Streamlining D&O needs for Canadian SMEs

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North American Management Liability

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Management liability, or D&O?

Often used interchangeably, but they’re not the same!

What’s new?

New ML product

Executive coverages

Executive Reputation mobile app

ML on Connect

Management liability v3.0

Directors and officers (D&O)

Protects the individual directors and officers, and the company itself. **Without D&O insurance the personal assets of a director or officer are at risk!**

- Past, present, prospective directors, officers and managers, in-house counsel, trustees or advisory boards
- Employees acting in a supervisory capacity or when named as a co-defendant
- Side A – paying on behalf of the director
- Side B – paying on behalf of the company, where they have reimbursed/indemnified the director
- Side C – entity cover, provides protection for the company itself

Employment practices liability (EPL)

EPL protects the company from claims by employees or third parties for issues including harassment, infliction of emotional distress, discrimination and wrongful dismissal.

- Past, present or prospective employee
- Customer, vendor or service provider third party claims for discrimination or harassment
- Workplace violence incident including an actual or threatened use of deadly force

Employment practices liability (EPL) can be purchased on a standalone basis. Fiduciary liability is also available under the policy.

Deeper dive into coverage

- Side A
- Side B (reimbursement)
- Side C (entity cover)
- Regulatory investigation costs
- Outside directorship liability
- Additional limit for insured persons
- Shareholder derivative investigations

- Extradition, assets and appeal costs
- Family costs
- Employee cover
- Third party cover
- Wage and hour cover
- Immigration investigation costs
- Workplace violence

What is ordinarily excluded

- E&O / professional services claims
- Breach of contract claims (against the company)
- Intellectual property rights infringement claims
- Product defect claims
- Bodily injury claims
- Property damage claims
- Prior and pending litigation

New executive coverages

Executive reputation protection

Protects senior executive officers (SEO's) against events that have caused damage to their reputation, standing or status

- Access to data security experts to process the removal of damaging content published online
- Public relations services including releasing a press release, legal advice
- Any other required services

Executive reputation protection

Incident response costs and ransom reimbursement for senior executive officers and their family in the event of a kidnap

Executive reputation protection

Cyber coverage aimed towards senior executive officers in a personal capacity

- Assistance due to unauthorised electronic access to SEO's personal identifiable information, payment card details or sensitive personal information including personal digital photos
- Ransom paid in response to an extortion demand against the SEO due to malware, including ransomware into the SEOs personal electronic device, and personal financial loss because of a social engineering attack or electronic theft of the SEOs personal identification documents
- Dark web identity monitoring and single-bureau credit monitoring, recover or replacement of personal identification documents, replacement of hardware, forensic investigation of personal devices

Crime coverage

- Reimbursement for direct financial loss arising out of any
- Employee theft
- Client Crime
- Third party forgery
- Funds transfer fraud
- Credit card fraud
- Currency fraud
- On-premises and off-premises theft
- Loss adjustment costs

Crime including client crime can be purchased on a standalone basis

Claims examples

Failure to promote

An employee who unsuccessfully applied for a promotion took his employer to court. Their argument was that they were the most qualified and experience person for the job, yet the company had failed to promote them. The court found in favour of the company. The company still faced a large legal bill for having to defend themselves

Messy crime

A contract cleaning company had a rogue employee who stole stock from a client who was a manufacturer of electronic consumer products. The company were required to reimburse the client for the theft, and this was covered under the client crime section of the policy.

Competitor claim

Two directors left a manufacturing company in Calgary to start up their own business. They hired a number of employees and took on clients from their former employer, who made a claim against the directors alleging misappropriation of trade secrets, breaches of non-compete and non-disclosure agreements and business interference.

Management liability myths debunked

Management liability insurance can appear more complicated than it is and cause some businesses to think they don’t need it.

Management liability is there to protect the management of the company, its employees and sometimes the entity itself whenever there is an allegation of potential wrongdoing which needs to be investigated or defended.

“We’re not big enough…”

Irrespective of a company’s size, any director or officer can have an allegation of wrongdoing made against them in the course of their management duties which may need to be investigated or defended, even if the case doesn’t reach court. Not only can this prove costly, but if a company is unable or unwilling to assist, the director or officer in question may need to foot the costs themselves if D&O cover isn’t in place to protect them.

Myth 1

“We outsource our HR…”

Smaller companies will often look to outsource human resources (HR) and may wrongly believe that this will absolve them from liability for employment-related issues. An outsourced HR company will assist with establishing policies and creating an employee handbook, but because they don’t sit within the company and aren’t immersed in the culture, it’s unlikely they will recognise potential issues as they develop. By the time a problem arises, it may be too late to mitigate. Having an insurance policy that helps direct employers can save a significant amount in defence and potential settlement costs.

Myth 2

“We’re a family-run business…”

Unfortunately, some of the most contentious claims that insurers see are from family-run businesses, whether this is a husband and wife led company or a second/third generation business. We’ve seen acrimonious divorces spill into disagreements within companies, as well as multi-generational family businesses where family members are pulling in different directions. These types of organisations can see insured vs insured, wife vs husband or cousin vs cousin claims; they can be emotive and therefore protracted, which leads to significant defence costs.

Myth 3

“We’re a private company...”

Many individuals believe that because a company is private that their liability is limited. However, the limited liability only protects the shareholders to the extent of their investments. This is does not reflect on the directors or officers of a company whose liability is unlimited. Therefore, if they do not have D&O insurance and the company is unable or unwilling to protect them, the directors and officers will have to support their own defence.

Myth 4

“It’s too expensive…”

Generally, for small to mid-market companies, the product is fairly standardised and will therefore be relatively inexpensive. If a company is publicly listed operating in multiple territories, their D&O requirements will be more bespoke and therefore be much more expensive.

Myth 5

New and emerging exposures facing directors and officers

Insolvency risk rising

Social and general inflation

Post covid challenges

Ongoing conflicts and knock on impact

Executive Protection

Available to all CFC management liability policyholders

Expert advice

Ask the expert function of Executive Response allows users to get in touch with our specialist team for help with employment, business and cyber-related questions and more.

Policy template and training

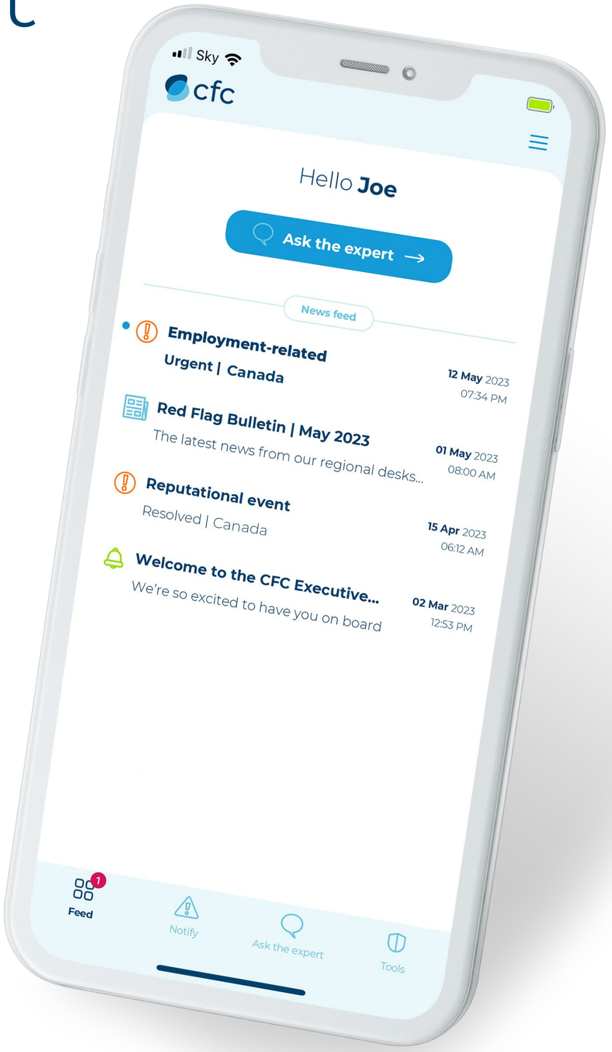
Access employment and business-related policies as well as articles to ensure company best practice.

News Feed

We will regularly post articles onto the feed either written by CFC or provided by our partners including Miller Thomson on interesting issues that are relevant to our policyholders.

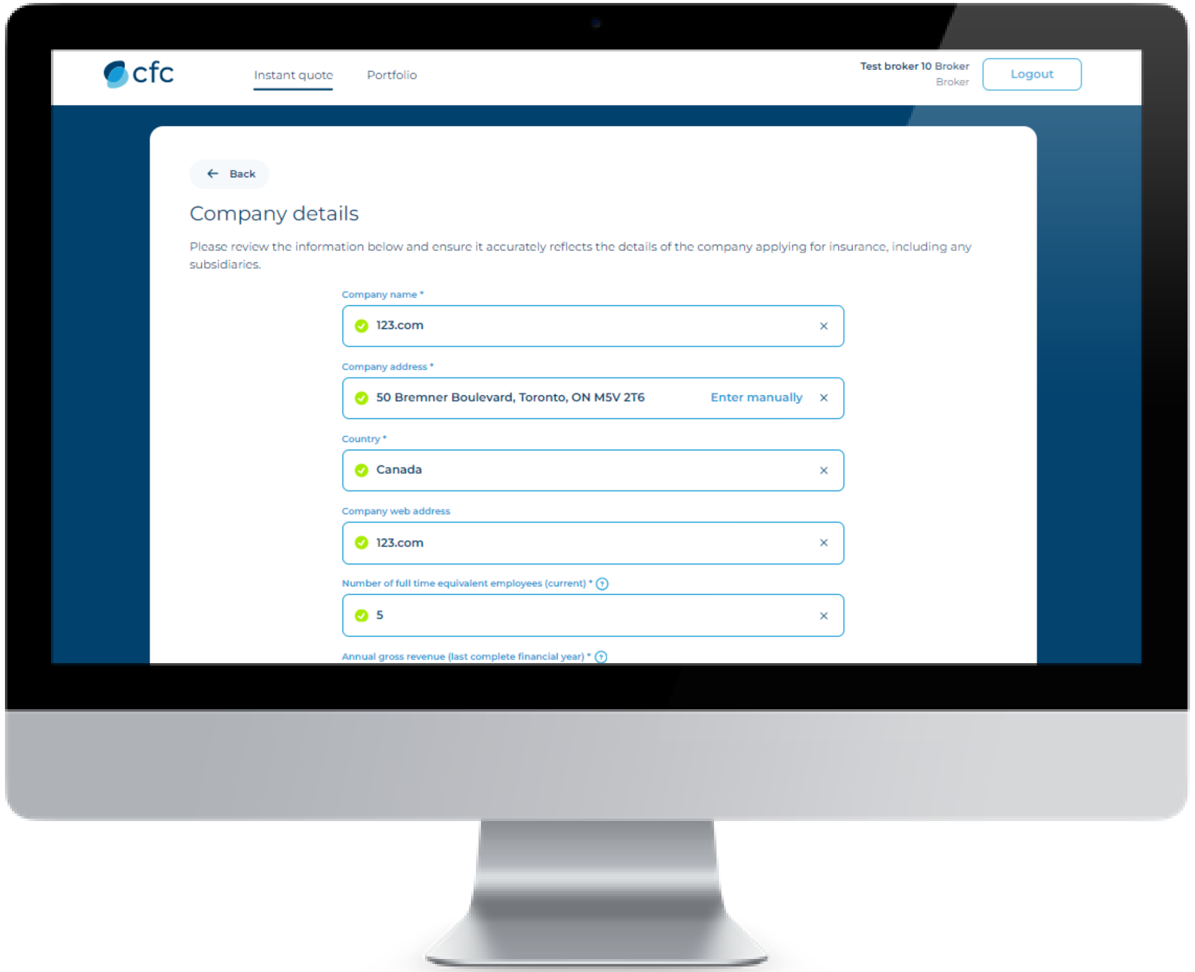
Access cyber security tools

Use the app to access tools like dark web monitoring and phishing simulations to mitigate cyber-attacks.



Connect

Quoting that used to take hours... now just minutes



What we love

Private, publicly traded or non-profits

Canadian companies with foreign exposure (including US revenues, assets & employees)

Can offer $1m expenses costs in addition

Primary or excess

Crime and EPL available on standalone basis

Can provide tailored solutions to groups of program business

Most competitive up to CAD250m and 1,000 employees on a primary basis

Standalone / straight to run off (in the event of a company being acquired)

Industry appetite

- Technology
- Real estate and construction
- Healthcare
- Life science including medical products, bio-tech and pharma
- Condominium corporations / stratas
- Hospitality
- Miscellaneous professional services, architect & engineers
- Various non-profits
- Media
- Oil & gas / mining & exploration

Questions?

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