



TODAY IF YOU ARE A DIRECTOR OR OFFICER, YOU NEED D&O INSURANCE!

The creation of a limited liability corporation does not grant immunity to directors and officers from the liability they may face for acts they commit on behalf of the corporation they serve. In Canada and the United States, corporate laws and statutes (see an abridged Canadian list below) have many built-in penalties and strict liability provisions that pierce the corporate veil and make the directing minds of the organization personally accountable for abusive corporate behaviour.

Many of these statutory liabilities are joint and several in nature. These statutes cast a wide net of potential liability and can often penalize innocent directors for the action or inaction of other board members. High net worth directors and officers are often obvious targets under these circumstances.

Relying on corporate indemnification as the sole protective mechanism is not enough. The worth of an indemnity is only as good as the company's financial ability to honour the agreement. Without Directors' and Officers' Liability Insurance, companies may face poor financial results as a consequence of uninsured losses, or even bankruptcy. Indemnity is only permitted under law if the directors and officers were acting honestly and in good faith with a view to the best interests of the corporation. Under the Canada Business Corporations Act, indemnity is only a right if the directors and officers are substantially successful on the merits of the defence of the action. There is no statutory obligation for a corporation to finance the defence thus potentially resulting in significant out-of-pocket expenses.

A Comprehensive General Liability Policy is not the answer since it is not intended to cover directors and officers for everyday decisions that could lead to lawsuits over alleged misrepresentations, misleading statements, neglect, breach of duty or violation of statutes.

Directors' and Officers' Liability Insurance considers all of the above issues. The policy responds to claims independent of the financial condition of the corporation in order to protect the directors and officers. Most Directors' and Officers' Liability policies pay on behalf of insureds, thereby eliminating any out-of-pocket expenses, and are designed to address the legal risks associated with day-to-day decisions made by directors and officers.

Statute	Statutory Breach	Liability Exposure
Canada Business Corporations Act (CBCA)	Failure to pay employee wages	Directors are jointly and severally liable for up to 6 months of unpaid employee wages and 12 months vacation pay
Income Tax Act, Employment Insurance Act, Canada Pension Plan	Failure to deduct, withhold, or remit required amounts (Income tax, EI, CPP)	Directors are jointly and severally liable with the corporation to pay outstanding amounts and interest or penalties
Excise Tax Act	Failure to remit net GST	Directors are jointly and severally liable with the corporation to pay outstanding amounts and interest or penalties
Retail Sales Tax Act (ON)	Failure to remit net PST	Directors are jointly and severally liable with the corporation to pay outstanding amounts and interest or penalties

Securities Act (BC, ON)	Misrepresentations contained in a prospectus, circular or notice	Directors are jointly and severally liable for damages to plaintiffs who purchased the security offered under the prospectus during the period of distribution
Bill 198 (amendments to the Ontario Securities Act)	Civil remedy to investors for the corporation's misrepresentations or non-disclosures	No limit where a director authorized the misrepresentation
Consumer Protection Act (BC, ON)	Corporation's breach of contract of sale or failure to disclose cost of borrowing if it acts as a lender	Every director and officer who acquiesced in any offence is personally liable
Canadian Environmental Protection Act, 1999	Failure to control pollution concentrations; unauthorized waste disposal; failure to comply with a Compliance Officer	Directors or officers who authorized or participated in, or failed to take all reasonable care to prevent an offence, are liable to punishment whether or not the corporation has been prosecuted or convicted
Bankruptcy and Insolvency Act	Offences such as concealing or destroying documents relating to the bankrupt's property, or making a false entry or knowingly making a material omission in a statement or accounting	Any director, officer or agent of the corporation who authorized, acquiesced or participated in the offence is guilty
Competition Act	Offences under this act include predatory pricing, conspiracy, bid-rigging, misleading advertising and deceptive telemarketing	Any director or officer who directs or influences the policy of the corporation with respect to such conduct is a party to and guilty of the offence
Employee Health Tax (ON)	Failure to pay, report or comply	Up to \$5,000 per day during the period the offence occurs
Occupational Health and Safety Act (ON)	Failure to comply	Fines
Pension Benefits Standards Act	Failure to make contributions	Fines and payment of owed amounts
Construction Lien Act (ON)	Breach of trust	Liable for financial deficit

About Trisura

Trisura Guarantee Insurance Company is a Canadian-based Property and Casualty insurance company, incorporated under the Insurance Companies Act (Canada). As a Canadian owned and operated company, Trisura is uniquely positioned to satisfy mid-market risks in Contract Surety, Commercial Surety, Directors' and Officers' Liability, Fidelity, and Professional Liability including Media Liability.

Trisura is rated **A- (Excellent)** by A.M. Best Company.

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.