything or anything to do with the incident that leads to a claim. It is feasible that the homeowner's personal liability as provided through their homeowner's insurance and the Club's liability insurance could both be named in a lawsuit. (Being named in a lawsuit means you are being sued and thereby are responsible to pay for the damages or injuries that have been sustained by whoever the plaintiff may be). The incidence of this is rare and is more dependent on the severity of the injuries suffered.

For simple slip and fall situation that could occur at a member's home, the blanket accident coverage, as proposed, would respond immediately to pay for the cost of medical care and for a continuing disability. We have seen where these expenses are paid up front and with no fault attached, that lawsuits are often avoided.

2. "once the primary insurance is exhausted (i.e., home, meeting facility, etc.)"

I find this statement a bit confusing as the language being used relates insurance issues and liability through various scenarios as follows. If I am correct in the interpretation of this statement, it indicates that the Club is relying on someone else's insurance to respond. This is firstly inherently faulty. Secondly, meeting facilities usually require the tenants or renters to provide insurance that is primary, i.e. it is the first policy to respond to a claim or lawsuit and would provide the landlord and/or owner through what is known as indemnity and hold harmless agreements. Thirdly, when incidents occur whether at a home, meeting facility, etc., as mentioned above everyone involved will be named in the lawsuit. Unless there is some written agreement that the insurance companies have agreed to all policies apply to the case at hand would be required to respond.

Once the primary insurance is exhausted can also mean that the insurance they have is an umbrella liability policy or excess liability policy that only responds once other primary insurance has been used up, i.e. limit of policy has been fully paid, yet claim requires additional limits of insurance to be paid which would require other policies to pay the additional amounts required.

NO the policy will not state "Will policy show under Tenants Legal Liability (in print) the benefits regarding serving food and liquor at any or all locations that the club may operate from".

Tenants legal liability does not insure the liability arising from the service of food or liquor. Tenants legal liability insures the physical damage to the premises occupied by a club. Food and liquor service is insured through the Commercial General Liability section (main policy)

We can however provide for additional insured status through the policies. This should be a question you ask of ever club. Do they provide additional insured status for anyone in their policies and if so who are they - full legal name is required.

Thank you for forwarding your questions. There are quite a few, so I will respond to them in the order they appear in your email.

With 200 members, your club's total insurance premium for 2010 - 2011, will be \$482.00 (including Directors & Officers)

We understand the number of members will change throughout the year. No additional premium will be charged or refunded during the policy terms for a change in membership numbers. Everyone who is or becomes a member of the club will be insured. New members can join at any time during the policy term and will be insured.

I cannot say what your premium will be for 2011 as this will depend on the number of current members at that time.

Premium payments are to be made through National Newcomers. The Registrar-Treasurer will collect the annual premiums from all clubs and forward one cheque to me for all the clubs who participate along with their names, addresses, etc. No payment plans are being made available, unless Judy would wish to provide terms for your club.

The aggregate limit of liability means that this is the total or maximum amount that we would pay in one year for any and all claims that occurred during the policy term.

We will examine the claims results of the combined group of clubs on an annual basis prior to the renewal date. If, unfortunately, there has been various claims, we will examine why they happened, the amounts paid and consider whether a rate increase is merited. That decision will be made by the lead underwriter.

The premium for the Directors & Officers Liability is the minimum amount we will accept for any Newcomers club. This is a flat fee per club.

The Directors & Officers Liability requires the completion of an annual application along with submission of the most recent annual financial statements. You will be directed to an agent in Ontario to arrange for this documentation. The review of the financial statements are conducted by the lead underwriter and myself.

The annual application process for Directors & Officers liability requires the completion of an application, a list of current directors and the annual financial statements. The initial application will also require submission of your bylaws, copy of the minutes of your last annual general meeting.

This review/application will not increase the cost of the Directors & Officers Liability.

As the executive change, they will automatically become insured as they are installed. A list of directors will be provided once a year for the annual application process.

We have 24/7 claims phone numbers and offices located within your region. Should a claim occur those numbers will be the best to call. They will ask for the name on your policy, the policy number and an explanation of what has happened. I am actually located in Western Canada, so it does not make sense for you to call me to report a claim.

We understand that clubs will have different expiry dates of their current policies. As they expire, and the club selects the insurance from the group program, coverage can be added as of the date the former policies expire.

Clubs do not need to be incorporated. The "club" would be considered the entity. So if there was a D&O claim where I was on the board and named in a suit I would not be insured as they are not incorporated but if the club was named that "entity" would be insurable. This should be reviewed this with some type of legal counsel as well. We can design the coverage for groups that are not incorporated without D&O coverage if they want.

Seems we can insure a recognized club, however, there may be concerns where individual members are insured. This is particularly true for the D&O liability.

Our recommendation is that the clubs register as non-profit societies in whichever province they operate. That way there is no question as to the legal status.

1. Meetings would be any gathering of a group of members for a social function, business meeting, fund raising, etc. The insurance applies at all locations wherever located within Canada

2. A member's home would be included as an insured location. One point to note: the homeowner still has responsibilities for anyone coming upon or into their premises, where those guests may be injured. The club insurance would respond where as a result of someone suffering injury on the homeowner's premises, a claim or lawsuit is brought forward that includes a Newcomers club as a defendant.

3. Where a member uses their personal vehicle on behalf of a club, should as a result of an accident, a claim or lawsuit is brought forward that names the Newcomers club as a defendant, the insurance coverage would respond to firstly provide and pay for a defence to the lawsuit. Should it be determined that the club was at fault or is liable in some manner and is required by the courts to pay an award, the insurance would pay the award up to the limit of the insurance stated on the policy.

4. Insurance has no relevance to whether you are liable or not. Liability is determined by who caused the injury or damages, and whether they were negligent in causing those damages. You can be liable whether or not you have insurance. Liability Insurance, that comes in various forms, is designed to pay for the negative financial consequences that result from an accident, incident or lawsuit that would name a club as a defendant. To aid an understanding of our legal responsibilities and put some definitions around liability and negligence, the following is an extract from a paper that describes the law as it exist in Canada.

Our Legal Responsibilities

Our laws state that we have a legal obligation to

- Be aware of the losses we cause
- Compensate those who suffer as a result or consequence of our activities

We are therefore liable for our actions or inactions that cause damage or injury to others. Those who undertake an enterprise are required to take all reasonable means to reduce the risk of loss by others arising from that enterprise. This is only one part of due diligence. Due Diligence in this context means

- Effort made by an ordinarily prudent/reasonable party to avoid harm to others
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Due Diligence originates from and is ultimately the responsibility of the Board of Directors. As a director of a board, due diligence requires specific levels of performance, such as:

- Duty to act cautiously
- Must be seen to attempt to anticipate consequences of decisions or actions
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- Failure to perform these duties can lead to a finding of negligence

Negligence is based on legal concepts of fault or who is to blame. It often means that someone either failed to do something they should have or did something they should not have. Negligence is determined by our courts who examine various factors such as:

- Was the danger was foreseeable
- Was the conduct within acceptable standards
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These are standards of behaviour/performance, when met or exceeded will receive a judgment of not guilty. Failure to meet these standards receives a judgment of guilty by reason of negligence.

The real value of Insurance it pays for the financial consequences of negligence, i.e. legal costs when defending against a lawsuit. Insurance should be considered the last line of defence from the risks that any organization must manage.

The insurance offering for the Newcomers Club within Canada is an optional program. It was however developed on behalf or and for the benefit of Newcomers Club because of the real concerns that Newcomers Clubs operated without the benefit of insurance.

A release of liability waiver is what is described as a liability shield. Valuable when they deter someone from suing, but they are not "bulletproof." i.e., prevent a club from being sued. Depending on the circumstances and the amount of damages, an injured party could sue despite a waiver. This particularly the case where there is negligence on behalf of a club. It should be noted that liability insurance in the various forms respond to pay the cost of legal defence whether or not the case is valid or even fraudulent. The cost of legal defence can be expensive. See attached info on waivers.

The release of liability waiver would apply to only those who sign it. There are other liability exposures that a club is exposed to on a regular basis, such as the occupancy of various premises for meetings and functions, the service of food, the service of liquor for example. Most landlords or property managers usually have some form of rental agreement that requires clubs and/or individuals liable for damages they cause to the premises and/or any bodily injury arising from the use of the facilities. They often will require that the clubs provide what is called a hold harmless and indemnity clause, which states that the clubs are liable to pay the costs of the defence of the landlord as a result of damage or injury those results.

If the clubs are going to rely on these waivers as their first and only line of defence from liability, then they are assuming those risks and their consequences. It is recommended that this be noted in the minutes of the organization that insurance was not purchased even though it was available. If something does happen where a lawsuit occurs, the question will arise as to why there was no insurance in place. If there are costs involved and there always are with lawsuits, those costs would be sought from the current directors of the boards, making them personally liable to pay.

1. All coverages are optional but the main coverage recommended over all others is the Commercial General Liability.

2. The total amount will vary based on the actual number of members per club and whether or not a club will elect to take the insurance package.

3. All insurance coverages are designed to apply to a non-profit organization. The term commercial is a general description as the names of the coverages are the same as those that apply to a business corporation. The real difference is the cost of the insurance for a commercial venture as opposed to a non-profit. It should also be noted that the law applies equally to corporation as a non-profit when negligence is involved. The insurance is designed to respond to those kinds of legal issues when they arise against a club.

Please go to our website: www.cooperators.com, move cursor right from HOME to BUSINESS. A column will appear. Scroll down to Community Guard and click on. A description of the Community Guard program will be shown which is an insurance program specifically designed by and for nonprofits and charities.

4. This question describes a number of factors centering on how the program would be administered. From our conversations, it was indicated that the NNCC would collect the premiums and provide annual updates for renewal of the coverages. As to the issuance of individual policies this can be arranged, however, one method we discussed was having a master policy where each club who select the coverages would be part of the program. There are various methods that can be implemented to meet the needs of the clubs. If one method is chosen, I would suggest it will be the same method applied for all clubs, hence the nature of a group insurance program.