

Liability and Risk Management Roundtable Minutes

Community Services Council Newfoundland and Labrador

January 16th, 2004

Background

Three years ago the federal government and representatives of the voluntary, community-based sector developed a collaborative project to enhance the sector. The five-year Voluntary Sector Initiative (VSI) will work to address issues including funding practices, policy dialogue, technology, volunteerism and research about the sector. In October of 2002, the Voluntary Sector Steering Group (VSSG) was replaced by the Voluntary Sector Forum and provides political and strategic leadership for the voluntary, community-based sector in the Voluntary Sector Initiative, and on issues on national concern.

As part of the on-going work, the Voluntary Sector Forum (VSF) has been holding regional sessions across Canada to gain a better understanding of the liability issues faced by the voluntary, community-based sector. The Community Services Council Newfoundland and Labrador (CSC) hosted the session in this province on January 16th, 2004. The CSC's C.E.O., Penelope M. Rowe and the VSF's research fellow, Roberta Bustard, facilitated the roundtable. Over 30 individuals and 25 different organizations were scheduled to attend, however, inclement weather prevented many representatives from arriving.

Introduction to the issues

The session began with an introduction from Penelope Rowe. Ms. Rowe gave a brief overview of the VSF, the key issues under assessment, CSC's contribution to this discovery process, a review of the day's agenda, and an introduction to Roberta Bustard. The roundtable participants were then invited to introduce themselves.

An informal discussion began when the participants were asked to identify some concerns regarding liability and risk management. Their responses included:

- One participant reported that an inquiry to an insurance company regarding one type of coverage prevented their organization from retaining a different type of coverage.
- A number of participants reported that insurance costs were too high.
- Some organizations indicated that they were unable to renew insurance; some policies had doubled or tripled in cost. An example given was all Regional Economic Development Zone Boards in the province are facing a 100% increase in the cost of insurance rates. Consequently, the zone boards are facing a financial crisis. It was noted that the boards might not qualify for insurance because they offer business advice.
- Some participants identified a need for nonprofits to stay informed about liability and risk management issues.

- It was reported that fundraising endeavours have been hampered by inflated insurance rates.
- It was commented that nonprofit organizations should consider developing policies and action plans around risk management.

Roberta then addressed the group and explained the process for the roundtable. Roberta explained that the purpose of the regional sessions is to shed light on the issues and how these issues affect nonprofit organizations, to demonstrate to nonprofits how widespread the problem is regarding liability, and to provide an opportunity to form partnerships as insurance coverage issues seem to pervade all sectors. Finally, Roberts indicated that the plan is to produce a report about the results of these sessions by the end of March 2004. She noted that she is coordinating her efforts with similar work being conducted by the March of Dimes and Ryerson University in order to create a set of policy recommendations.

In her presentation, Roberta defined 3 types of liability that are of concern for the non-profit sector:

- Organizations working with vulnerable populations,
- Directors and officers' liability,
- Staff and volunteer liability.

At this point, the question was raised as to what degree do risk management programs mitigate insurance premiums and whether or not these programs were making an impact on premiums if due diligence has been demonstrated. The general response from the group was the demonstration of due diligence was not making a positive impact on insurance premiums, and that maintaining a risk management program might even be raising coverage rates.

That final aspect of Robert's presentation was a discussion of vicarious liability. Specifically, she identified third party liability – being liable for events without any direct involvement, where volunteer groups may be liable for actions of its agents (volunteer and staff). Roberta noted that vicarious liability became an issue for the voluntary, community-based sector following two Supreme Court decisions in 1999, which involved nonprofit organizations.

Following her presentation, Roberta invited the participants to react to her comments, especially to offer feedback on its definitions and any points that needed refinement or that were missing. The feedback included:

- General comments
 - That the definitions needed to be broadened.
 - The need to be aware and critical of the fine print on policies, where exceptions often exclude coverage that the organization was seeking.
 - The voices of those in the legal profession and insurance industry that, according to one participant's opinion, provide the momentum for these

insurance issues, were missing. This raised the question of what's really driving the rise of insurance rates / costs?

- That in today's society, lawsuits have become a common practice. For example, Wal-Mart has 6,400 outstanding slip and fall claims filed across the nation. The amount of claims made affects insurance rates. Insurance companies will not provide coverage if they keep losing money. The situation requires some control. People have to be realistic.
- That there is a need for a proactive point.
- Regarding liability
 - That there are more insurance coverage problems aside from vicarious liability coverage. For example, bodily injury to a third party visiting the premises; bodily injury to a third party away from the premises; bodily injury to a director while traveling; potential law suits against directors, employees, etc.
 - That organizations cannot acquire liability insurance for their volunteers.
 - That the liability definition is missing injury and vehicle liability. The definition needs expansion.
 - That there is a need to address the question of who shoulders the responsibility when more than one organization is involved. In partnership situations, all partners may be sued or held liable.
- Concerning risk management and due diligence
 - That the definition of risk management is not clear. It should also consider prevention as an element (managing and minimizing risk). Acknowledge that risk management and prevention are complex.
 - That risk management is very difficult to do. As well, it is based upon worse case scenarios, which raises the rates of insurance, which reduces the funding pot for sub-services.
 - That the insurance companies need to understand that is impossible to "manage" every risk. Things are going to happen no matter how prepared an organization might be.
 - That there is a huge issue around the relationship between capacity and due diligence.
 - That even though nonprofits show due diligence, they are still "getting the shaft" with insurance rates and coverage.

Following the responses to Roberta's presentation, the participants were divided into two smaller working/discussion groups. The groups were asked to answer six questions (which were provided) and to identify some themes pertinent to the issues at hand. Afterward, the two groups would report back to the group at large, and the accumulated feedback incorporated into a larger picture.

Group One Discussion Notes

(The questions put to the group are *italicized*.)

Discuss the types of insurance your organization carries.

The participants named directors' and officers' liability, office contents, and injury (commercial and general liability coverage), workers' compensation, accident benefit, errors and omissions, and professional liability coverage. It was noted that none of the participants' organizations carried all of these types of coverage.

Do you have a risk management program in place? Discuss its impact on your insurance coverage including premiums and exclusions.

Only 2 of the 7 participants identified their organizations as having a risk management program, one of which is in the process of planning its risk management program.

Has getting or renewing liability insurance been an issue for your organization? If so, how?

All the participants agreed that obtaining and / or renewing liability insurance has been an issue for their respective organizations.

How will the continuation of changes in the insurance environment affect your organization in the future?

The group had several predictions on this point:

- That some organizations may no longer exist. An example cited was the Snowmobile Federation, whose insurance rate escalated from \$15,000 to \$205,000. Since the roundtable, it was reported that the organization, which had to scramble for funds from various sources, managed to acquire enough to cover the insurance cost for this year (the insurance company lowered the quote to an estimate that was still over \$100,000).
- Volunteers and board members will be more difficult to attract, as liability will be a major concern for them.
- Services will be curtailed and mandates diminished. As a result, the community overall and the government will have to absorb additional costs for lost services.
- The percentage of funds allotted to the operating budget will dwindle as insurance rates increase.
- Fundraising will suffer since more money will go towards insurance coverage.
- More resources, time and money will be spent on financing and risk management.
- Members may be asked to pay for liability.
- Administrators and volunteers will become more aware of risk management and liability issues.
- Organizations will try more to prevent risk.
- The insurance industry will be dictating policy.

Have liability concerns had an impact on your organization's ability to recruit and retain volunteers, including your Board of Directors?

- Of the 7 representatives in the group, 3 answered, "Yes" and 4 answered, "No, but..." The "but" was the implication that, although they have not experienced this challenge, they do foresee it becoming an issue for their organization in the future.

Has your organization considered forgoing insurance coverage?

- None of the participants indicated that they have considered forgoing insurance coverage. They added that the challenge is to get a company to insure their organization.

In addition to these questions, the group came up with 2 of their own that they felt were very relevant to, and telling of, the current atmosphere regarding insurance.

Has your group ever been denied any type of insurance coverage?

- 5 of the 7 participants responded, "Yes".

Has your organization's insurance coverage ever contained exclusion clauses that you do not want or that excluded what you wanted covered?

- 2 of the 7 replied, "Yes".

Next, the group identified what they saw as the main/primary themes and needs surrounding the issues of liability, risk management and insurance for the nonprofit sector:

- *Collapse of the sector*, resulting from the inability to obtain insurance and / or the rising cost of insurance.
- *Insurance companies' lack of communication and collaboration with nonprofit organizations* to develop an affordable coverage plan suitable to the organization.
- *More energy diverted to risk management* than to other aspects of organizational management and other activities.
- *Government must take notice and take action* to defuse the impact that the current insurance environment has made, and will make, on the voluntary, community-based sector.
- *Collective collaboration in the voluntary, community-based sector* is required to lobby the issue and to work towards solutions. As well, the sector needs to get more educated on the issue.
- *Insurance considerations slow down new economic and social development* as nonprofit organizations are forced to concentrate more on financial resources, risk management and liability, and less on programs and services.
- *Raise awareness of the needs and services managed by the voluntary, community-based sector* that are vital to the health and continuing growth of communities.

In general, the group maintained that should the current situation with insurance, liability, and risk management continue, it could result in the collapse of some nonprofit organizations. The participants agreed that "all or nothing" insurance deals did not work for the voluntary, community-based sector. As well, they noted that no organization could

afford to forgo insurance because individuals do not want to assume personal responsibility and liability. Several participants mentioned that voluntary, community-based organizations want to obtain insurance but that the obstacles identified negatively impact the sustainability of the organizations themselves.

The group also stressed the need for government intervention at the legislative level. They indicated that there is a need for public forums on the disappearing attitude of “the common good” in today’s society and how it impacts the voluntary, community-based sector. As well, the participants noted that there was a need to create public pressure on this issue in order to initiate changes. Finally, the group commented that the voluntary, community-based sector would survive because its people are strong and determined, and because it has support.

In closing, the group thought it unfortunate that some people were not able to attend the discussion due to the foul weather conditions, and would like to see another roundtable discussion. Before the group session ended, they voiced the idea that the Community Services Council should have a conference about this issue, which would involve all stakeholders: government, the insurance industry, the legal profession, the nonprofits and the public.

Group Two Discussion Notes

(The questions put to the group are *italicized*.)

Discuss the types of insurance your organization carries.

- The different types of insurance that organizations carried included:
 - Public liability
 - Director’s and officer’s insurance
 - Fleet insurance
 - Bonding
 - Errors and omissions/professional
 - Travel accident

It was noted that with Director’s and officers insurance, you could appoint some staff, as officer’s to broaden your coverage. The group raised the question of how well covered board members are while traveling came up. It was felt that there is a lack of understanding about what insurance policies actually cover and a lack of understanding of what type you actually need. Finally, it was noted that personal auto insurance covers only pleasure. If it is used for business it may not be covered.

Do you have a risk management program in place? Discuss its impact on your insurance coverage including premiums and exclusions.

- The majority of the participant’s stated that their organizations do not have formal risk management programs but instead have individual policies.
- It was noted that risk management programs are still in the early stages of development in a few

- One participant commented that good risk management might not help reduce rates but in court it could help you
- One organization reported that they have physical and sexual abuse policies in place.
- One association reported that it has had workshops and made list of risks
- One of the participants reported that their organization has a risk management team which reports any perceived and new risk that might change their policies and procedures
- It was suggested that the development of specific committees would be a form of risk management

Has getting or renewing liability insurance been an issue for your organization? If so, how?

- It was reported that the insurance renewal for one foundation was completely declined. The foundation was only able to get it renewed because a member of their board worked for an insurance company.
- Most of the organizations reported that their rates have increased
- It was noted that there are benefits of having all policies with same carrier

How will the continuation of changes in the insurance environment affect your organization in the future?:

- One participant commented that an increase in premiums that could limit the services her organization offers.
- It was suggested that because of insurance and risk management issues, organizations have had to develop policies that have hindered normal human relations. Risk management has changed how programs operate

Have liability concerns had an impact on your organization's ability to recruit and retain volunteers, including your Board of Directors?

- One of the organizations reported to be having trouble recruiting volunteers
- One suggestion was that the changing environment made them more aware of what they have to do. A good risk management program will make you more attractive to volunteers.
- One foundation has been adversely affected
- Volunteer levels within one of the organizations are reportedly about the same, but their screening process has always maintained the same level
- It was commented upon that male volunteers seem to be affected more in some organizations.

Has your organization considered foregoing insurance coverage?:

- It was suggested that if an organization can't obtain liability coverage it shouldn't bother operating!
- One participant stated that his association would shut their doors rather than operate without insurance.

Next, the group identified what they saw as the main themes and needs surrounding the issues of liability, risk management and insurance for the nonprofit sector:

- How organizations can determine if their insurance coverage is adequate.
- How organizations can determine whether they have the right type of insurance(s).
- There appears to be a lack of understanding of what is covered, what is needed, and what is actually provided (vs. what you are told by the agent).
- How organizations can determine what is an appropriate level/amount of coverage.
- The relative unavailability of insurance/many exclusions (especially relative to main areas of risk).
- That insurance companies do not differentiate low vs. high-risk activities.
- Dramatic increases in deductibles (especially challenging for small organizations).
- That there are policies being written to limit programs/activities.
- That there are limits on volunteer involvement as a result of issue with liability and insurance.
- That there is a need to clarify roles and responsibilities (staff vs. volunteers).

The group identified a couple of themes that emerged from their conversation. These include;

- The need to understand risk management and insurance issues.
- An improved understanding of the kinds of coverage – range of coverage and limits.
- The possibility of limiting and restricting the programs being offered, the services and the work of their volunteers.
- The high costs associated with insurance.
- The group also identified two issues which they felt that the sector just doesn't know:
 - What should we be doing
 - Coverage of using private vehicles

Closing Plenary

The final phase of the roundtable brought the two groups back together to discuss their answers, draft a list of common themes, provide possible solutions and recommendations regarding liability, risk management and insurance.

The identified themes included;

- *The Cost and Denial of Insurance.* It was suggested that the increasing costs and possible denial of insurance coverage could lead to the collapse of the sector.
- *A need for education and awareness of the issues.* It was suggested that the sector must become more aware of and better informed about the issue of liability and risk management.
- *Issues of insurance coverage.* It was noted that the issue of insurance is complex and the possibility of denial and exclusion of coverage is potentially difficult to understand by the sector.

- *The lack of consultation by the insurance industry.* It was suggested that the insurance industry should work with the sector to develop a workable solution to the problem.
- *The diversion of resources.* It was commented that the allocation of resources, both human and financial, toward the issue of liability and risk could significantly and negatively impact the sector.
- *The role of external groups.* It was noted that there is a role for external groups, such as government, the insurance industry, the legal profession, and society as a whole, to take notice of the issue and assist with possible solutions.
- *Implications.* It was commented that the insurance companies would be, in essence, slowing down economic and social development by hampering the work of the voluntary, community-based sector. The lack of appropriate coverage could impose limitations on volunteering which would slow progress in general.

Possible solutions and next steps include:

- *Clearly define the problem.* Research the extent of shape of the problem of liability, risk, and insurance among voluntary, community-based organizations in Newfoundland and Labrador.
- *Find collective options for insurance coverage.* One idea was reciprocal insurance, where it's not private for profit – a variation of 'self insurance' (similar to blanket coverage). Another idea was to have an umbrella organization negotiate insurance coverage for various organizations so that each organization does not have coverage on its own. The issue of indemnification was also mentioned as a possible solution for the voluntary, community-based sector.
- *Establish funds against certain risks.* This would entail all voluntary, community-based organizations annually depositing money into a collective fund. The fund would be maintained by the sector and used for asset protection and to protect the member organizations against risk.
- *Develop a clearer understanding of what coverage is provided to volunteer workers.* Non-profit organizations need a clear understanding of what, and who, any insurance coverage they have, and/or Worker's Compensation, does and does not cover.
- *Address government regulations and policy.* The voluntary, community-based sector needs some top-down assistance. Nonprofits need to impress upon the government the need for policy. Regulation could limit the types of suits, for example. Nova Scotia has a Volunteer Protection Act, which limits liability claims.
- *Garner government support.* The voluntary, community-based sector is important. Its services need to be maintained in order to avoid additional costs for the government and / or the community at large. The government must recognize the voluntary, community-based sector's important role and provide support, such as providing incentives to volunteers.
- *Form a Steering Committee to address the issue of liability and insurance.* This body could bring voluntary, community-based organizations, the insurance industry, and government together to better understand and deal with these, and

other issues, as well as to take a more systematic approach to solving the problem. It was suggested that a work group be struck to explore and begin the process of forming this body.

- *Follow-up and involve the other stakeholders.* All those groups with a stake in the issue need to be consulted in order to find a solution, or set of solutions, that would be initiated.
- *Increase awareness among nonprofits and create well-informed insurance shoppers.* They need to understand how insurance companies calculate risk and categorize organizations. Nonprofits should question all these aspects and shop around for insurance quotes.
- *Convince Insurance companies to allocate costs according to significance of risk.* Currently, many voluntary, community-based organizations face high insurance costs because of the way they are categorized in the insurance industry, even though the categorization inadequately reflects the actual amount of possible risk involved within their particular nonprofit organization.
- *Create a public dialogue, pressure and mobilization.* The sector must raise awareness of the problem among other stakeholders including government, the insurance industry, and society as a whole. It was felt that this is the only way that there will be legislative change.
- *Take action on the provincial and national levels.* This problem is not unique to voluntary, community-based organizations in Newfoundland and Labrador. All non-profit organizations will face aspects of this issue. Roberta noted that this is the impetus behind the work that she is doing now. The CSC has recognized this problem locally and is willing to invest some energy to addressing this problem.

Action

Since there's a sense of immediacy around this issue, participants brainstormed on what they could do now to work towards a resolution. They concluded that a provincial champion, perhaps someone from the provincial government, and a province-wide campaign would aid the process. CSC indicated that it is willing to facilitate further action. Five representatives volunteered to serve on a preliminary Steering Committee that would include representatives from government, the insurance industry and the legal profession. It was suggested and agreed upon that the Steering Committee first have one meeting without other stakeholders present before embarking on an inclusive dialogue.

The Roundtable was adjourned.