



# Directors' & Officers' Exposures

- If an organization has a corporate board or advisory committee they should consider protecting their assets with
- Directors' & Officers' Liability (D&O) insurance. Not only publicly traded companies require D&O Insurance. Public,
- private and even non-profit organizations can face D&O litigation risks.

## Parties That Typically Bring D&O Litigation

- Shareholders/Investors
- Government
- Business Partners
- Current/Former Employees
- Financial Institutions
- Transactional Parties
- Competitors
- Business interruption

## Potential Exposure to D&O Litigation

### Mergers & Acquisitions Exposures

Claims surrounding mergers and acquisitions relate to the purchase of companies and assets. These claims represent one of the highest severity exposure areas that D&O insurers pay out on claims annually. M & A claims typically include alleged misrepresentation with respect to the financial position (or health of the company), or the true condition of the asset being sold.

### Employment Related Claims

Employee related lawsuits are on the rise in Canada. Lawsuits alleging retaliation, discrimination, and sexual harassment are some of the most common complaints. These claims can happen at any point making them difficult to foresee, but they often occur when a company runs into financial difficulty and has to downsize.

### Competition Act Claims

The Competition Act applies to all companies (public or private) and can impose personal liability for directors who breach the act. Offenses under the Competition Act include predatory pricing, conspiracy, bid-rigging, misleading advertising and deceptive telemarketing. Claims can be brought by competitors, or the general public, injured as a result of the anti-competitive practices. Of course, fines and penalties for criminal conduct are excluded. Entities do not typically have defense cost coverage for regulatory investigations or proceedings.

## Bankruptcy Claims

In the event of an economic downturn that affects your balance sheet and income results, it may be difficult to purchase D&O coverage. Of course, this is when a company needs their D&O policy the most since this is when many claims arise as the company takes necessary measures to preserve capital.

A 'Side A' D&O policy is a prudent consideration, as most offer broad difference in conditions coverage for when a company is in bankruptcy and subject to a bankruptcy stay.

## Defence for Frivolous or Groundless Claims

A fraction of all D&O claims go to trial; however, defendants are still required to respond to every law suit, even if the claim is entirely frivolous in nature. One of the most valuable aspects of a D&O policy is the defence costs coverage it provides, which is activated on every covered or insured claim, and should be outside the limit on a well-drafted D&O policy.

## Shareholder/Investor Claims

Private entities that have shares, and the voting rights that go with them, can be sued by any shareholder or investor (i.e. misrepresentation).