

## **MEMORANDUM ON DIRECTORS**

### **GENERAL**

There are many situations now and increasing by the day in which the directors are held personally liable for a wrong doing of the company. Such personal liability is now extended to directors in the case of pollution problems.

Directors are elected by a majority vote of the shareholders at a general meeting. Directors can themselves authorize the appointment of the officers.

In the case of an Ontario company, if a person is appointed or elected a director in the meeting of the shareholders where he was not present, he must consent to act as a director in writing within 10 days' time. If he does not consent, his appointment is not effective.

### **FIDUCIARY RESPONSIBILITY**

A director's duty is to give his whole ability, business knowledge, exertion and attention to the best interests of the shareholders who have placed him that position.

### **SKILLS REQUIRED**

Under a case law, a director did not exhibit a greater degree of skill that may reasonable be expected from a person of his knowledge and experience but he must exercise both skill and diligence. Under the Ontario Business Corporations Act, a director is required to act "honestly, in good faith and in the best interests of the Corporation and exercise the degree of care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances."

### **DUTY TO ATTEND MEETINGS**

A director has a legal right to attend all meetings of the Board and to participate in the Company's management. His duties are of an intermittent nature to be performed at periodical Board Meetings and at meetings of any committee of the Board upon which he happens to be placed.

### **INSURANCE**

Under the Ontario Act, a Corporation may purchase and maintain insurance for the benefit of a director or officer.

A nominee director holding office at the request of the beneficial shareholder should seek indemnification covenant from his principal and also acquire adequate insurance protection before consenting to accept the office.

## **STATUTORY OBLIGATIONS AND PENALTIES**

There are several statutes, which require the directors to do a number of things, and a breach some of these statutes carry fines between \$20.00 to \$2,000.00 with imprisonment.

### **WAGES**

Directors are jointly and severally liable to the clerks, LABOURERS and servants, apprentices and other wage earners for up to six month's wages and for vacation pay.

### **PROSPECTUS**

Directors and officers are liable for failing to file prospectus under the Securities Act. A prospectus is required when the shares of a company are going to be sold to other persons.

### **NAME**

In Ontario, every director of a Company that fails to use the word "Limited" (or its contract "Ltd.") as the last word in its name is liable to a fine of \$200.00.

Under the Federal Act, the directors are liable to a penalty of \$20.00 for every day during which the name of the Company is not painted or fixed on the outside of every office or place of business.

### **SEAL**

Directors and officers of a Company using a company seal on which its name is not engraved in legible characters are liable to a penalty of \$200.00.

They may also be personally liable to the holder of any bill of exchange, promissory note, cheque or order for money or goods on which the name of the Company is not legible.

### **RETURNS**

Under the Business Corporations Act (Ontario), every person who makes or assists in making a statement in any document required by or for the purpose of the Act or regulations that is false or misleading is liable to a fine of up to \$2,000.00 or to imprisonment for one year, or both.

### **BOOKS**

If the Company fails to keep the books as required under the various acts, a fine is indicated. A director or officer of a Company who makes or assists in making any entries in the Minute Book, Registers or Account Books and who knows it to be untrue is liable to a fine of not more than \$2,000.00 or imprisonment for one year or both.

If a director refuses to permit a person entitled thereto to inspect the Minute Book, Registers or Account Books, or to make extracts there from, he is liable to a fine of up to \$1,000.00 under both the Federal and Ontario Acts.

## **FINANCIAL STATEMENTS**

Directors and officers who assist in preparing any financial statements which they know to be untrue are liable to fines of \$1,000.00 or to imprisonment for a term of three months, or both. The same applies if the financial statement is not approved by the Board of Directors and if the approval is not endorsed by the signatures of two directors at the foot thereof.

For issuing a financial statement, which has not been properly approved by the Board of Directors, or failing to have it signed by two directors or failing to accompany it with the auditor's report, the directors and officers are liable to a fine of up to \$2,000.00.

For failing to file a proper financial statement, they could be liable to a fine of up to \$500.00 per day.

## **DECLARATION OF DIVIDEND**

Directors are personally liable for declaring a dividend or bonus when the company is insolvent or when they pay a dividend or bonus, which render the company insolvent or diminishes its capital. For so doing, the directors are jointly and severally liable for the amount of each dividend.

## **ISSUING OF SHARES**

If the directors authorize the issue of par value shares as fully paid for less than their fair equivalent of cash, they are jointly and severally liable at the suit of any director, shareholder or creditor of the Company to make good to the Company the amount by which the consideration received is less than the amount which ought to have been received.

## **TRANSFER OF UNPAID SHARES**

If the directors consent to the transfer of shares that are not fully paid, to a person whom the directors have reason to believe is not of sufficient means to pay fully for such shares, the directors are jointly and severally liable to the Company and to its creditors in the same manner and to the same extent as a transferor would have been liable if the resignation had not been made.

If the directors permit a transfer of shares prohibited under the restrictions contained in the incorporating documents, the company may lose its private company status.

If the directors permit a transfer of shares of a share company in violation of the special provisions applicable thereto they are liable to a fine of \$5,000.00 or imprisonment for a term of up to one year or both.

## **IMPROPER REDEMPTIONS, DIVIDENDS OR LOANS**

Under the Ontario Act, directors are made jointly and severally liable to the Corporation for the amounts expended in respect of improper redemption, purchase of acceptance or surrender of shares, the improper declaration and payment of dividends, the improper making of a loan to shareholders, directors or employees or to other persons in connection with the purchase of shares.

## **BANKRUPTCY**

When an offence against the Bankruptcy Act has been committed by a Corporation, every director and officer who directed, authorized, condoned or participated in the commission of the offence is liable to the same penalties of a Corporation and as if he or she had committed the like offence personally.

A trustee in Bankruptcy must sue for breach of trust a director who has participated in an allotment of bonus stock or made payments to relieve the director of personal liability.

## **GENERAL PENALTIES**

Both the Canada Corporations Act and the Ontario Business Corporations Act impose fines for committing any act contrary to the provisions of the respective Acts.

## **CITIZENSHIP REQUIREMENTS**

The Ontario Act requires the majority of the Board of Directors of an Ontario Company to be resident citizens.

## **ANNUAL MEETINGS**

The directors are required to call the annual meeting of the Corporation and the secretary usually calls this meeting, but the authority comes from the Board of Directors as a whole. Within 15 months of each year, a meeting must be called of the shareholders, at which time the directors are elected and the financial statements are presented. There are penalty provisions for not complying with the provisions of the Business Corporations Act.

## **CORPORATIONS TAX ACT RETURN**

The directors are personally liable to file the Corporations Tax returns. In the failure to file the return, it is punishable by fine. If the company has become inactive, a special affidavit must be filed for this purpose, to be exempted from the payment of the minimum \$50.00 filing fee, as well as the return.

## **INCOME TAX RETURNS**

Even if the Corporation has made no income, the Corporation has an obligation to file the return. The Ministry may make a demand for this purpose, and failure to demand may result in the directors becoming personally liable.

## **ACTIONS AGAINST THE CORPORATION**

To commence a proceeding against the Corporation, a Writ may be served against any director and the director has an obligation to respond to the Writ, and he may be required to appear by subpoena or otherwise, to answer on behalf of the Corporation.

## **DUTY TO SHAREHOLDERS**

The director's primary duty is to the shareholders, and this is reflected in the annual meeting at which time the financial statement is required to be signed by two directors for presentation to the shareholders

## **MEMO**

The memorandum is prepared as assistance and guidance to you and to minimize the time spent in discussion. Any specific questions affecting the directors or the Company should be referred to me.

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