

# Why D&O Matters for Canadian Design Firms

A concise guide to directors' and officers' liability (D&O) and how it differs from errors and omissions insurance (E&O).

Canadian design firms—architecture, engineering, interior design, and multidisciplinary practices—operate in an increasingly complex business environment. Most carry professional liability (E&O) insurance to address negligence in the delivery of professional services.

What is often underestimated is a different and equally serious exposure: personal and corporate liability arising from business and management decisions, not design work. Directors', officers', and firm leadership may be held personally liable for governance failures, employment issues, or financial decisions.

Directors' and officers' liability (D&O) insurance helps protect both firm leaders and the entity itself when these claims arise. D&O coverage is typically structured into three components—Side A, Side B, and Side C—each of which plays a distinct role for Canadian design firms.

## SIDE A: PROTECTING INDIVIDUAL DIRECTORS AND OFFICERS

### WHAT IT DOES

Side A responds when the firm cannot legally or financially indemnify its directors or officers, such as during insolvency or when indemnification is restricted by bylaws or provincial legislation.

### WHY IT MATTERS

Design firms often operate with lean balance sheets and are vulnerable to market volatility, cash flow pressure, or partner disputes. If the firm cannot indemnify leadership during a claim, Side A protects personal assets.

#### Examples

- A privately held design firm becomes insolvent

following allegations of financial mismanagement. Creditors bring claims against directors, and the firm lacks funds to indemnify them. Side A responds to defence costs.

- A minority shareholder alleges breaches of fiduciary duty during a restructuring. Because indemnification is restricted under the firm's bylaws, Side A protects the individuals named.

## SIDE B: REIMBURSING THE FIRM FOR INDEMNIFICATION

### WHAT IT DOES

Side B reimburses the firm when it indemnifies directors or officers for covered claims, protecting working capital and the firm's balance sheet.

### WHY IT MATTERS

Most firms indemnify partners, principals, and executives to support leadership continuity. Side B transfers that financial burden to the insurer.

#### Examples

- A former employee alleges wrongful dismissal and names both the firm and its HR director. The firm indemnifies the director; Side B reimburses defence costs.
- Executives are sued by a lender alleging breach of duty in connection with a financing agreement. The firm indemnifies the executives, and Side B responds.

## SIDE C: PROTECTING THE FIRM ITSELF

### WHAT IT DOES

Side C (entity coverage) protects the firm when it is named directly in claims related to governance, employment practices, or operational decision making. It does not respond to professional negligence, which falls under E&O.

### WHY IT MATTERS

Claims frequently name both the firm and its leadership. Side C ensures the entity is protected for non professional liabilities.

### Examples

- A competitor alleges unfair competition, including the improper solicitation of an employee and misuse of trade secrets. The firm is named directly; Side C covers defence costs.
- Claims arise from governance issues such as inadequate board oversight, record keeping failures, or resource allocation disputes.
- Employees allege harassment, discrimination, or unsafe workplace practices. Side C responds at the entity level.

## D&O VS. PROFESSIONAL LIABILITY (E&O)

E&O and D&O address fundamentally different risks:

- E&O covers allegations of negligence in professional services, such as design errors or omissions.
- D&O addresses claims arising from business decisions, including governance, fiduciary duties, financial oversight, shareholder disputes, and employment practices.

Even firms with strong internal controls may face D&O claims tied to leadership and management, not design quality.

## WHY CANADIAN DESIGN FIRMS SHOULD REVISIT D&O

Exposure is increasing due to:

- Greater regulatory and governance scrutiny
- Alternative delivery models (P3, design build, IPD)
- Higher expectations around workplace culture and safety
- Rising employment and shareholder disputes
- Market volatility and financial pressure

D&O coverage is not just for large corporations—it is a critical risk management tool for firms of all sizes.

## CONCLUSION

D&O insurance complements E&O by covering business side risks affecting leadership and the entity itself. Reviewing limits, exclusions, and the interaction of Side A, B, and C—particularly around insolvency and employment practices—can help Canadian design firms better protect both their people and their business.



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**If you have questions specific to your business, or would like additional information, please reach out to your Navacord Insurance Services Alberta Inc. Advisor.**

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