



PERSONAL LIABILITY OF DIRECTORS & OFFICERS OF A FRANCHISOR

“Responsibility is the price of greatness” said Winston Churchill. Some directors and officers may not be aware of risk scenarios which expose their personal assets to claims by creditors or governmental authorities. Unintended personal liability for matters associated with a franchisor’s business operations however is substantially avoidable. Miller Canfield lawyers can help you evaluate, understand and minimize these risk examples.

DIRECTORS’ & OFFICERS’ DUTIES

Failure by Directors or Officers to discharge their duties according to the corporate laws of all applicable jurisdictions may result in a lawsuit for breach of duty of good faith and breach of contract. Particularly in financially turbulent times, directors and officers should:

- Understand what fiduciary duties apply in each applicable jurisdiction, including solvency rules, and to whom such fiduciary duties are owed.
- Be aware of the financial situation of the franchisor corporate entities, whether near insolvency or actually insolvent, even if an insolvency filing is not imminent.
- Review director & officer protections afforded by law, as well as by the franchisor's articles, bylaws, contracts and insurance policies, and make sure they are updated and accurate.
- Ensure that all director board and committee actions are properly recorded in the minutes and implemented as directed.
- Ensure appropriate governance policies are instituted, and complied with.

MISREPRESENTATION OR OMISSION OF MATERIAL FACT IN FRANCHISE DISCLOSURE DOCUMENTS

- Under Ontario’s *Arthur Wishart (Franchise Disclosure) Act*, each person who signs a disclosure document or statement of material change can be held liable for damages for misrepresentation or failure to disclose a material fact.

UNPAID EMPLOYEES WAGES

- Under the *Ontario Business Corporations Act* and the *Canada Business Corporations Act*, directors can be held liable to the employees of the corporation for an amount up to the equivalent of 6 months unpaid wages. Wages can include vacation pay, overtime, and bonuses.

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HUMAN RIGHTS VIOLATIONS

- Directors can be found liable for fines imposed on a corporation for human rights violations, such as sexual harassment in the workplace [which can include the parking area and even off site company functions].

GST AND SOURCE REMITTANCES

- Directors can be personally liable for remittance of GST and for source deductions such as income tax, CPP and Employment Insurance.

OPPRESSION REMEDY

- If a complainant (shareholder, creditor etc.) establishes that the powers of the directors have been, or are threatened to be, exercised in a manner that is oppressive or unfairly prejudicial to the interest of the complainant, a court can order relief against directors personally.

ENVIRONMENTAL LEGISLATION

- Under the *Environmental Protection Act* (“EPA”), clean-up or preventative measures Orders can be issued to persons who have or had “management or control” of an undertaking or property.

WORKPLACE SAFETY

- Section 217.1 of the *Criminal Code* establishes a legal duty on all persons who direct the work of others, and requires that they take reasonable steps to ensure the safety of both workers and the public. If bodily harm results from failure to discharge this duty, prosecution and incarceration are possible. All organizational decision makers may be subject to this duty.

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