

**THE INSTITUTE OF CHARTERED  
ACCOUNTANTS OF ONTARIO  
BOARD OF DIRECTORS RESOURCE MATERIALS**

**The Legal Duties of Directors  
of Charities  
and Not-For-Profits  
(Power Point Presentation)**

**May 13<sup>th</sup>, 2003**

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## **A. OVERVIEW OF TOPICS**

- **Introduction**
- **Common Law Duties and Liabilities**
- **Statutory Duties and Liabilities**

2

## **B. COMMON LAW DUTIES AND LIABILITIES**

- **Management of the Corporation**
  - **Directors responsible for all aspects of corporations operations**
  - **To fulfill duties, directors must ensure:**
    - **Objects are properly carried out and activities comply**
    - **Corporation's financial stability and overall performance**
    - **Proper hiring and supervision of management and staff**

3

- **Duty of Care**
  - **Directors of all corporations must exercise certain standard of care in carrying out duties**
  - **But standard of care varies depending on type of corporation**
    - **Business corporation**
      - **Statutory objective standard of care**
      - **Reasonably prudent person**

4

- **Not-for-profit corporation (non-charity)**
  - **Common law subjective standard of care**
  - **Director's own knowledge and experience important**
- **Charitable corporation**
  - **Additional expectations beyond subjective standard**
  - **Directors of charities also subject to fiduciary duties as quasi-trustees of charitable property**

5

- **Liability Risk for Lack of Corporate Authority**
  - **Corporate authority defined by corporate objects in governing documents**
  - **All corporate activities must fall within parameters of these objects**
  - **Liability results where directors act outside scope of this authority**

6

- **Liability Risk for Negligent Mismanagement (Tort)**
  - **Tort is civil wrong for which injured party can seek damages from the court**
  - **Directors can be personally liable for corporation's torts where own conduct contributed to victim's injury**
- **Liability Risk in Contract**
  - **Directors generally not personally responsible for contracts signed for corporation**
  - **However, need to have proper corporate authority to sign contracts and ensure contractual terms are complied with**

7

- **Liability Risk for Breach of Fiduciary Duty**
  - **Overview**
    - **Directors of charitable corporations, subject to fiduciary duty to act as quasi trustee of charitable property**
    - **Directors have primary obligation to exercise due diligence in overseeing corporation**
    - **Fiduciary duties owed to charitable objects, corporation, donors and creditors**

8

- **Summary of fiduciary duties**
  - **Duty to act honestly**
    - **Conflicts of interest to be avoided and disclosed**
    - **Directors must not act fraudulently**
  - **Duty of loyalty**
    - **Director's sole interest is to the corporation**
    - **Director's interests not to be placed in conflict with those of corporation**

9

- **Duty of diligence/duty to act in good faith**
  - **Directors to diligently attend to duties by being familiar with all aspects of corporation**
  - **Where necessary, advice of qualified professionals to be sought**
- **Duty to exercise power**
  - **Directors responsible for managing corporation**

10

- **Delegation to management, staff and volunteers is possible, but directors must always supervise**
- **Duty of obedience**
  - **Directors must comply with applicable legislation and corporations governing documents**
  - **All valid corporate decisions must be implemented**

11

- **Duty to avoid conflict of interest**

- **Conflicts of interests to be avoided**
- **Directors must also avoid anything that gives director appearance of a personal benefit**
- **Where conflicts occur, they are to be declared, director to not participate in discussions or vote, and may even have to resign**

12

- **Duty of prudence**

- **Directors with special expertise must use it prudently to achieve best result for corporation**

- **Duty to continue**

- **Resignation as director will not relieve all obligations**
- **May even constitute breach of trust**
- **Independent legal advice should be obtained in considering resignation**

13

- **Liability for Breach of Trust**
  - **Overview**
    - **In addition to fiduciary quasi trustee duties, directors of charitable corporations may also be trustees of charitable property**
    - **However, fiduciary duties and trustee duties essentially the same**
    - **Aids Society case emphasizes that directors have obligation to apply charitable property to charitable objects**

14

- **Where charitable property lost as a result of actions or inactions of directors, breach of trust could be found**
- **Potential liability risks**
  - **Remuneration of directors**
    - **In Ontario, directors of charitable corporations can not receive direct or indirect remuneration, e.g. as employee or contractor, without court approval**
    - **Indemnification and directors' insurance now available**

15



- **Dealing with charitable property**
  - **Directors responsible for handling of charitable property**
  - **Personal liability results where mismanagement occurs**
- **Dealing with charitable objects**
  - **Charitable property only to be applied to charitable objects**
  - **Failure to properly apply charitable property may result in liability**

16

- **Dealing with special purpose charitable trusts**
  - **Directors of charitable corporations have fiduciary obligations to donors**
  - **Liability for breach of trust possible where donor restrictions or terms of endowment funds are not complied with**
- **Investment of charitable funds**
  - **Directors may sometimes have specific duty to invest charitable property**

17

- **Liability can result from failure to comply with investment powers as well as bad investments, overly conservative decisions and missed opportunities**
- **Co-mingling of donor restricted funds**
  - **Are gifts subject to restrictions or limitations**
  - **Co-mingling of donor restricted gifts now possible under *Charities Accounting Act* (Ontario) regulations**
  - **See charity law bulletin #4 at [www.charitylaw.ca](http://www.charitylaw.ca)**

18

## **C. STATUTORY DUTIES AND LIABILITIES**

- **Overview**
  - **Many federal and provincial statutes impose offences and penalties for acts and omissions of corporate directors**
  - **Directors can be held personally liable, as well as jointly and severally, with other directors**
  - **Only defence is due diligence**
  - **Resigning as a director may not limit liability though there are generally limitation periods**

19

- **Federal Statutes**

- *Canada Corporations Act*

- **Wages and vacation pay**
    - **Conflict of interest**
    - **Reporting requirements**
    - **Books, minutes and records**
    - **Identification of corporation**
    - **Membership lists**
    - **Winding up**
    - **General penalty**

20

- *Income Tax Act (Canada)*

- **Directors liability to pay employee income tax deductions for two years after term of office**
    - **Personal liability possible for failure to comply with reporting requirements, e.g. annual charity information return or improper charitable receipts, or for giving improper tax advice**
    - **Avoid liability by showing positive steps taken to ensure compliance**

21

- *Excise Tax Act (Canada)*
  - **Directors liable for corporation's failure to collect & remit GST**
  - **Liability continues for two years after cease to be director**
- *Canada Pension Plan*
  - **Joint and several liability where corporation fails to remit employee pension premiums**

22

- *Canadian Environmental Protection Act*
  - **Positive duties imposed on directors to ensure compliance in relation to air and water pollution as well as toxic substance storage and disposal**
  - **Failure to comply could result in prison terms and fines**
- *Anti-terrorism Legislation*
  - **Legislation has serious liability risks for charitable corporations and directors, particularly those involved in overseas work**

23

- **Risks include seizure of charitable property, loss of charitable status and criminal code charges**
- **See [antiterrorism.ca](http://antiterrorism.ca)**
- **Ontario Statutes**
  - ***Corporations Act (Ontario)***
    - **Reporting requirements**
    - **Conflict of interest**
    - **General offence provision**

24

- ***Employment Standards Act (Ontario)***
  - **Fines imposed on directors for failure of corporation to pay wages, vacation pay and severances**
  - **6 months liability for wages and 12 months liability for vacation pay, plus fines**
  - **However, limitation periods are available**

25

- *Retail Sales Tax*
  - **Directors jointly and severally liable where corporation fails to remit**
- *Workplace Safety and Insurance Board Act (Ontario)*
  - **Directors liable for corporation's failure to remit premiums unless it can be shown they did not intend to pay them**

26

- *Pension Benefits Act (Canada)*
  - **Directors who fail to pay corporation premiums for employee's pension plans and to hold monies in trust may be ordered to make up contribution**
  - **Failure to comply may subject directors to fines**
- *Ontario Health Insurance Program*
  - **Directors will be held personally liable for premiums and health tax not paid by corporation**

27

- ***Occupational Health and Safety Act (Ontario)***
  - **Directors required to take reasonable steps to comply with workplace health and safety requirements**
  - **Failure to do so will result in fines to corporation and its directors**
- ***Environmental Protection Act (Ontario) and Related Legislation***
  - **Directors required to take reasonable care to prevent unlawful discharge of contaminants**

28

- **Persons in control of contaminants are responsible for cleanup and related costs**
- **Appropriate environments audits need to be obtained before purchasing or receiving land**
- ***Child and Family Services Act (Ontario)***
  - **Failure to report child abuse is an offence**
  - **A charitable corporation and its directors may be liable where employees fail to report abuse or where it occurs because of failure to monitor employees and operations**

29

- ***Trustee Act (Ontario)***
  - **Act establishes that directors of charitable corporations have power and duty to invest assets of charity**
  - **Investments must be in accordance with prudent investor standard**
  - **See charity law bulletin #8 at [www.charitylaw.ca](http://www.charitylaw.ca)**
- ***Charities Accounting Act (Ontario)***
  - **Act gives rights to donor and Public Guardian and Trustee (PGT) to call directors to account for improper use of**

30

- **Charitable property as well as fundraising practices**
  - **Co-mingling of donor restricted funds is permitted provided there is strict compliance with the act's requirements**
- **Fundraising**
  - **Specific charitable statutes concerning fundraising**
  - **General statutes affecting charitable fundraising**

31



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