
D&O Insurance

A Guide

Find out how likely you are to have a D&O loss in the next three years with our Risk Scorecard [PAGE 10](#)



WHAT'S INSIDE:

TOP 10 REASONS FOR DIRECTORS & OFFICERS INSURANCE
WHY DO YOU NEED D&O INSURANCE? • MISTAKES HAPPEN • RISK SCORECARD

Top 10 Reasons for D&O Insurance

Directors' & Officers' Liability Insurance (D&O) protects corporate managers at all levels if they are personally sued— often in addition to the company being sued—by shareholders, employees, vendors, competitors, customers, government bodies, and creditors, among other parties.



D&O coverage can provide a team of experts to help you navigate the process. D&O covers legal fees, settlements, and other costs. It can extend to protect the company if it is named in a suit as well.



1. Directors' personal assets are at risk

If accused of breaching their duties, they are liable, and assets are potentially at risk if there is no D&O coverage.



2. Bill C-45 “Westray Bill” amendment to Criminal Code

This bill provided new rules for attributing criminal liability to organizations, including corporations, their representatives and those who direct the work of others; it imposes criminal liability for negligence and other offences.



3. Defending a legal action can be costly

Legal costs for defending allegations against the company or one of its directors can often run into tens—and even hundreds—of thousands of dollars, not to mention the time commitment required of you/your team.



4. Employment practices insurance

Employment practices insurance, a type of D&O coverage, is, in essence, a human resources malpractice coverage specifically designed to respond to claims/litigation about sexual harassment, wrongful dismissal, demotion or failure to promote.



5. Your competitors can sue you

Canadian antitrust laws maintain and encourage competition in Canada. Your competitor may challenge you/your company on your practices.



6. Protection in case of bankruptcy or insolvency

Statutory Liabilities in Canada can mean exposure for unpaid and unremitted taxes and/or suits by creditors in the event of insolvency or bankruptcy of the company.



7. Groundless/unfounded claims still need to be defended

You don't have to be wrong to be sued!



8. D&O Claims are NOT covered under any other liability policy

A common misconception is that alleged misconduct by directors or companies is covered under other liability policies, such as Commercial General Liability.



9. D&O insurance is more affordable than ever

A D&O policy can cost from \$1500 per year, yet the total cost of a D&O claim can run into thousands/hundreds of thousands of dollars.



10. D&O helps attract talent

Having D&O insurance in place can be attractive for talent considering joining a company—they know they will be protected.



Why do you need D&O Insurance?

Did you know that in Canada, your personal assets are at risk if you or your company are sued? And you don't have to be in the wrong to be sued.

A company needs to ensure that its directors and officers have the room to make decisions. D&O liability insurance supports good corporate governance by making the risks of these decisions manageable and transparent.

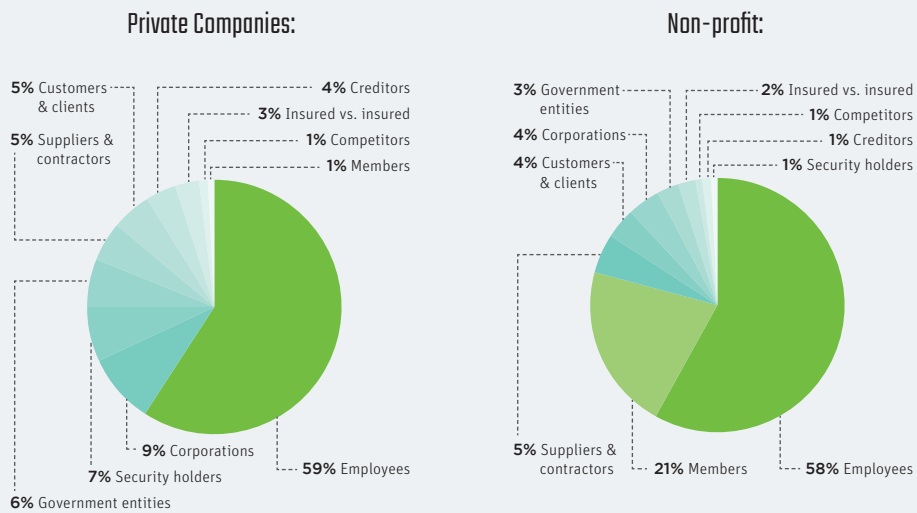
Private companies face increased scrutiny from various sources, and the volume of lawsuits and investigations against private companies continue to rise. D&O insurance provides an invaluable means to cover the ever-increasing costs incurred by companies to combat such actions.

Many private company officials are convinced that because they have only a minimal number of shareholders or owners, they will never have a D&O claim, and so they don't need to buy D&O insurance. This business decision may be a mistake. The list of potential claimants on a private company D&O claim is not limited to shareholders or owners. D&O claims plaintiffs could also include customers, vendors, suppliers, regulators, creditors and others.

In its 2016 private company risk management survey report, Chubb noted that over a quarter of all companies reported experiencing a claim in the last three years. The average reported loss was \$387K.

Among companies responding to the survey that do not buy D&O insurance, the average reported loss was almost \$400K.

Director and officers claims by source



Source: Encon



Do you have a plan in the case of a D&O lawsuit?

Alleged misconduct by directors or companies is not covered under other liability policies such as Professional Indemnity.

Defending a legal action can be costly, often running into tens of thousands of dollars.

The coverage available under private company D&O insurance policies is materially broader than the coverage afforded under public company D&O insurance policies—private company D&O insurance policies provide broad balance sheet protection for the insured companies.

An aspect of private company D&O insurance that many prospective buyers often overlook is that the coverage afforded extends far beyond just protection in the event of a lawsuit. The typical definition these days will also define the term claim to mean “a written demand for monetary, nonmonetary or injunctive relief” as well as “a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, nonmonetary, or injunctive relief,” subject to all of the policy’s terms and conditions. This broad wording means that a lawsuit is only one mechanism by which coverage may be triggered.

Mistakes Happen

Managers at all levels constantly walk a fine line, making tough decisions in complex operating environments.

Any manager's decision can result in losses for the company or a third party, **and the manager can be held personally liable** for those losses—and can be involved in costly litigation.

The Risk is Real:



More than 1 in 4 Canadian private companies report experiencing a D&O loss in the last 3 years¹



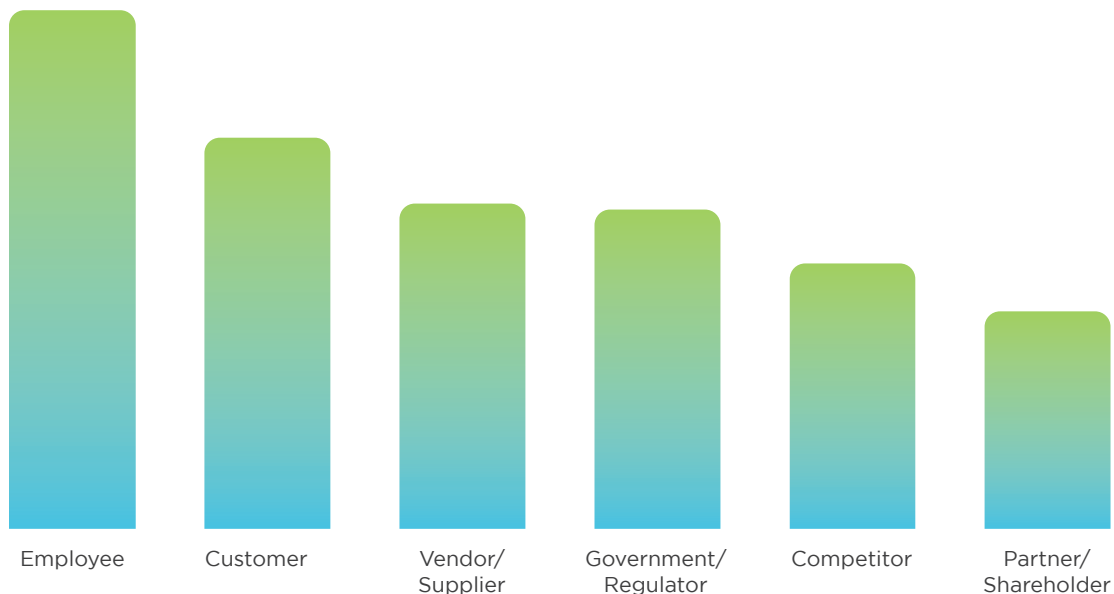
\$288K

Average reported loss in Canada

¹Chubb 2016 Private Company Risk Survey

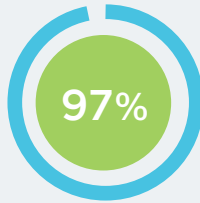
Sources of Claims:

Canadian private companies experienced losses due to suits or fines brought by:

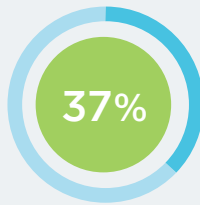


Financial Impact:

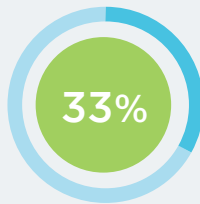
Canadian private companies that experience D&O losses report the following¹



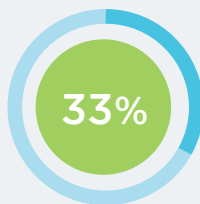
financial loss



loss of productivity or staff hours



negative impact to morale/company culture



negative impact to brand/reputation

¹Chubb 2016 Private Company Risk Survey

Risk Scorecard

On a scale of 0-100, what is your risk of having a D&O loss in the next three years?

To help businesses better understand the level of risk their directors, officers, and managers face, CMB Insurance Brokers provides this Directors' & Officers' Liability Scorecard.



Instructions: Each of the following sections has its own instructions related to scoring. Please review them carefully. After you have completed all of the sections to the best of your ability, add up your score and determine your level of risk by utilizing the chart at the end of this document.



COMPANY NAME:

DATE OF D&O RISK ASSESSMENT:

SECTION A: BUSINESS OPERATIONS AND HISTORY

YES = 4 PTS NO = 0 PTS UNSURE = 4 PTS	YES	NO	UNSURE	SCORE
1. At any point in the past five years, has your business experienced any changes to its senior management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. At any point in the past five years, has control of your business changed hands or been offered for sale?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. At any point in the past five years, has your business accepted outside investments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. At any point in the past five years, has your business filed for bankruptcy or breached any of its debt covenants, loan agreements or contractual obligations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. At any point in the past five years, has your business or one of its directors, officers, managers, or employees been involved in a labour- or employment-related dispute or been accused of harassment or discrimination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. At any point in the past five years, have any competitors, current or former employees, customers, suppliers, contractors or other third parties brought suits or made claims against your business for alleged wrongdoing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. At any point in the past five years, has your business made layoffs or staff reductions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. At any point in the past five years, has your business been involved in any proposed or completed mergers, acquisitions or divestitures?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. At any point in the past five years, has your business made a substantial change to its operations or sources of revenue?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10. At any point in the past five years, has your business hired an employee who had access to proprietary information, trade secrets, or other forms of confidential business information at his or her previous job?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. At any point in the past five years, have any of your directors, officers, or managers made a material representation to potential investors, customers, contractors, suppliers or other third parties?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SECTION A SCORE:				

SECTION B: GOVERNANCE						
YES = 0 PTS	NO = 4 PTS	UNSURE = 4 PTS	YES	NO	UNSURE	SCORE
1.	Has your business established formal procedures to inform directors, officers and managers of new development within the company?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2.	Has your business established a formal training process to ensure that directors, officers and managers have a sound understanding of their duties, responsibilities and obligations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.	Does your business's by-laws and/or charter indemnify directors, officers and managers to the fullest extent permitted under the applicable provincial and federal laws?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.	Does your business require its directors and officers to report all potential conflicts of interest?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5.	Does your business require its directors, officers and managers to document and justify all major decisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
6.	Does your business provide directors, officers and managers with access to legal counsel when they are faced with difficult decisions or when requested?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
SECTION B SCORE:						

SECTION C: HUMAN RESOURCES PRACTICES						
YES = 0 PTS	NO = 4 PTS	UNSURE = 4 PTS	YES	NO	UNSURE	SCORE
1.	Does your business have an HR department?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
2.	Does your business have an employee handbook that has been reviewed by legal counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
3.	Does your business distribute a copy of your employee handbook to all employees, including those with managerial and supervisory responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
4.	Does your business require all employees to acknowledge receipt of your employee handbook?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
5.	Does your business have formal guidelines and written procedures to address compliance with the Canadian Human Rights Act, provincial human rights codes and provincial employment standards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
6.	Does your business have formal guidelines and written procedures for disciplining and terminating employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
7.	Does your business have a formal process for addressing and resolving employee grievances?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
8.	Does your business have a formal process for conducting employee evaluations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
SECTION C SCORE:						



TOTAL SCORE FOR YOUR BUSINESS	
SECTION A: BUSINESS OPERATIONS AND HISTORY	
SECTION B: GOVERNANCE	
SECTION C: HUMAN RESOURCES PRACTICES	
TOTAL:	

On a scale of 0-100, what is your risk of having a D&O loss in the next three years?



MODERATE



HIGH RISK



ESCALATED RISK

D&O RISK ASSESSMENT COMPLETED ON BY:
(DATE)

NAME: TITLE: TELEPHONE 1:

TELEPHONE 2: SIGNATURE:

CMB SALES EXECUTIVE: TELEPHONE 1:

TELEPHONE 2: SIGNATURE:



Insurance is complicated. It can feel like it's out of your control. It's good to have an ally in your corner working for you.

CMB Insurance Brokers makes insurance easier to understand and has dedicated our business to making the insurance experience simple, controllable and predictable.

Give CMB the opportunity to make insurance easier and better for your business.

CALL US AT:

Office: 780.424.2727

Toll Free: (800) 424.7141

24/7 Claims Line: 1.877.318.5117

[CLICK HERE TO REQUEST A QUOTE ONLINE](#)