

NON-PROFIT D&O CLAIMS EXAMPLES

(These Claims Examples are for illustrative purposes, only.)

The D&O's of an Ontario based not-for-profit organization received a writ alleging wrongful dismissal, in the amount of \$1,700,000. The claim alleged that the D&Os lured the claimant from a high profile, well-paid position. They then hired another individual in an identical position, at a lower salary, thereby undermining the claimant's effectiveness in the organization. The claim included damages for injury to reputation and name, breach of contract and constructive dismissal, misrepresentation and punitive damages.

The plaintiff, a member of a professional association, decided to his own practice. The association advised the Plaintiff that he was not qualified to practice on his own and that he would be required to write an exam in order to improve his qualifications. The Plaintiff brought an action against the association and several of its directors and officers claiming damages for breach of fiduciary duty, defamation and interference with economic interests. Defence costs: \$110,000. Settlement: \$25,000.

A not-for-profit organisation and its D&Os received a demand for damages in the amount of \$1,700,000. The plaintiffs owned a prize cow and were displaying the animal at an exhibition. The animal was disqualified after the plaintiffs were accused of tampering with the animal prior to the competition. The claim alleged damage to reputation, loss of wages, and libel and slander.

The board of a community sporting complex terminated the employment of a manager once they learned that he planned to start a competitive facility on a "for profit" basis near by. The manager brought an action against the directors. The suit was brought for wrongful dismissal, mental distress and financial hardship caused by the inability to find comparable employment. Claim amount: \$250,000.

A school became bankrupt due to declining revenues. A number of claims were presented by banks, creditors, employees and parents for reimbursement of prepaid enrolment. Even though most claims were brought against the school, the directors were held personally liable for the claims of unpaid wages, wrongful dismissal and prepaid enrolment. Claim amount: \$500,000.

One of the directors of a national charitable organization donated a large amount of the charity's funds to help fund a political party's election campaign. The director was criminally charged with misappropriation of the funds. The other directors were sued by the government on the grounds that they did not exhibit enough control over the actions of the other director. Even though one director was charged with a criminal act (which is excluded from most directors and officers policies), the policy responded for the suit against the other directors for lack of control over the funds. Claim amount: \$500,000

A government funded agency failed to grant monies as instructed by the government, its directors failed to record financial transactions and submitted unaudited financial statements. As a result, the agency was declared bankrupt. The directors were presented with claims by the government, suppliers and creditors for mismanagement of funds. Claim amount: \$1,000,000

The non-profit organization retained consultants to help in their fight against plans to build on an historical site. The consultants were told by two directors that they had enough donations to cover their potential fees. When the fight ended, there was no funds left to pay the consultants. The consultants brought action against the directors for negligent misrepresentation. The court ruled that negligent misrepresentation is not sufficient to hold directors or officers personally liable but significant legal fees were incurred to defend the case. Claim amount: \$30,000

The association was in charge of securing the group's insurance for its members. The board decided to move their insurance to what it considered to be a more attractive package. The previous insurer brought an action against the association for breach of contract. Claim amount: \$10,000.

A professional association's board suspended a member's right to practice as he/she was in breach of the associations' regulations. The individual sued the association in an attempt to regain their license to practice and in addition, filed for damages. Claim amount: \$500,000

A golf and country club was sued by a group of its members who alleged the directors and officers failed to renew an option to extend the lease of the land used as the golf

course. Consequently, the lessor required the club to either purchase the land or to renew their lease for a substantially higher price. The suit was settled for \$2 million.

A social services organization which provided housing for the disabled was sued by the collective parents of various disabled adults alleging a multitude of wrongful acts including negligence and breach of fiduciary duty. The case went to jury trial and was consequently appealed, and the plaintiffs were ultimately rewarded a judgement in excess of \$3 million.

CONDOMINIUM D&O CLAIMS

Bare Land, Condominium Plan 8820814 v. Birchwood Greens Ltd.

The Alberta Court of Queens Bench imposed liability on one of three directors of a land development corporation. The judge found that the corporation was obliged under applicable condominium legislation to maintain a holdback of funds received from purchasers of condo units to ensure money would be available to pay for the construction of common property improvements. No holdback was maintained and the owners sued the three directors, the law firm advising the corporation, and the real estate agent that marketed the project.

One director was found to be liable. The court found that he was the guiding force of the corporation, and that he made all the decisions alone. On the facts the court found that this individual knowingly participated in the breach of trust by the corporation and was therefore personally liable.