

The Canadian Institute's 12th Annual Conference on

DIRECTORS', OFFICERS', AND FIDUCIARIES' LIABILITY

*Identifying New or Widening Exposures and Implementing Best Practices
to Manage Risk in a Challenging Economic Climate*

October 21–22, 2009 • Toronto

DAY 1: WEDNESDAY, OCTOBER 21, 2009

8:00 Registration Opens and Coffee Served ☕

8:45 Opening Remarks from the Co-Chairs

9:00 Exploring Trends in D&O Liability to Anticipate
Exposures and Manage Risk

Ian Rose

Partner, Lavery, de Billy, LLP

- Emerging trends in the scope of D&O liability exposure: Determining the extent to which personal and criminal liability for directors and officers is increasing
- Interpreting litigation trends: What causes of action are being made against D&Os in Canada? What are the trends in oppression and derivative actions in Canada and the U.S.?
- Top tips to avoid or mitigate incurring directors' liability in fundamental conflict of interest situations and multiple board directorship scenarios

10:00 Avoiding and Reducing the Risks Posed by D&O
Criminal, Dishonest, and Fraudulent Conduct

Paul Schabas

Partner, Blake, Cassels & Graydon LLP

- Assessing the implications of enhanced scrutiny of D&Os after *Hollinger* and *Livent* on future investigations
- Avoiding circumstances under which D&O criminal liability typically arises: What were the triggers of the wrongful acts in *Hollinger*? Best practices for protecting D&Os
- Determining whether your insurance coverage protects innocent D&Os: Exclusions, severability, and coverage limits
- Top tips for avoiding or dealing with suspected fraudulent, dishonest, or criminal activity

11:00 Networking and Refreshment Break ☕

11:15 Defining Directors' and Officers' Obligations:
Has Anything Actually Changed After *BCE*?

Carol Hansell

Partner, Davies Ward Phillips & Vineberg LLP

Markus Koehnen

Partner, McMillan Binch LLP

- Identifying the extent to which D&Os owe duties to non-shareholder stakeholders and best practices for factoring in such considerations into decision-making
- What did BCE's directors do correctly that resulted in the Supreme Court of Canada's finding in their favour?
- Strategies for ensuring that the business judgment rule works in favour of D&Os

12:15 Networking Luncheon for Delegates and Speakers 

1:30 Managing Directors' and Officers' Exposures in the
Context of Regulatory Investigations and Proceedings

John Fabello

Partner, Torys LLP (Securities)

Norm Keith

Partner, Gowling Lafleur Henderson LLP
(Occupational Health & Safety)

C.W. Daniel Kirby

Partner, Osler, Hoskin & Harcourt LLP (Environmental)

Lawrence Ritchie

Vice Chair, Ontario Securities Commission

- Understanding the depth of investigation by securities commissions in both fraud and non-fraud circumstances
- Establishing the extent of D&O civil and criminal liability under OH&S legislation
- Treatment of D&O environmental liability in common law jurisdictions and under Quebec's Civil Code
- Best practices to reduce D&O exposures



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2:45 **Protecting D&Os from Liability Arising From Corporate Insolvency, Bankruptcy, and Restructuring**

Edward Sellers

Partner, Osler, Oskin & Harcourt LLP

Murn Meyrick

SVP Corporate Counsel, Executive Risk Insurances Services

- Reviewing the impact of key amendments to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* on D&O liability
- How would an insurance policy respond to claims arising from corporate insolvencies, bankruptcies, and restructurings? How can companies in financial difficulty obtain or renew D&O insurance?
- Evaluating the pros and cons of underwriters' taking on or offloading risky accounts
- Identifying the process and documents needed to determine if there are funds left for D&O indemnification

4:00 **Networking and Refreshment Break** 

4:15 **Responding to Class Actions Litigation Exposures**

Peter Jervis

Partner, Davis LLP (Securities)

- Anticipating new causes of action: What are they? Where are they? Impact of U.S. litigation trends on D&O liability within Canada
- Updates on Bill 198 actions and decisions, and impacts on D&O liability: *IMAX, CV Technologies*
- Determining the impact of the amendments to the *Competition Act* on D&O liability and claims: Why D&Os will be more vulnerable and how to minimize risk exposures
- Understanding trends in D&O exposures to employment practices litigation and response of insurance policies

5:30 **Conference Adjourns**

DAY 2: THURSDAY, OCTOBER 22, 2009

8:00 **Coffee Served** 

8:45 **Opening Remarks from the Co-Chairs**

9:00 **Managing Fiduciary Pension Plan Risk Exposure**

J. David Vincent

Senior Partner, Ogilvy Renault LLP

- Establishing the effect of the economic crisis on the future growth of pension claims: Areas ripe for litigation
- Exposing the fiduciary liability of non-D&Os, administrators, and other pension professionals under defined benefit and defined contribution plans
- Meeting pension obligations in a tough financial marketplace: Best practices for managing and communicating on pension plans and asset bases to minimize fiduciary liability issues
- Evaluating whether and how insurance policy terms are changing to respond to increasing risk exposures

10:15 **Networking and Refreshment Break** 

10:30 **Identifying Key Multijurisdictional Aspects of Directors' and Officers' Liability**

Trudy E. Haas

Assistant Vice President, Canadian Zone Speciality Claims Manager, Chubb Insurance Company of Canada

- Determining key differences in the treatment of D&O duties and liability across Canada: Minimizing exposure for D&Os of companies operating in multiple Canadian jurisdictions
- Getting up-to-date on top D&O liability trends in the U.S. and potential impacts in Canada
- Establishing, avoiding, and mitigating the exposures of D&Os of cross-listed and multinational companies

11:30 **Best Practices for Meeting Due Diligence Obligations and Establishing the Due Diligence Defence**

W. John Jussup

General Counsel and Corporate Secretary, Bank of Canada

- Best practices to establish prudent due diligence and internal processes
- Structuring board meetings to meet due diligence obligations
- Taking steps to meet the due diligence defence requirements under amendments to the *Canada Business Corporations Act* and the *Ontario Business Corporations Act*

12:45 **Networking Luncheon for Delegates and Speakers** 

2:00 **Bullet-Proofing Directors: Exploring Developments in the Insurance Marketplace to Obtain Effective D&O and Fiduciary Insurance**

Jordan Solway (Moderator)

General Counsel and Vice President, Claims, Munich Reinsurance Company of Canada

Mary Margaret Fox

Counsel, Nicholl Paskell-Mede

Cameron Rose

Senior Vice President, FINPRO, Marsh Canada Limited

David B. Williams

Senior Vice President, Chubb Specialty Insurance, Chubb Insurance Company of Canada

- What are D&Os of public, private, not-for-profit, and crown corporations asking for?
- What risks are underwriters willing to take on in a difficult financial market? What are they saying "no" to?
- Understanding the impact of *Bennet vs. BEI* on the indemnification of directors under the *Canada Business Corporations Act* and defining the conduct threshold
- Best practices for structuring a bullet-proof insurance program for D&Os and other fiduciaries

3:30 **Closing Remarks from the Co-Chairs**
Conference Concludes

PRE-CONFERENCE WORKSHOP | Tuesday, October 20, 2009 • 1:30 p.m. – 4:30 p.m.

Negotiating Insurance Coverage: Establishing What You Have to Have in Your Policy and What You Can Give Up

Patrick Bourk
Senior Associate, Management Risk Practice
Integro Insurance Brokers

David S. Cherepacha
Partner, Davies Howe Partners

- What can you give up and what should you fight tooth and nail to keep in the D&O insurance policy in a hardening market?
- Understanding the implications of policy limits on individual directors' coverage
 - What are the things to watch out for in insurance policies?
- To what extent are insurance policies changing to improve coverage in those areas
- Crown corporations: How would government indemnification for D&O work in concert with D&O liability insurance?
- Not-for-profit corporations: Maximizing your leverage when negotiating D&O insurance to ensure adequate coverage

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