

# Degree of Care, diligence and Skill - Corporate Directors

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*Maddin v The Queen*, [2014 TCC 277](#)

The sole issue was whether the appellant, in the role of director of a corporation, exercised the degree of care, diligence and skill required so as to avail himself of the due-diligence defense available against personal liability of a director for unremitted source deductions - subsection 227.1(3) [Income Tax Act](#).

### FACTS

The operating company, of which the appellant was the director, withheld source deductions but did not remit them to the Receiver General. The appellant attended the business premises 2-3 days per week, was familiar with the business structure, banking information, operations, bookkeepers, and accounting software.

A previous bookkeeper was in constant communication with the Appellant, and this included communications about the lack of skills of the newly-hired bookkeeper who was to replace her. The appellant also had a history of payroll debts to the CRA and was previously convicted for failing to file returns.

### ANALYSIS

The Court referred to ITA sections 153(1)(a) and 227.1(1), as well as the liability sections in the *Canada Pension Plan* and *Employment Insurance Act*, before referring to the leading case on the standard to be applied to directors in *Buckingham v R*, [2011 FCA 142](#).

In short:

[24] Conjunctively then, a director must focus upon the Source Deductions issue and exercise due diligence directed to preventing a failure to remit same. These dual obligations are to be consistent, omnipresent and invariable; a creative or alternative business plan, no matter how plausibly economic or lucrative, which diverts or attempts to divert resources away from remitting Source Deductions to the Crown will end availability of the due diligence defence: *Buckingham* at paragraph 57. The circumstances (ie: the factual particularities) are to be considered, but viewed against the objective standard of a “reasonably prudent person”.

In this case the court reviewed the evidence and found that the taxpayer's assertions and actions fell well short of the required standard.

NOTE: There were three directors of this corporation, with one having official management duties, but it is unclear whether they were also pursued so as to collect the tax debt.

**- Sas Ansari, JD LLM PhD (exp)**

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