



Liability of Corporate Directors

Directors are elected by shareholders to control the day-to-day operations of a corporation. Directors may appoint officers such as a president, secretary and treasurer, or may themselves serve as both directors and officers.

Directors are legally obligated to govern in the best interests of the corporation on behalf of its shareholders. They owe what is known in legal terms as a “fiduciary duty.” Because of the responsibilities and personal liability that can be associated with being a director, if asked to serve in that capacity, you should give the matter careful consideration before agreeing to do so.

Limiting Personal Liability

In smaller corporations, at least one of the principal shareholders is likely going to have to be a director. While limiting the number of directors helps limit potential personal liability, it can also result in some shareholders giving up a degree of power and authority over the actions of the company. This can be avoided or mitigated by establishing a contract among the shareholders that limits what directors can do without the consent of all major shareholders. This is commonly known as a Shareholders Agreement.

Directors and Officers Liability Insurance

The potential liability of directors and officers can be covered by insurance. In Canada, there is no statutory obligation for a corporation to insure its directors and officers. However, the reality is that innocent people acting with honesty and diligence in the best interest of the corporation and its shareholders can still be sued, drawn into litigation or made the subject of an investigation. Defending oneself can be a very expensive proposition. Insurance can provide corporate directors and officers with security against judgments and defense costs. In the event of an investigation or litigation, it also allows corporate management to focus on business concerns, knowing that insurance will protect them from personal liability.

Statutes Imposing Liability on Directors

Many pieces of legislation and numerous court decisions impose personal liability on directors. Statutes that do so include:

- Ontario Business Corporations Act
- Canada Business Corporations Act
- Income Tax Act (Federal)
- Unemployment Insurance Act (Federal)
- Canada Pension Plan Act (Federal)
- Income Tax Act (Ontario)
- Goods & Services Tax Legislation (Federal)
- Retail Sales Tax Amendment Act (Ontario)
- Occupational Health & Safety Act (Ontario)
- Environmental Protection Act (Ontario)
- Ontario Water Resources Act
- Pesticides Act (Ontario)
- Transportation of Dangerous Goods Act (Federal)
- Dangerous Goods Transportation Act (Ontario)
- Employer Health Tax Act (Ontario)
- Employment Standards Act (Ontario)
- Pension Benefits Act (Ontario)
- Construction Lien Act (Ontario)
- Canadian Environmental Protection Act (Federal)
- Fisheries Act (Federal)

If being a director of a corporation is in your future, be aware of the risks involved and consider your options for mitigating those risks, including the purchase of directors and officers liability insurance. While insurance may not be right for everyone, it's worth discussing with your lawyer and insurance agent. The peace of mind it brings may be well worth the cost.

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