



## LIABILITY OF DIRECTORS

If you are a director of a business corporation, co-operative, credit union or non-profit corporation, you have certain duties and obligations which may result in personal liability if you fail to discharge them. These duties arise from statute, such as the Act under which the corporation is incorporated, and from the special relationship which exists between a director and the corporation that he or she serves. These duties may also apply to an officer of the corporation.

Every director and officer of a corporation may be liable if he or she fails to:

- act honestly, in good faith and in the best interests of the corporation;
- put the interests of the corporation before his or her personal interests or the interests of others;
- be informed about and understand the business and affairs of the corporation; and
- use his or her knowledge and expertise for the benefit of the corporation.

A director may also be held personally liable for:

- misusing the corporation's property;
- condoning illegal or improper acts of employees, officers or other directors;
- declaring dividends which render the corporation insolvent;
- wages of employees;
- deductions and premiums such as employees' income tax, unemployment insurance and workers' compensation; and
- unpaid taxes such as income tax and GST.

In the case of non-profit corporations, liability of directors for any loss suffered by any person may be limited in a civil action if the director or officer acted in good faith.

Directors may purchase insurance to protect themselves from liability, however, the insurance will only cover a director who has acted in good faith. For example, directors cannot insure themselves against the consequences of stealing from the corporation. Similarly, a director cannot be indemnified by the corporation with respect to illegal or dishonest acts.

This is not an exhaustive review and is intended only as general information and not as a statement of law. While there is no foolproof way for a director to avoid liability, you can reduce your chances of being found liable by being aware of your duties and responsibilities. If you are uncertain about any of your activities as a director or officer of a corporation, you should seek the advice of a qualified legal advisor.

### **Criminal Liability of Directors and Officers**

Directors and officers could be held criminally liable for any criminal offence that they commit in the course of their duties

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## **Criminal Liability of Corporations**

Corporations can also be held accountable for *Criminal Code* offences. Newly passed legislation permits the combined acts of corporation's representatives and senior officers to constitute criminally negligent offences. This legislation also holds corporations accountable for criminal offences when senior officers commit an offence to benefit the company, direct the work of other employees to commit an offence, or fail to take all reasonable measures to stop an employee from committing an offence.

The court can now impose a number of conditions on corporations when they are found guilty of committing a criminal offence. Those conditions could include such things as mandating that corporations change their policies and procedures, making the corporation publicly announce their conviction, ordering them to pay restitution, and/or giving them up to a \$100,000 fine for summary conviction offences.

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