
CO-OPERATIVE DIRECTORS – DUTY OF GOOD FAITH

Acting as a Director for your co-operative can be a rewarding experience. Motivation for joining the board can be varied, but you would probably find that the reasons for doing so are entirely altruistic, motivated by a personal desire to advance the stated goals of the co-operative in which the person has lived.

This article is not intended to be an exhaustive list of matters that directors should be aware of but rather an outline that touches on some of the major issues.

1. Duties of Directors

Section 84(1) of the Cooperative Association Act is one of the most important.

84 (1) Every director of an association, in exercising the director's powers and performing the director's functions, must

(a) act honestly and in good faith with a view to the best interests of the association,

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances,

Directors serve their co-operative as fiduciaries in a common law sense and by virtue of section 84(1)(a) as set out above. As fiduciaries, directors owe a duty of utmost good faith to their co-operative. A couple of examples where this did not occur in the realm of Societies:

- a. Directors who receive donations to their society and spend funds contrary to the society's bylaws are personally liable for converting the funds to their own use. In addition, directors who sit on the board who do not engage in these practices but nevertheless fail to safeguard the society's property while in their possession are liable for damages if the property was not returned. (*Khalsa Dawan Society of Abbotsford v. Sidhu* (2000)).

- b. Failure by the society's directors to exercise the appropriate level of care, diligence and skill required by the Act to safeguard the assets of the society may result in personal liability. In this case, the directors permitted the President of the society to take society funds and place them in his own personal account. Further, the directors did not enforce the annual audit as prescribed by the Bylaws. The Treasurer failed to properly report to the directors. In the end, the directors were found to be personally liable for a portion of the losses (*Richmond Raiders Football Club v. Richmond Savings Credit Union*).

The test that was applied to the cases above was whether the directors had exercised the care, diligence and skill of a reasonably prudent person. Directors of non-profits are often volunteers without any particular expertise or professional skill associated with the work of the organization. Accordingly, and for those persons that match that criteria, the reasonably prudent person test will not be onerous. An exception will be made for those who accept director positions who have specialized skills such as lawyers, accountants or anyone else who has a specialization that might be particularly relevant to the business of the society in which the directorship was accepted.

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(2023)

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