

Director and Officers' liability and the Load Brokers' Trust Obligation under the Ontario Highway Traffic Act

Litigation | Litigation & Dispute Resolution | Transportation and Logistics

12 November 2025

Ontario continues to be the only province in Canada requiring that persons who arrange for carriage, typically load brokers who are “load arrangers”, must hold “in trust” any freight charges earmarked for the associated carriers.

Prior to the enactment of the current *Highway Traffic Act* (“HTA”) [1] provisions, rather familiarly even today, carriers were frequently at the mercy of unscrupulous or eventually insolvent load brokers that had already received freight payment from the shipper, but who then, unsurprisingly, failed to pay the carrier.

To attempt to combat this problem, the *Load Brokers Regulation* (Ontario Regulation 556/92) under the former *Ontario Truck Transportation Act*[2] was enacted to regulate the activities of load brokers. Regulation 556/92 required load brokers to register with the Ministry of Transportation, to obtain and maintain a surety bond and to hold “in trust” those funds that a load broker owed to carriers for freight charges. To most carriers, this regulation was ineffective, especially given the lack of enforcement by the Ministry of Transportation.

Deregulation efforts saw the repeal of the *Ontario Truck Transportation Act* and Regulation 556/92 as of 1 January 2006. One provision of the *Load Brokers Regulation* was reborn as part of the *Highway Traffic Act*, specifically, Section 191.0.1(3) for the trust fund requirement, applying to all “persons” (which arguably may include any carrier who sub-brokers a load). This section continues to be important as a tool for carriers to collect freight charges (particularly in bankruptcy and insolvency situations) though there continues to be no regulatory “teeth” to enforce such trust provisions in the normal everyday course of business. The trust protection afforded to carriers regarding freight owed by Ontario-based load brokers is based on an honour system. While not specifically enforced in any way, that provision has been a key factor in priority disputes where the load broker has declared bankruptcy or entered into voluntary receivership.

Case law continues to be limited regarding how the courts have dealt with carrier claims in priority disputes or whether the corporate veil will be lifted, allowing for personal liability of officers and directors, where funds are not held separately in trust.[3]

Outside of priority disputes, lack of enforcement and litigation regarding unpaid freight charges often leaves the carrier unpaid and opens the doors for legal creativity.

The Legislation – The Statutory Trust

Contracts of carriage

191.0.1 (1) Every contract of carriage for a person to carry the goods of another person by commercial motor vehicle for compensation shall contain the information required by the regulations and shall be deemed to include the terms and conditions set out in the regulations. 2002, c. 18, Sched. P, s. 34.

...

Money for contract of carriage held in trust

(3) A person who arranges with an operator to carry the goods of another person, for compensation and by commercial motor vehicle, shall hold any money received from the consignor or consignee of the goods in respect of the compensation owed to the operator in a trust account in trust for the operator until the money is paid to the operator. 2002, c. 18, Sched. P, s. 34.

Other rights unaffected

(4) Nothing in subsection (3) derogates from the contractual or other legal rights of the consignor, the consignee, the operator or the person who arranged for the carriage of the goods with respect to the money that is held in trust under that subsection. 2002, c. 18, Sched. P, s. 34.

(emphasis added)

Personal Liability of Directors and Officers for Freight Charges

There is an avenue that might assist when the carrier is left unpaid by an insolvent or unscrupulous load broker or such other person taking control of such arrangements. This involves consideration of the trust and the exposure of certain individuals to liability. Success will depend very much on the facts.

Personal liability of directors of closely held corporations for breach of trust by the corporation was considered by the Supreme Court of Canada in *Air Canada v. M&L Travel Ltd.*, [1993] 3 SCR 787 ("**Air Canada**").

Iacobucci J. for the Court held, at page 26,

"...whether personal liability is imposed on a stranger to a trust depends on the basic question of whether the stranger's conscience is sufficiently affected to justify the imposition of personal liability"

There are two bases on which personal liability can attach:

- (1) As trustees *de son tort*, where such persons, "although not appointed trustees, take on themselves to act as such and to possess and administer trust property" Trustees *de son tort* are personally liable only if he or she "commits a breach of trust while acting as trustee".
- (2) Strangers to the trust who knowingly participate in a breach of trust. This basis of liability is established where a person is either "in receipt and chargeable with trust property" in his or her personal capacity (referred to as "knowing receipt") or is "knowingly assist[ing] in a dishonest and fraudulent design" (referred to as "knowing assistance") (at p. 28).

Knowing assistance may be proved by actual knowledge, recklessness, or willful blindness (at p. 29). If a trust is created by statute, the trustee "will be deemed to have known of it" (at p. 30).

Receipt of a benefit as a result of the breach of trust "may ground an inference that the stranger knew of the breach", but this is neither a sufficient nor a necessary ground (at p. 30).

There were two lines of cases with respect to the "knowing assistance" branch: one requiring fraudulent and dishonest conduct, and the other requiring only innocent or negligent breach of trust if the person knowingly assisted in that breach of trust. Iacobucci J. held, at p. 42, that "a stranger will be liable if he or she knowingly assisted the trustee in a fraudulent and dishonest breach of trust", so, therefore, "it is the corporation's actions which must be examined."

Iacobucci J. referred to *Scott v. Riehl* (1958), 15 DLR (2d) 67 (BCSC) where the directors of the defendant corporation failed to comply with the statutory trust in the *Mechanics' Lien Act*, 1956, SBC 1956, c. 27. Funds payable to the corporation were deposited into one bank account that was always overdrawn. The director and president of the corporation knew that monies deposited should not be used for the general purposes of the company in abuse of the trust. The Court found that the corporation was the instrument of its operation, but the defendant was the director and the acts of the corporation, while not physically his, were entirely directed by him. The director received a benefit from this breach of trust of payment of his salary out of the account into which these trust funds were paid. In such circumstances, not only the principal, but also the agent was liable.

Iacobucci J. also referred to *Wawanesa Mutual Insurance Co. v. J.A. (Fred) Chalmers & Co.* (1969), 7 DLR (3d) 283 (Sask. QB) where the defendant corporation was under a statutory obligation to hold premiums in trust for the insurer. The defendant corporation collected insurance premiums and deposited them into its general



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

account from which office expenses and salaries had been paid. The personal defendant also transferred funds between two of his businesses. The judge held that the conversion of the trust funds to other purposes was a wrongful or illegal act or series of acts and that the breach was inspired and directed by the personal defendant who made all the corporate decisions. The personal defendant was found liable for the plaintiff's loss.

The proper description of fraudulent and dishonest conduct is, therefore, the taking of a risk to the prejudice of another's rights, which risk is known to be one, which there is no right to take. Iacobucci J. held, at page 43, that the taking of a knowingly wrongful risk resulting in prejudice to the beneficiary is sufficient to ground personal liability.

With respect to the knowledge requirement, Iacobucci J. held, at page 44, that such requirement would not generally be a difficult hurdle to overcome in cases involving directors of closely held corporations because they, if active, usually have knowledge of all of the actions of the corporate trustee. Where the personal defendant knew that the trust funds were being deposited in the general bank account, this constituted actual knowledge of the breach of trust.

Load Broker Cases

There is recent case law in this area from the Court of Appeal for Ontario.

(a) *Paul's Transport Inc. v. Immediate Logistics Limited*, 2022 ONCA 573

A number of procedural issues arose in this matter. The case is actually cited often for its decision relating to the expression of and quantum of interest applied on outstanding invoices. However, the Court also fielded a breach of trust obligation issue. For the purposes of this paper, the review is restricted to the appeal regarding whether the HTA trust obligation can be imposed directly upon directors and officers of a load broker.

Immediate Logistics Limited ("**Immediate**") was a carrier and load broker that verbally contracted with a carrier, Paul's Transport Inc. ("**Paul's**"). Paul's performed carriages at the direction of Immediate, moving goods for Immediate's shipper customers. After completing its carriage mandate, Paul's would invoice Immediate for its freight charges for its carriage services. Immediate would receive payment for the invoice that it in turn provided to its shipper customers. Immediate then, in the normal course, would pay Paul's invoice.

Immediate, however, shut down its business leaving Paul's unpaid on certain freight charges even though Immediate had been paid by their shipper customer in respect of Paul's services. Paul's statement of claim specifically alleged a breach of the HTA trust obligation to hold any monies received in this regard in trust until paid to Paul's. Immediate's principal, William O'Connor, was also named as an individual defendant ("**O'Connor**"). Paul's alleged that O'Connor as director, officer and manager had consented to, acquiesced or directed Immediate to breach the statutory trust obligation. The motions judge agreed, finding that O'Connor had admitted to personally sending Immediate's invoices to their shipper customers then receiving funds from those customers and depositing same into the company's general account and not a designated trust account as required under the HTA.

The motions judge found that Immediate was in breach of the trust obligation by failing to utilize a trust account to protect the carrier's funds, improperly diverting those funds to others when the funds should have been held and paid out to Paul's benefit. This occurred even though O'Connor knew or ought to have known that Paul's was unpaid and the funds should have been earmarked and held in trust for Paul's. O'Connor knowingly assisted Immediate to commit the breach. Judgment was rendered against Immediate and O'Connor for damages of \$220,000.

Immediate and O'Connor appealed. The Ontario Court of Appeal agreed with the motions judge calling Immediate's actions at page 32, "fraudulent and dishonest" and then applying the test in *Air Canada v. M & L Travel Ltd.*, noted above, as having taken "a risk to the prejudice of the beneficiary, knowing it had not right to take the risk." Immediate knew that diverting statutorily earmarked funds meant for Paul's to others increased the risk that Paul's would not be paid which was prejudicial to Paul's. The Appeal Court confirmed that O'Connor had actual knowledge of the breach by Immediate of the trust requirement to hold funds in trust and their diversion to others and consented to or acquiesced in or directed Immediate to do so. O'Connor was deemed to have knowledge of the trust as it was imposed by statute.

The appeal was dismissed with costs to Paul's.[4]

(b) *Sager Transport Ltd. v. Varga Trucking Ltd.*, [2004] OJ No 4923 ("**Sager**")

Sager considered the issue of whether the HTA trust obligation can be imposed personally on directors and officers of a load broker. The defendant, Varga Trucking (operated by its principals Dennes and Candace Varga), occasionally operated as a load broker by "double-brokering" loads to other carriers. The Court held that monies paid to Varga by various shippers did not go to pay the plaintiff carrier Sager's invoices but rather went to the "ultimate benefit" of the personal



defendants.

Justice Harris referred to *Commercial Union Life Assurance Company of Canada v. John Ingle Insurance Group Inc. et al.* (2002), 61 OR (3d) 296 (CA) where Weiler J.A. held that the personal defendant not only had knowledge of the breach of trust (as majority shareholder of the corporation, as the person who directed that the premiums be withheld, and who "benefitted significantly" from the withholdings by developing the business) but "as the directing mind... participated or assisted in the breach of trust" (at para. 72). Weiler J.A. also held that if a statutory trust exists, the corporation is deemed to have knowledge that the monies are to be held in trust because it is deemed to have knowledge of the law.

Weiler J.A. also referred to *Wawanessa*, noted above, that was referred to by the Supreme Court in *Air Canada* for the proposition that "liability for breach of trust is not confined to express trustees, but extends to all who are actually privy to the breach", where the breach of trust was "inspired and directed by [the personal defendant] who made all the corporate decisions" (at para. 74).

Justice Harris, (at para. 12), referred to *Air Canada* for the proposition that:

"Irrespective of good faith or intent, in an instance where a corporation had a duty to pay out funds from the designated proceeds but such proceeds were used for other purposes, the directors were held personally liable because they had a duty to see that the funds were used for the agreed upon purpose and they could not excuse themselves on the grounds that they did not dissipate or misappropriate the funds nor were they, in other respects, derelict in their duties."

The judgment was given against the corporate and personal defendants for breach of the statutory trust.

(c) *Sunbelt Transport Inc. v. Bonair Logistics Inc.*, 2006 CanLII 5460 (ON SC)

In this case the plaintiff moved unsuccessfully for summary judgment against the sole director and officer of the load broker.

Applying *Air Canada v. M & L Travel Ltd.*, noted above, the Court observed that the director's evidence of his non-involvement in the routine business of the corporation had not been contradicted and that the plaintiff's position amounted, in essence, to holding the director personally liable simply because he was the sole director and president.

The Court considered *Sager*, noted above, as proof of the proposition that the directors of the load broker could be held personally liable on the basis that they had a duty to ensure that the funds were used for their proper purpose. However, as the trust funds in *Sunbelt* were distributed to entitled carriers other than the plaintiff, and because the defendant director of the load broker was not personally involved in the business of the defendant, *Sager* was distinguished on the basis that the two directors in that case had been found to have substantial involvement in the corporation's affairs.

(d) *4 Star Courier & Logistics Inc. v. Domino's Pizza Canadian Distribution ULC*, 2012 CanLII 98318 (Ont Sm Cl)

In this Ontario Small Claims Court case, Deputy Judge Winny also held that the statutory trust obligation imposed on load brokers could be extended to directors of the corporation if the requirements in *Air Canada*, noted above, could be made out. The Court confirmed that *Air Canada* applied to statutory trusts.

The Court stated that the HTA trust obligation is not one imposed on the directors personally. The Court also vigorously critiqued *Sager*, noted above, and held, that while directors could be personally liable for the breach of a load broker's statutory trust if certain factors exist, the suggested presumptive liability or reverse onus regarding the director's personal liability, as found in *Sager*, was contrary to the appellate jurisprudence.

The Court ultimately dismissed the case on the basis that there was no evidence that 4 Star's director knowingly assisted in the breach of the trust obligation.

Despite dismissing the action for evidentiary reasons, an identical conclusion about the state of the law as concerns load brokers was also made in *Travelers Transportation Services Inc. v. 14155557 Ontario Inc.*, 2011 ONSC 44.

(e) *Tripair Transportation LP v. U.S. Consolidators Inc., Linda Earle-Barron and Jonathan Turner*, heard August 2012, Court file SC-1100001987-0000 (Brampton) (unreported)

In this Ontario Small Claims Court case, a carrier sued a load broker along with its three officers and directors for a number of unpaid invoices.

The broker had segregated any freight charges owing to the carrier "in trust" as is required pursuant to the HTA trust obligation. The broker was insolvent and was no longer operating. The personal defendants defended on the basis that they were not liable for the obligations of the load broker as it was an incorporated company.



The trial judge held that the load broker had committed a breach of the HTA trust obligation. The load broker, via the evidence of the personal defendants at trial, admitted that the work was performed and invoiced by the carrier and that monies were received from the various shippers and deposited into a general account and not a separate trust account. From that account, other creditors of the load broker (including rent and payroll) were paid before the carrier's obligations. The Court found that the fact that the funds were deposited into a general account and not segregated into a specifically designated trust account was, in itself, an act of a breach of trust, as was remittance of those trust funds to entities other than the carrier beneficiary. The broker had subsequently become insolvent and had no assets with which to satisfy any creditor or any judgment for the unpaid invoices.

Per *Air Canada*, the Court further held that two of the three corporate directors and officers "knowingly assisted" the corporation in its breach of trust. To prove "knowing assistance", the directors and officers were required to have actual knowledge (or be reckless or willfully blind) of the corporation's breach of trust and that the disbursement of trust funds was in breach of trust.

The judge imposed personal liability upon two of the corporation's three directors and officers for the corporation's breach of trust as each was personally aware of the corporation's breach of the statutory trust given their intimate knowledge of the day-to-day running of the corporation and were aware of the details of the broker corporation's accounts.

One director had received trust funds directly from the subject general account pursuant to a contractual agreement and the other director had authorized payment of the trust funds to other creditors despite the requirement that they were to be held in trust. This latter director received a salary and certain benefits paid from the general account and admitted that he and the other director knew that the funds received by the shippers as payment for freight were to be paid to Tripar, but that Tripar remained unpaid. The directors, therefore, not only were deemed to be aware of the trust obligation imposed by the HTA and that such disbursement of funds was in breach of the statutory trust, but they were also found to be fully aware of the broker corporation's breach of trust.

Finally

It is clear that the HTA trust obligation should also be directly addressed in the drafting of the terms of any transportation agreement. A PDF version is available for download [here](#).

[1] R.S.O 1990 c. H8, as amended.

[2] R.S.O 1990 c. T. 22, repealed 1 January 2006.

[3] Stay tuned, a fulsome review on priority disputes will be provided in an upcoming article.

[4] Gordon Hearn and Conal Calvert of Gardiner Roberts were counsel appearing for Paul's.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



Author



Kim E. Stoll

Partner

416.203.9509

kstoll@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com