



## DIRECTORS' & OFFICERS' LIABILITY INSURANCE FOR CONTRACTORS

### So much at *risk* and so little time!

You are a prudent business leader operating in a competitive market and you are constantly assessing the risks facing your construction operation. You recognize the various types of risk and apportion time and resources accordingly.



Managing the various risks takes careful prioritization. Transferring risk, wherever possible, allows you to focus more on running the business with the confidence that you have a safety net when a risk manifests. Your trusted Insurance Broker can help advise you where an insurance product can be used to transfer risk and where solutions exist for what concerns you; we are interested in being part of the solution.

After all, we at Trisura are Canadian-owned and operated with 40% employee ownership so we understand the constant balancing of business opportunity and risk.

### D&O is a Liability Product... Does your CGL policy offer sufficient coverage? *No...*

While a Commercial General Liability (CGL) policy is a very critical part of any insurance portfolio, it typically responds to claims made against you related to third party bodily injury, property damage and personal injury. However, if you are sued for financial loss suffered by another party such as an employee, client, supplier, lender, competitor, shareholder or government agency, your CGL policy may not provide coverage. A D&O policy responds to claims for monetary damages or non-monetary relief for wrongful acts committed by executives of the corporation. In the event of a claim, a D&O policy will also act to insulate your working capital from the expense of defending a suit. In turn, your operations continue without impacting cash flow, vendor management, debt servicing, line of credit or your surety bond capacity.

### Your corporation's by-laws include an indemnification clause so you are fully protected, right?

Even when a corporation's by-laws provide an indemnification clause for the corporation's executives, there are a number of situations where this protection will not apply:

- a. if the corporation is unable to pay it due to financial hardship or bankruptcy;
- b. where the corporation is legally prohibited from indemnifying in cases alleging fraud, self-dealing or dishonesty;



- c. in actions brought by the corporation against its own directors and officers where the court is required to provide approval to indemnify but does not grant it;
- d. in politically motivated situations where individuals in control don't want to indemnify certain parties.

### So what exposures does a Directors' & Officers' Liability Policy address?

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A Directors' and Officers' liability policy protects the directors, officers, and corporation against liability arising from:

- Statutory Liabilities
- Common Law Exposures

Exposures that have specific relevance for Contractors are as follows:

- Strict Criminal Laws governing workplace health and safety (Bill C-45 federal legislation - imposes serious penalties for violations that result in employee injuries or death)
- Construction Lien Act - directors and officers can be held liable in an action for breach of trust
- Succession Planning - failure to adequately plan for transition of ownership or leadership
- Shareholder Action against directors and officers for:
  - misrepresentation of material information
  - putting their own personal interests before the corporation's
  - derivative action where there is a gap in upkeep of fiduciary duty
  - oppressive activities of directors or officers having influence with respect to voting control
- Employment practices and litigation from employees
- Defence of a customer suit requesting reimbursement/replacement of faulty product or service

### Do your board members and executive team know their responsibilities?

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As you know, your board of directors is a body of elected or appointed members who jointly oversee the activities of the corporation. Their duties are generally outlined in your corporate by-laws. The main duties of all board members are:

- a duty of diligence/care - the requirement to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- a duty of loyalty - the duty to act honestly and in good faith, with a view to the best interests of the corporation; and
- a duty of obedience - to follow all applicable rules, regulations, and bylaws that impact the corporation.

While you may not have a board of directors, the expectation of your executive team is that they will conduct themselves in accordance with the above listed duties. The difference is that they will not be judged within the same framework of statutorily dictated obligations and responsibilities as that of a director of a corporation.

### How can Trisura help?

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**Trisura Guarantee Insurance Company** is a Canadian owned and operated specialty lines insurance and surety company. Through a select network of national and regional brokerage firms, Trisura provides innovative solutions and expertise in the Contract & Commercial Surety, Directors' and Officers' Liability, Fidelity, Professional Liability including Media and Cyber Liability, Casualty and Warranty product lines. Trisura operates six offices across Canada, underwrites approximately \$106 million in premium, and has an A.M. Best rating of A- (Excellent).

**Refer to your policy for complete details. In case of inconsistency between this document and your policy, the policy terms, conditions and limitations will apply.**