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Practice Area Definitions

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DIRECTORS AND OFFICERS LIABILITY

The practice area of Directors and Officers Liability focuses on the liabilities of directors and officers arising out of their duties and responsibilities as directors and officers of business corporations and non-profit organizations. Much of modern society's activities are carried out by such corporate entities, and as they act through their directors and officers, it is not surprising that there is a broad range of sources of liability for directors and officers when acting in their respective capacities for these corporations.

The *Canada Business Corporations Act* and analogous provincial and foreign statutes establish regimes under which the duties and responsibilities of directors and officers are defined, and liabilities are imposed for failure to act in accordance with those duties and applicable standards. In addition, a large number of other statutes in fields as diverse as securities, tax, labour and environment also impose specific liabilities on directors and officers in order to ensure compliance by corporations with the provisions of those statutes.

Over the past 10 to 15 years, in the post-Enron era of Sarbanes-Oxley type legislation, higher standards of behaviour have been imposed on directors and officers by various legislative and regulatory bodies, such as securities exchanges, and the standards imposed on corporations and their various representatives and officials including directors and officers have heightened the requirements for corporate disclosure, and in doing so, dramatically increased the potential for liability of those individuals in situations where there is failure to comply with these heightened standards.

In addition, further criminal and penal sanctions have been introduced to discourage, for example, attempts to involve the corporation in corrupt business practices or fraudulent behaviour, whether domestically or abroad, such as those provided for in the recent amendments to the Canadian *Corruption of Foreign Public Officials Act*, and analogous legislation elsewhere.

Both the statutes and the case law relating to directors and officers liability establish parameters and limitations on the liability of directors, as well as defences such as due diligence and the Business Judgement Rule, which provides a measure of protection to directors and officers when making business decisions in the course of fulfilling their duties.

This area of practice necessarily cuts across other practice areas, such as securities law, corporate governance, insurance law, bankruptcy law, labour law, criminal and white collar litigation, and, as well as class action proceedings, as they relate to the liabilities of directors and officers in those areas.

Moreover, as the corporate statutes also provide generally for indemnification and in some instances insurance of directors and officers, the practice area generally also encompasses questions relating to the application of directors' and officers' liability insurance, and the interplay between the concepts of liability, indemnity and insurance.

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