

CFHSS Insurance Program

Directors & Officers Liability and
Errors & Omission Liability Insurance

Programme d'assurance de la FCSH

Assurance responsabilité des administrateurs et dirigeants et assurance
responsabilité contre les erreurs & omissions



Canadian Federation for the
Humanities and Social Sciences

Fédération canadienne
des **sciences humaines**

GLOBALEX

L'ESPRIT TRANQUILLE • PEACE OF MIND

Who is eligible for the program?

- ▶ All Scholarly Associations
- ▶ All Affiliate Members

A qui s'adresse le programme?

- ▶ Toutes sociétés savantes membres
- ▶ Tous membres affiliés

Presentation Overview

▶ Directors & Officers Liability

- Impacts of the New Canada Not-For-Profit Corporations Act
- Liabilities of Directors & Officers
- Claims scenarios
- Coverage provided

▶ Errors & Omissions Liability (New!)

- Errors & Omissions Exposures for Associations
- Claim scenarios
- Coverage provided

▶ Program Pricing and Highlights

▶ Process for obtaining insurance

Impacts of the New Canada Not-For-Profit Corporations Act

- ▶ The NPCA sets out the common law duty of directors and officers
 - To act honestly and in good faith with a view to the best interests of the corporation.
- ▶ Outlines specific potential liabilities of directors
 - Directors can be liable to employees of the corporation (not exceeding six months' wages)
 - For services performed during their directorship.
 - Directors who authorize, permit or acquiesce to an offence committed by the corporation under the new legislation will be party to and guilty of the offence as well, unless they establish that they exercised due diligence in preventing its commission.
- ▶ The common law due diligence defence is also set out in the NPCA
 - Allows a director to avoid personal liability arising out of his or her duties as a director where he or she has acted in accordance with that duty and exercised the care, skill, and diligence of a reasonably prudent person in comparable circumstances, including where the director relied on professional advisors.
- ▶ Potential indemnification
 - Similar to the CCA, the NPCA permits corporations to indemnify directors and officers for losses suffered as a result of third party actions.

Potential Exposures of D&O's

- ▶ Statutory liability claims:
 - Unpaid wages, including vacations, bonuses, commissions, fringe benefits
 - Source deductions
 - Sales taxes
- ▶ Errors, misstatements, acts, omissions, neglect or breach of duty in their role, including day to day decisions such as:
 - Acquiring / divesting assets
 - Mergers / Strategic Alliances
 - Negotiating key contracts
 - Hiring / firing of key personnel

Potential Exposures of D&O's

▶ Employment Practices Liability

Most Directors & Officers Liability policies provide coverage for Employment Practices Liability claims. Not only providing coverage for claims made against the Directors & Officers but also for claims made against the Corporation.

Employment Practices Liability claims include:

- Wrongful dismissal; discharge or termination of employment
- Breach of any oral or written employment contract
- Violation of employment discrimination laws
- Wrongful discipline
- Wrongful deprivation of a career-opportunity
- Negligent evaluation
- Invasion of privacy
- Wrongful infliction of emotional distress

Personal Liabilities of D&Os

Responsabilités personnelles des A&Ds

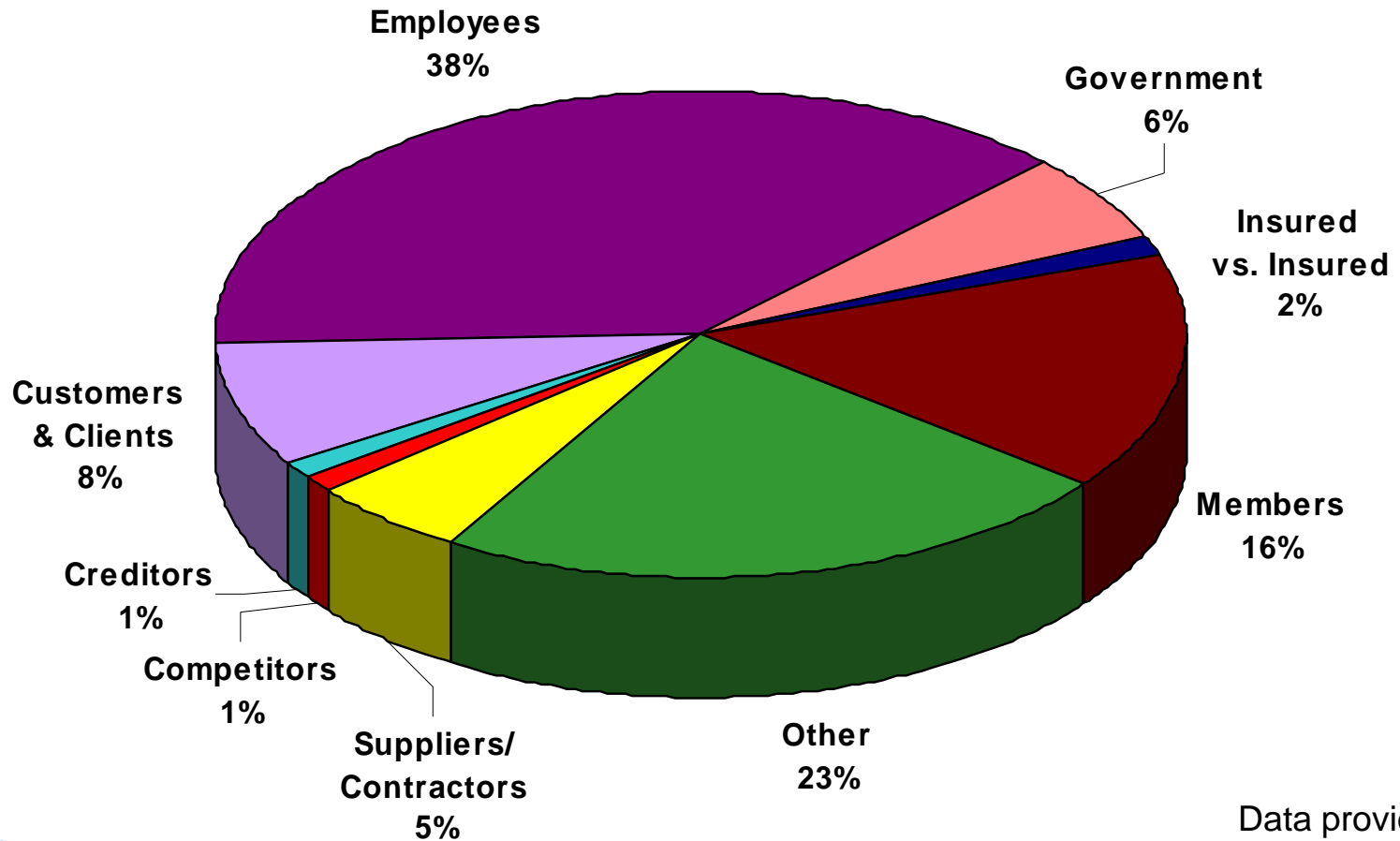
Duties owed to:

- ▶ Organization
- ▶ Members
- ▶ Other D&Os
- ▶ Employees
- ▶ Volunteers
- ▶ Government
- ▶ Creditors
- ▶ Public
- ▶ Suppliers

Devoirs envers:

- ▶ L'organisation
- ▶ Membres
- ▶ Autre A&Ds
- ▶ Employés
- ▶ Bénévoles
- ▶ Gouvernement
- ▶ Creditors
- ▶ Publique
- ▶ Fournisseurs

Suits are made by: Poursuites sont intentées par:



Data provided by
Encon Group Inc.

D&O Claims Examples

Exemples de réclamations A&D

Breach of Duty – Abuse of Process

Claimant: Member

Description:

Association revoked member for unethical conduct.

Member sued alleging the board had targeted him and did not follow by-laws.

Expenses: Undisclosed settlement + \$100,000 defense costs

D&O Claims Examples

Exemples de réclamations A&D

Wrongful Dismissal Claim

Claimant: Executive Director

Description:

Terminated due to behavior, including sexual misconduct and harassment.

Sued the organization and board for wrongful termination.

Expenses: \$0 damages, \$250,000 defense costs

D&O Claims Examples

Exemples de réclamations A&D

Breach of Trust

Claimant: Partner organization

Description:

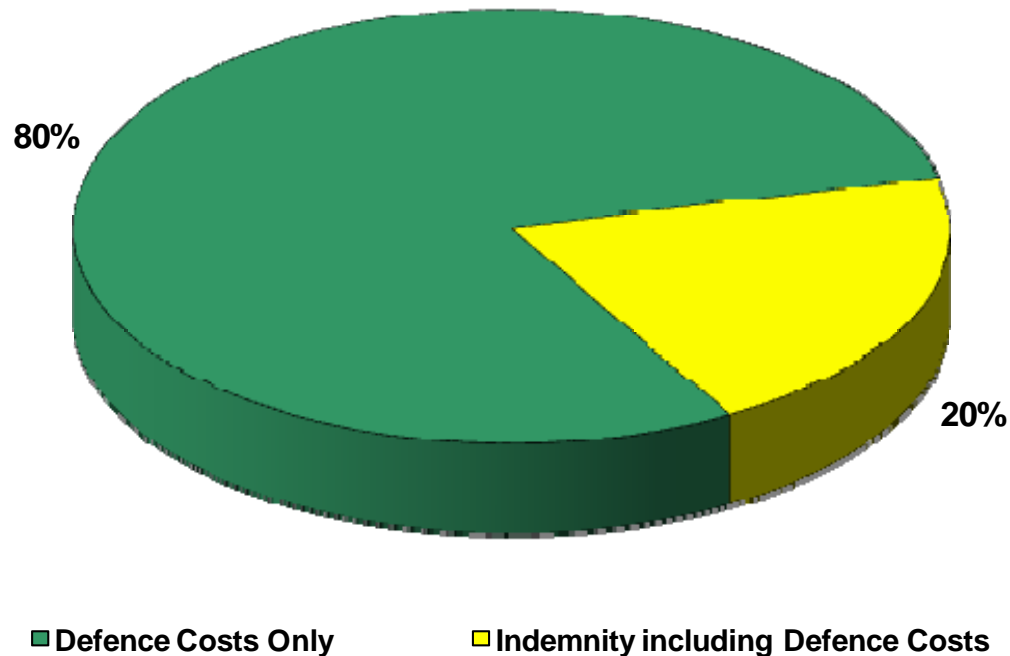
Partner organization provided operating fund to be repaid by the proceeds of an event.

The association subsequently filed for bankruptcy and was unable to return the float.

Expenses: \$75,000 settlement, \$30,000 defense costs

Defense Expenses vs. Indemnity

Frais de défense vs. Indemnités



Average claims:

- ▶ Claims with defense costs only: \$10,000
- ▶ Claims with indemnity: \$20,000
- ▶ Blended: \$12,000

Data provided by
Encon Group Inc.

Coverage Provided for D&Os

Couverture offerte pour les A&Ds

Statutory liability

Claims such as unpaid wages, source deductions, and sales taxes.

Breach of Duty

Errors, misstatements, acts, omissions, neglect or breach of duty in your role as D&O.

Employment Practices Liability

Employment or volunteer related allegations (discrimination, harassment, wrongful termination, invasion of privacy, etc.)

Fiduciary liability

Liability arising from alleged breach of fiduciary duties.

Outside Directorship

Liability arising out of the participation of a Director or Officer as a duly elected or appointed director, officer or trustee of an outside non-profit organization. Only if position is held at request of the Entity.

Key Benefits of Insurance for D&Os

- ▶ Personal protection in the absence of indemnification
- ▶ Transfer of financial risk to the insurer
- ▶ Access to expert counsel who specialize in D&O litigation

Avantages clés de l'assurance pour les A&D

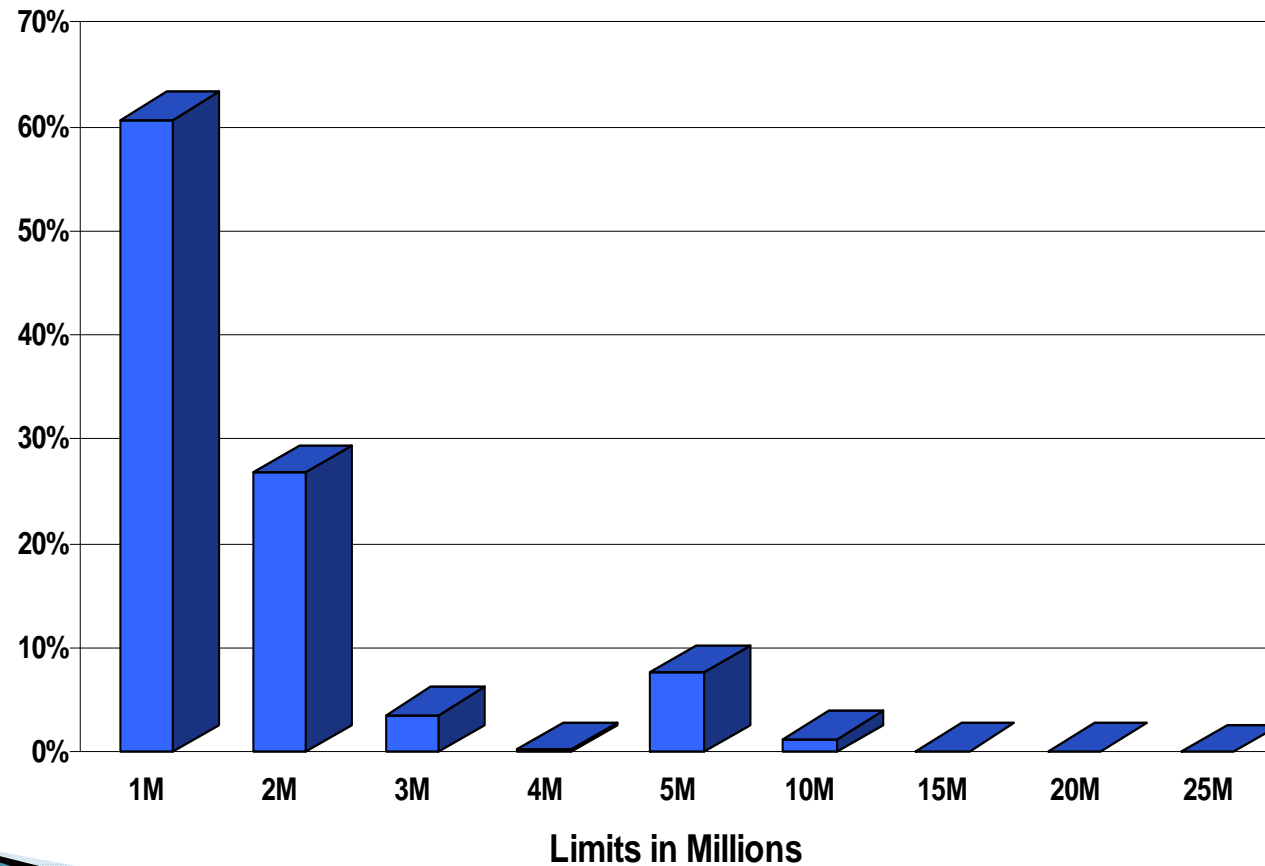
- ▶ Protection personnelle en l'absence d'indemnification
- ▶ Transfert du risque financier envers l'assureur
- ▶ Accès à des avocats spécialisés en litiges A&D.

D&O Insurance Pricing

D&O Limit of Insurance	Annual Premium Excl. Tax
\$500,000	\$325
\$1,000,000	\$450
\$2,000,000	\$585
\$3,000,000	\$700
\$4,000,000	\$810
\$5,000,000	\$900

D&O Not-For-Profit Limit Profile

Profile de Limite D&O pour OSBL



Data provided by
Encon Group Inc.

Errors & Omissions Liability Insurance (New!)

In response to concerns of liability arising from the Association's publications

- Journals
- Bulletins
- Communiqués
- Newsletters
- Press Releases
- Magazines
- Books
- Reports
- Etc.

Scope of E&O Coverage

Provides coverage against errors or omissions arising out of the insured's duties as publisher (Media Liability)

- Defamation including libel and slander.
- Disparagement or harm to character, reputation or feelings.
- Invasion or infringement of or interference with the right of privacy or publicity.
- Piracy, plagiarism or misappropriation of information or ideas.
- Infringement of copyright, title, slogan, trademark, trade name or service mark.

E&O Claims Examples

Exemples de réclamations E&O

- ▶ Association was sued for an article relating to the suspension of a member's license. The license had not been revoked permanently but was merely suspended pending an investigation. Only defense expenses were paid.

Pricing for D&O and E&O Coverage

<u>D&O</u>		<u>D&O + E&O</u>	
D&O Limit of Insurance	Annual Premium Excl. Tax	D&O & E&O Limit of Insurance	Annual Premium Excl. Tax
\$500,000	\$325	\$500,000	\$650
\$1,000,000	\$450	\$1,000,000	\$900
\$2,000,000	\$585	\$2,000,000	\$1,170
\$3,000,000	\$700	\$3,000,000	\$1,400
\$4,000,000	\$810	\$4,000,000	\$1,620
\$5,000,000	\$900	\$5,000,000	\$1,800

Insurance Program Highlights

- ▶ Insurer: Encon Group Inc.
- ▶ Annual program aggregate of \$15M
- ▶ Individual limits of \$500K up to \$5M
- ▶ Optional Errors & Omissions coverage
- ▶ Significant premium savings with group purchase
- ▶ Broad coverage
- ▶ Ease of administration
- ▶ Professional service in both French and English
- ▶ 1-800 number for expert insurance advice
- ▶ 24h/7 days a week emergency claim service

Standard Exclusions

- ▶ Claims arising out of prior litigation
- ▶ Deliberate, fraudulent or criminal acts
- ▶ Gaining any profit or remuneration which the insured person was not legally entitled to
- ▶ Bodily injury and property damage
- ▶ Event cancellation

The Process

- ▶ www.fedcan.ca/insurance
 - 2 page application to be completed
 - Send application to Globalex
 - Globalex will provide a Certificate of insurance and invoice within 5 business days.

Le processus

- ▶ www.fedcan.ca/assurance
 - Une proposition de 2 pages à compléter
 - Acheminer la proposition à Globalex
 - Globalex vous fournir un Certificat d'assurance et la facture dans un délai de 5 jours ouvrables.

About Globalex

▶ Who we are

- Specialty insurance brokerage firm serving Canadian Associations operating on a provincial and national level.
- Proud member of the Canadian Society of Association Executives.



▶ Our Strengths

- We strive to provide innovative insurance solutions.
- We benefit from privileged relationships with top tier insurers.
- We make every effort to building long term client relationships.
- We customize coverage to client's needs.

**Thank you
Merci**

Questions?

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