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# Insurance Coverage

## Profile

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Our cross-Canada expertise in complex coverage matters and our passion for insurance coverage sets the team apart. We are one of the first law firms in Canada to develop a team of specialized complex coverage lawyers. We provide clients with a broad range of expertise to assess any issue that arises, from insurance contract interpretation to advice on avoiding bad faith risk in Canada.

With extensive experience in providing coverage advice to our clients, our Insurance Coverage group has become the go-to Canadian law firm for coverage advice and risk management for all species of insurance policies, including E&O, D&O, COC, commercial property, CGL, wrap, personal lines, EPL, and cyber policies.

We can break down coverage issues, assess legal interpretations, and provide thoughtful and strategic approaches to managing claims for our clients. We assist with policy drafting and product development, coverage interpretation and enforcement for equitable contribution or overlapping coverage, risk management, preparation of reservation of rights and denial letters, acting as monitor counsel, facilitating settlement negotiations for multiple insureds on one responding policy, working with experts for determining covered and uncovered claims, quantification of complex construction indemnity, and providing coverage advice on third party liability claims from the commencement of a liability claim through to settlement discussions and trial.

The coverage legal landscape is nuanced in Canada and very different from the UK or the US. Clients benefit from the depth and breadth of our expertise. We deliver practical and cost-effective advice across a wide range of areas, including historic sexual abuse claims, mass and general tort litigation, complex construction litigation or project failure, directors and officers liability and securities litigation, professional negligence claims, malpractice

suits, and a multitude of business loss scenarios and unique circumstances that give rise to a dynamic coverage practice.

## Work Highlights

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### Construction Liability

- > Acted as coverage counsel on a wrap policy with a potential underwriting exposure of \$80,000,000 in the context of an underlying construction defects lawsuit involving mass failure of the HVAC system in a highrise building and assisted underwriters with securing overlapping coverage for insureds of the wrap.
- > Provided coverage advice on a project-specific E&O policy related to the catastrophic failure of a bio waste processing facility and assisted underwriters with risk management and resolution of claims before commencement of litigation.

### Construction Property

- > We regularly provide coverage advice on builders risk policies on a multiple of issues, including: the triggering of the insuring agreement in the construction context; the consideration of whether the loss involves "direct physical loss of or damage to" property, and the operation LEG, DE and other policy exclusions.
- > We assist clients in quantifying indemnity risks. With our construction expertise, we are well-versed in instructing and working with engineering and costing experts to determine covered indemnity pursuant to a policy.

### Environmental

- > Acted as coverage enforcement counsel on behalf of underwriters to seek equitable contribution against other insurers based on overlapping coverage to recoup defence costs and indemnity paid out pursuant to a pollution policy on behalf of insureds sued in a pollution lawsuit.

*[Additional work highlights below](#)*

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Whether the task is to interpret the implications of one word in a policy, the absence of that word, to consider the policy as a whole or all of the above, our Insurance Coverage Group will approach each assignment with priority, interest and the goal to provide our clients with balanced advice for the risk landscape.

### Services

- > Coverage advice on E&O, D&O, COC, commercial property, CGL, personal lines, EPL and cyber policies
- > Wrongful denials of travel coverage
- > Assessment of time on risk and defence costs for class actions and historic sexual abuse claims
- > Determination of applicable deductibles for single or multiple occurrences
- > Assessment of duty to defend and duty to indemnify
- > Overlapping coverage issues
- > Onus and standard of proof for lost insurance policies

- > Coverage enforcement proceedings and jurisdictional challenges
- > Insured compliance with the policies and duties after a loss
- > Assessment of the scope of property damage and defects exclusions
- > Assessing the duty to provide reasons for the cancellation of an insurance policy
- > Assessing the scope and enforceability of a right to examination under oath
- > Assessment of coverage for named insured and additional insureds
- > Impact of indemnity agreements between the parties
- > Whether a loss occurred during the course of construction
- > Application of Standard Mortgage Clauses
- > Duty of Good Faith and Bad Faith Claims
- > Duties and obligations of Excess Insurance
- > Coverage for Delay Claims
- > Coverage for Business Interruption
- > Crime Coverage
- > Agency of Brokers

## Co-Chairs

Samantha Ip  
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Bo Carter  
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604 891 7704

## Additional Work Highlights

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### Commercial & Strata Property

- > Acted as coverage counsel on first party defects claim by a strata corporation.
- > Provided a number of coverage opinions for first party property coverage claims by insureds trying to access business interruption coverage due to COVID-19
- > We routinely provide coverage advice to underwriters on commercial properties involving various perils (including fire, flood, wind, theft); material misrepresentation or omission by insured, breach of warranties and late notice claims.

### Personal Lines Property Coverage

- > We provide coverage advice in the context of personal lines policies from triggering of the insuring agreement, to applicability of exclusions (including vacancy exclusion), material misrepresentation and omissions, standard mortgage clauses and conditions precedent

to coverage.

### **D&O Policies**

- > We act as coverage and monitor counsel for eroding D&O policies involving underlying shareholders disputes and securities litigation for which insurer has no duty to defend, but has a right to associate.

### **E&O Policies**

- > We regularly act as coverage counsel on eroding E&O claims made policies for underlying lawsuits involving various professional activities.

### **Aviation**

- > We offer coverage counsel on third party liability aviation matters, including airplane and helicopter incidents.

### **Crime & Fidelity Coverage**

- > Acted as coverage counsel providing advice on the evidence required to substantiate a covered loss due to employee fraud and theft, including advice on the mental element of intent required to establish that an employee committed dishonest and fraudulent acts as defined in the policies.

### **Employment Practices Liability Insurance (EPL)**

- > Acted as coverage counsel to employers against claims made by employees alleging discrimination, wrongful termination, harassment, and other employment-related issues.