



CORPORATE · GUIDE

Directors' and officers' personal liability

The situations where the corporate veil doesn't protect you, including unpaid wages, source deductions, and HST.

Posted May 21, 2026 · Updated Jul 7, 2026

One of the main reasons people incorporate is to put a wall between the business's problems and their personal assets. That wall, often called the corporate veil, is real. But it has doors in it. There are specific situations where the law reaches through the corporation and holds directors, and sometimes officers, personally responsible. If you sit on the board of your own company, or anyone else's, you should know where those doors are before you find yourself standing in one.

The general rule, and why it has exceptions

The starting point is that the corporation is a separate legal person, and its directors are not personally liable for its debts just because they are directors. If that were the whole story, this article would end here. But over time, legislatures decided that certain obligations are too important to let a corporation's insolvency wipe out, so they made directors personally responsible for them. The idea is to make sure the people running the company have a personal stake in meeting these specific obligations.

The categories below are the main ones. This is not an exhaustive list, and the details and any limits or defences are technical, so treat this as a map of where the risk lives, not a precise statement of every rule.

Unpaid employee wages and vacation pay

Directors can be held personally liable for certain unpaid wages and vacation pay owed to the corporation's employees, up to limits and within conditions set by law. The policy is straightforward: employees should not be the ones who absorb the loss when a company fails to pay them. So if the corporation does not pay, the directors can be on the hook for a defined amount of the wage and vacation obligations.

This is one of the most common surprises for directors of a struggling business. As the company runs out of money, the instinct is to keep operating and hope. But continuing to employ people you may not be able to pay can create personal exposure for the directors.

Unremitted source deductions and HST

This is the big one, and it catches many small business owners. When a corporation pays employees, it is supposed to withhold income tax, and the employee's share of certain payroll items, and remit them to the government. It is also supposed to collect and remit HST. These are sometimes called trust amounts, because the corporation is essentially holding the government's money.

When a corporation fails to remit these amounts, directors can be held personally liable for them. This exposure is serious and frequently arises, because a cash-strapped business will sometimes "borrow" from its remittances to keep the lights on, intending to catch up later. If the business then fails, the directors can be personally pursued for the unremitted amounts. Treat payroll remittances and HST as money that was never yours to use, because the personal consequences of getting this wrong are real.

Environmental liabilities

In certain circumstances, directors and officers can face personal responsibility in connection with the corporation's environmental obligations and contamination. The details are highly fact-specific and beyond what a short article can cover, but if your business handles substances, operates on industrial land, or has any environmental footprint, this is an area to get specific advice on.

Other statutory and duty-based exposure

Beyond those categories, directors and officers carry duties to the corporation, including a duty to act honestly and in good faith and to exercise the care a reasonably prudent person would. Breaching those duties, or engaging in oppressive conduct toward shareholders or certain stakeholders, can also create personal exposure. And various statutes impose specific director liabilities in particular industries and situations.

How directors can protect themselves

You cannot eliminate these risks, but you can manage them:

- Stay genuinely informed. Many director duties and defences turn on whether you acted reasonably and took appropriate care. A director who pays attention and asks questions is in a far better position than one who rubber-stamps.
- Keep remittances current, always. Prioritize source deductions and HST. Do not treat them as a cash-flow buffer. This single discipline avoids one of the most common personal liabilities.
- Watch the wage exposure in a downturn. If the business is struggling, get advice early about your obligations to employees and your personal exposure, before it compounds.
- Consider directors' and officers' insurance. D&O insurance can respond to certain claims against directors and officers. Whether it is worth it and what it covers depends on the business.
- Document decisions. Proper records of board decisions and the reasoning behind them support a director who later has to show they acted reasonably.

- Get advice before resigning or before things go bad. If a company is heading for trouble, the timing and manner of a resignation, and what you do in the meantime, can affect your exposure. This is worth a conversation, not a guess.

Bottom line

Incorporation protects directors from a lot, but not from everything. The law deliberately makes directors personally responsible for certain obligations, most importantly unpaid employee wages and unremitted source deductions and HST, and in some cases environmental and other statutory liabilities. The practical takeaways are simple: keep your remittances current, pay attention to your duties, be especially careful as a business struggles, and get advice early when trouble is brewing. If you are a director and want to understand your specific exposure, talk to us.

This is general information about directors' and officers' liability in Ontario, not legal advice for your situation. The rules, limits, and defences are technical and fact-specific. Talk to us about your circumstances.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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