



# Hamel-Smith

ATTORNEYS-AT-LAW, TRADEMARK & PATENT AGENTS

# FORUM

VOLUME 11 ISSUE 1

The Lawyers Newsletter for Business Professionals

AUGUST 2019



## DIRECTORS' DUTIES

*Debra Thompson*

Much has been made in recent times about appointments of directors, resignations of directors and changes to various boards. A director, in relation to a Company, can be an individual or a body corporate and includes a person occupying the position of a director by whatever title he is called.

### **What then are the duties of a director?**

The Companies Act Ch 81:01 dictates that in discharging his fiduciary duties every director must act honestly and in good faith with a view to the best interest of the Company.

That duty must be exercised with the diligence and skill that a reasonably prudent person would exercise in comparable circumstances. As such, a director doing something which he is entitled to do but doing it without being prudent, diligent or without exercising appropriate skill could very well constitute a breach of duty for a job not well done.

In determining what are the best interests of a Company, a director must have regard to both the interests of the employees in general and to the interests of its shareholders. A director must also ensure compliance with the Company's Articles of Incorporation, Bye-Laws and any unanimous

shareholders agreement (which may in whole or part restrict the powers of the directors to manage the business and affairs of the Company), save that no provision in a contract, Articles of the company, Bye-Laws or any resolution relieves a director from his/ her duty to act in accordance with the legislation.

Being present at a meeting of the directors in which any resolution is passed or taken will be attributable to a director who was present at the meeting unless he requests that his dissent be or is entered in the minutes of the meeting, sends a written dissent to the secretary of the meeting before the meeting is adjourned or sends his dissent by registered post or delivers it to the registered office of the Company immediately after the meeting is adjourned.

Moreover, a director who was not present at a meeting at which a resolution was adopted, or action taken is also presumed to have consented thereto unless within 21 days after he becomes aware of the resolution, he causes a dissent to be placed in the minutes of the meeting or sends his dissent by registered mail or delivers it to the registered office of the Company.

The duties of a director include (subject to the Articles or Bye-Laws or any unanimous shareholders agreement) fixing the remuneration of the officers and employees of the company and requires directors to call an annual meeting of shareholders not later than 18 months after the company comes into existence and subsequently not later than 15 months after holding the last preceding annual meeting.

It is the duty of the directors of a Company to place comparative financial statements before the shareholders at each annual meeting and to approve a copy of the financial statements of each of its subsidiary bodies corporate, the accounts of which are consolidated in the financial statement of the Company. Nonetheless, in doing so a director is not liable if he relies upon the financial statements of the Company represented to him by an officer of the Company or of an Attorney, Accountant or other person whose profession

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