

February 22, 2009

Director's Liability Insurance – FYI

Attention Library Board Chairs/BCLTA Liaisons:

Thanks to Joanne Richards of the Kootenay Library Federation for sharing the following information on Directors' Liability Insurance. It was felt that some BCLTA members might benefit from her research and findings on this topic.

Under Section 54 of the Library Act, individual board members, their employees and trustees are protected from lawsuits. Quoting from the Act:

Protection against lawsuits

54 (1) No action for damages may be brought against an existing or former member, officer or employee of a library board or against a person acting under the direction of the library board for

- (a) anything said or done or omitted to be said or done in the performance or purported performance of a duty or the exercise of a power, or
- (b) any alleged neglect or default in the performance or purported performance of a duty or exercise of a power.

(2) No action for the debts or obligations of a library board may be brought against an existing or former member, officer or employee of a library board or a person acting under the direction of the library board.

(3) Subsections (1) and (2) do not provide a defence if

- (a) the member, officer, employee or person acting under the direction of the library board has, in relation to the conduct that is the subject of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or
- (b) the cause of action is libel or slander.

(4) This section does not absolve a library board from vicarious liability for anything said or done or omitted to be said or done by, or for any neglect or default of, an individual referred to in subsection (1), for which the library board would have been vicariously liable had this section not been in force.

This section protects *individual board members* from being sued for making an error in the performance of their duties. Since Directors' Liability Insurance is intended to cover *only the individual* in the event of a lawsuit, it is essentially redundant insurance because, under the Library Act, the *individual* can't be sued.

The fourth clause in this section of the Library Act allows for a board in its entirety to be sued. This means that the board as a whole should have liability insurance and, according to the advice Joanne received from PLSB and a local insurance agent, this type of insurance is "General Commercial Liability Insurance". This includes fire and accident insurance, and possibly contents insurance as well.

As an addendum, the North East Library Federation Board recently decided to purchase insurance through Encon (www.encon.ca) for members of the Pacific Region Arts Council. The price, including PRAC membership fee and administration fee is \$205 per year – substantially lower than some libraries

are currently paying for board insurance. If you are interested in learning more about PRAC/Encon, contact Stephanie Spiers, Office Manager with PRAC at 250-338-6987 or pracpacific@hotmail.com.