

Unpaid GST - Director Liability of Persons Carrying Out Duties of Director

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McDonald v The Queen, [2014 TCC 315](#)

The Appellant was assessed under the ITA (s. 227.1) and ETA (323) which impose personal liability on corporate directors for unremitted GST and source deductions withholdings of a corporation. The Appellant was not formally or legally a director, but the CRA took the position that he was a *de facto* director by performing the functions and carrying out the duties of a director.

The issue was whether the Appellant was a *de facto* director at the relevant time.

FACTS

The Appellant was an electrical contractor. His wife and her father decided to incorporate the business and were the directors, the Appellant was employed by the company to manage field operations.

The Appellant did not know "how to do books" and it was his wife who took care of the financial side of the business (personally, through an accountant, and then through a hired bookkeeper). He signed cheques and had a bank card (but had to clear its use with the office manager), he also accompanied his wife to meetings with the CRA.

ANALYSIS

A person not formally appointed as a director, but who acts as a director, will be liable as a director under the ITA and ETA provisions: *Wheeliker v The Queen*, 99 DTC 5658. To make a determination as to *de facto* directors, two factors need to be considered (*Beauchemin v The Queen*, [2007 TCC 105](#)):

1. did the person usurp the function of director by taking actions normally required of or reserved for directors under the applicable corporate statute;
2. did the person introduce themselves to third parties as a director of the corporation.

A determination of *de facto* directorship must be made cautiously. In certain circumstances, persons not representing themselves as directors may be liable (*Hartrell v The Queen*, [2006 TCC 480](#)), for example where the corporation is not formally organized, or where the director of record plays not part in the corporation, but persons take on the functions of a director. This is a highly contextual matter, and one that is more likely to be in play in family operations where lines are blurred to the outside world (para 26). A person need not be involved in all aspects of management of corporate operations to be a *de facto* director, but only requires sufficient direct and indirect control over corporate affairs (para 30).

The Court, on the facts, concluded that the Appellant was not playing a subordinate role as he: signed cheques, had access to corporate books and records, was free to question bookkeepers on remittances, finings, and office procedures, solely managed and controlled the employees and fieldwork, went to meetings with the CRA, and obtained contracts (para 27).

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