

# Laws of duties of directors or officers of the company in british columbia



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## **Introduction**

The primary objective of this memo is to summarize the current laws amended by the government of British Columbia regarding the duties of directors or officers of the company. It will explain the objective and subjective test and identify the laws that can be applied in British Columbia for exercising the duties of directors. Business Corporation Act of British Columbia will be described to represent the legal obligations of directors within the firm. Moreover, it will provide advice to the local member of the legislative assembly Joe Quimby to clear his confusion about the legal obligations of directors and how the courts have applied the law in the past and whether any possible changes to the existing law would be beneficial for the people of BC.

## **Summarization of current laws in British Columbia**

The current law, as amended by the regime of British Columbia regarding the duties of directors, is the Business Corporation Act. Under section 142 (1) of the act, the director of a firm must act honestly as well as in good faith to the best interests of the organization when exercising powers and performing his functions[1]. A director must also exercise care, skill, and diligence that a reasonable individual would exercise in similar situations. A director must act in accordance with the Business Corporations Act and the relevant regulations. He or she must act in agreement with the memorandum and articles of the corporation. Under section 142 (2) of the act, the duties and liabilities of the director of the firm must be enacted by the rule of law[2]. Under section 142 (3) of the act, it is stated that no provision can discharge the director from performing his duty as per the <https://assignbuster.com/laws-of-duties-of-directors-or-officers-of-the-company-in-british-columbia/>

regulations and the act. Directors under the corporate laws are subject to legal duties in which he is not permitted to act on his self-interest instead act as per the corporation's interest[3].

The most vital duties of the directors within the business organizations are a duty to manage, the duty of loyalty and duty of care. As per the act, in the case of *Peoples Department Stores Inc. v. Wise*, the court released directors of duty to creditors. The Business Corporations Act of British Columbia needs the directors to manage as well as supervise the management of the corporation business that means manage the internal corporate affairs. The directors have limited powers, and cannot delegate its power to declare dividends, amend corporate by-laws, approve financial statement and declare dividends. The duty of loyalty is also referred to as fiduciary duty in which the directors are required to act with integrity and in good faith to the corporation and avoid abusing the position to obtain a personal advantage. In the case of *Cook v. Deeks*, the Toronto Construction Company consisted of four shareholders who were also the directors of the firm and the court found that three directors have breached their duty of loyalty to the corporation because they wanted to exclude the fourth director, Mr Cook from the business[4]. In *Dovey v Cory* a bank sustained heavy losses by advances made improperly to customers. The irregular nature of advances was concealed by means of fraudulent balance sheets, which were the work of the general manager and the chairman. The co-directors assented to payment of dividends out of the capital on the advice of the general manager and chairman but was held that the reliance placed on the co-directors by the general manager and chairman was reasonable[5].

The duty of care is another obligation of the director, which requires the board of members to be diligent to ensure that their decisions are made on a rational basis. In the case of *Peoples v. Wise*, the main issue was the right to owed duties to creditors by the directors. Based on section 122 (1) of the CBCA, the court of Canada imposed a duty on directors to exercise diligence, care or skill in the situation and act in good faith to the interest of the company. The court held that no duty of care could be owed to creditors by the directors as it is owed to the corporation[6]. It is mentioned that a director is not liable under section 119, 122 if he depends in good faith on the financial statements of the business as per section 123 (4) and he is not an expert in all factors of the company. Although the employee of Wise had 15 years of experience in administration, his advice on the issue of inventory management cannot be accepted by the directors because the directors are not allowed to depend on his advice under the duty of care.

The court under section 156 (2) of the act may order the shareholder of the firm to deliver any rights or property to the director if the court recognizes that were paid improperly[7]. In the legal proceedings on the liability of directors, the court may order the company to issue shares to the individual from whom the shares were purchased.

### **Difference between objective test and subjective test**

An objective test signifies that the mindset of the directors is not vital, but what is significant is how reasonably the directors have acted under the same situations. On the other hand, a subjective test considers the mindset of the directors, more than asking how reasonably the directors have acted under the same situations. The *Peoples* case, a decision that is now Canada's <https://assignbuster.com/laws-of-duties-of-directors-or-officers-of-the-company-in-british-columbia/>

leading case on directors duties is significant because it holds that directors owe duties to more than just the corporation; it establishes an objective standard of care for directors and rejects the subjective standard; it provides a first comment on the relationship between corporate governance standards and directors liability. The decision of the Federal Court of Appeal in *Soper v. Canada*, which described the standard as being “objective subjective” which could consider the lower personal skill set of certain directors. The Supreme Court of Canada rejects this approach in *Peoples* and calls expressly for an objective test. Where directors possess superior skills, they will be required to apply them to the issues at hand. S122(1)(b) states that directors must exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances. Objective-subjective standard: *Soper v Canada*. They acted in good faith and showed no reckless disregard for the duty of care. Further, they have a defense under S123(4)(b) - they can rely in good faith on a report of a person whose profession lends credibility to a statement by that person.

The statutory responsibility of care under Section 142 (1) of the Business Corporation Act needs the director of the firm to act honestly as well as in good faith to the best interests of the organization while exercising powers and performing his functions. Under Section 122 of Canada Business Corporations Act (CBCA), the directors need to use their diligence, skill and care which a reasonable and wise person will carry on in comparable situations[8]. The comparable situations are debatable since it is not clear whether it is being referred to factual situations of the case or the skill set of the director.

In the *Peoples v Wise* case, the court did not consider it as subjective and did not regard the subjective intention, which was the actual state of mind of the director. It called for an objective test to concentrate more on the objective intention that is the deliberate intention of the director under similar situations[9].

Referring to the *Peoples v Wise* case, it is advisable to Joe Quimby that objective test can be used as it can toughen the standards of care applicable to the directors. Under the objective test, the directors with lesser skills will be able to hold higher objective standards and the directors with higher skills will not be able to take benefits of lower standards of care[10]. The directors with higher skills can apply them to the problems in current situations.

### **Change in the existing law**

It is advisable to bring change in the existing law of British Columbia so that the directors can perform their duties well under various obligations. The companies of British Columbia under the Business Corporations Amendment Act, 2019 are required to maintain as well as prepare transparency register that contains all information about the significant persons of the company[11]. Under the legislative amendments, the companies are needed to provide tax authorities and law enforcement and also take necessary steps to maintain transparency register that contains accurate information about the critical persons. Significant individuals may include the directors of the company or any other stakeholders who directly or indirectly own 25% of the issued shares of the firm.

The government should impose a duty of assistance on the directors of the company, which allows the director to assist the other members of the company in any legal obligations. The government should remove legal and statutory restrictions on insider trading so that the director can stand in a fiduciary relationship to the shareholders[12]. The act should also provide a statutory right of action for the liability of directors to address the deficiencies and right to act on the materials that are not fully or appropriately disclosed in the register of the companies.

## Conclusion

Although, cases like *People* set standards to follow when determining the director's liability and the objective standard is a good approach. It is advisable to Joe Quimby that amending s 142 and possible changes to the existing law will play an important role in the stricter administration and transparency of the companies. The directors will owe a duty of care to the creditors along with the corporation so that the creditors could also determine the best interest of the business. Joe Quimby may order all the companies of British Columbia to prepare transparency register to record all relevant information about the directors or shareholders of a company.

## Bibliography

Text:

- Yalden, R. et al, Business Organizations: practice, theory and emerging challenges, 2nd ed., 2018, Emond Montgomery Publications Limited, Canada. ISBN: 9781772552171

## Case Laws:

- Peoples v. Wise., 2019. *Mcmillan. Ca* . Accessed July 15 2019.  
<https://mcmillan.ca/Files/People%20vs%20Wise1104FR.pdf>
- Cook v. Deeks
- Soper v. Canada
- Dovey v. Cory

## Journals &amp; Scholars:

- “ Canada Business Corporations Act”. 2019. *Laws-Lois. Justice. Gc. Ca* . Accessed July 15 2019. <https://laws-lois.justice.gc.ca/eng/acts/c-44/>.
- “ Company Directors And Their Duties (Part 2)”. 2019. *Reading Law* .  
<https://readinglaw.wordpress.com/2009/05/16/company-directors-and-their-duties-part-2/>.
- Barker, Roger. “ The duties and liabilities of directors-getting the balance right.” *The handbook of board governance* (2016): 249-269.
- Barnett, Michael L. “ The business case for corporate social responsibility: A critique and an indirect path forward.” *Business & Society* 58, no. 1 (2019): 167-190.
- Bonafede, Michela, Marisa Corfiati, Diana Gagliardi, Fabio Boccuni, Matteo Ronchetti, Antonio Valenti, Alessandro Marinaccio, and Sergio Iavicoli. “ OHS management and employers’ perception: differences by firm size in a large Italian company survey.” *Safety science* 89 (2016): 11-18.
- Garvie, Kathryn H., and Karena Shaw. “ Shale gas development and community response: perspectives from Treaty 8 territory, British Columbia.” *Local Environment* 21, no. 8 (2016): 1009-1028.

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- Ho, Kong Shan. “ Revisiting the Legal Capital Regime in Modern Company Law.” *The Journal of Comparative Law* 12, no. 1 (2017): 1-21.
- Holmes Jr, R. Michael, Shaker A. Zahra, Robert E. Hoskisson, Kaitlyn DeGhetto, and Trey Sutton. “ Two-way streets: The role of institutions and technology policy in firms’ corporate entrepreneurship and political strategies.” *Academy of Management Perspectives* 30, no. 3 (2016): 247-272.
- Kolk, Ans. “ The social responsibility of international business: From ethics and the environment to CSR and sustainable development.” *Journal of World Business* 51, no. 1 (2016): 23-34.
- Lo, Lucia, and Carlos Teixeira. “ Immigrants doing business in a mid-sized Canadian city: Challenges, opportunities, and local strategies in Kelowna, British Columbia.” *Growth and Change* 46, no. 4 (2015): 631-653.

Statute:

- British Columbia Business Corporation Act. Section 142 (1); S 142 (2); S 142 (3)
- Canada Business Corporations Act. Section 119; 122, 123, 156
- Business Corporations Amendment Act, 2019

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[1]Roger Barker. “ The duties and liabilities of directors-getting the balance right.” *The handbook of board governance* (2016): 249-269.

[2]Kong Shan Ho. “ Revisiting the Legal Capital Regime in Modern Company Law.” *The Journal of Comparative Law* 12, no. 1 (2017): 1-21.

[3]Michael L Barnett. “ The business case for corporate social responsibility: A critique and an indirect path forward.” *Business & Society* 58, no. 1 (2019): 167-190.

[4]“ Company Directors And Their Duties (Part 2)”. 2019. *Reading Law* .  
<https://readinglaw.wordpress.com/2009/05/16/company-directors-and-their-duties-part-2/>.

[5]Dovey v Corey

[6]Michela Bonafede, Marisa Corfiati, Diana Gagliardi, Fabio Boccuni, Matteo Ronchetti, Antonio Valenti, Alessandro Marinaccio, and Sergio Iavicoli. “ OHS management and employers’ perception: differences by firm size in a large Italian company survey.” *Safety science* 89 (2016): 11-18.

[7]Kathryn H Garvie, and Karena Shaw. “ Shale gas development and community response: perspectives from Treaty 8 territory, British Columbia.” *Local Environment* 21, no. 8 (2016): 1009-1028.

[8]“ Canada Business Corporations Act”. 2019. *Laws-Lois. Justice. Gc. Ca* .  
Accessed July 15 2019. <https://laws-lois.justice.gc.ca/eng/acts/c-44/>.

[9]Peoples v. Wise., 2019. *Mcmillan. Ca* . Accessed July 15 2019.  
<https://mcmillan.ca/Files/People%20vs%20Wise1104FR.pdf>.

[10]Guido Boella, Luigi Di Caro, Llio Humphreys, Livio Robaldo, Piercarlo Rossi, and Leendert van der Torre. “ Eunomos, a legal document and knowledge management system for the web to provide relevant, reliable and

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up-to-date information on the law." *Artificial Intelligence and Law* 24, no. 3 (2016): 245-283.

[11]Jr Holmes, R. Michael, Shaker A. Zahra, Robert E. Hoskisson, Kaitlyn DeGhetto, and Trey Sutton. " Two-way streets: The role of institutions and technology policy in firms' corporate entrepreneurship and political strategies." *Academy of Management Perspectives* 30, no. 3 (2016): 247-272.

[12]Ans Kolk. " The social responsibility of international business: From ethics and the environment to CSR and sustainable development." *Journal of World Business* 51, no. 1 (2016): 23-34.