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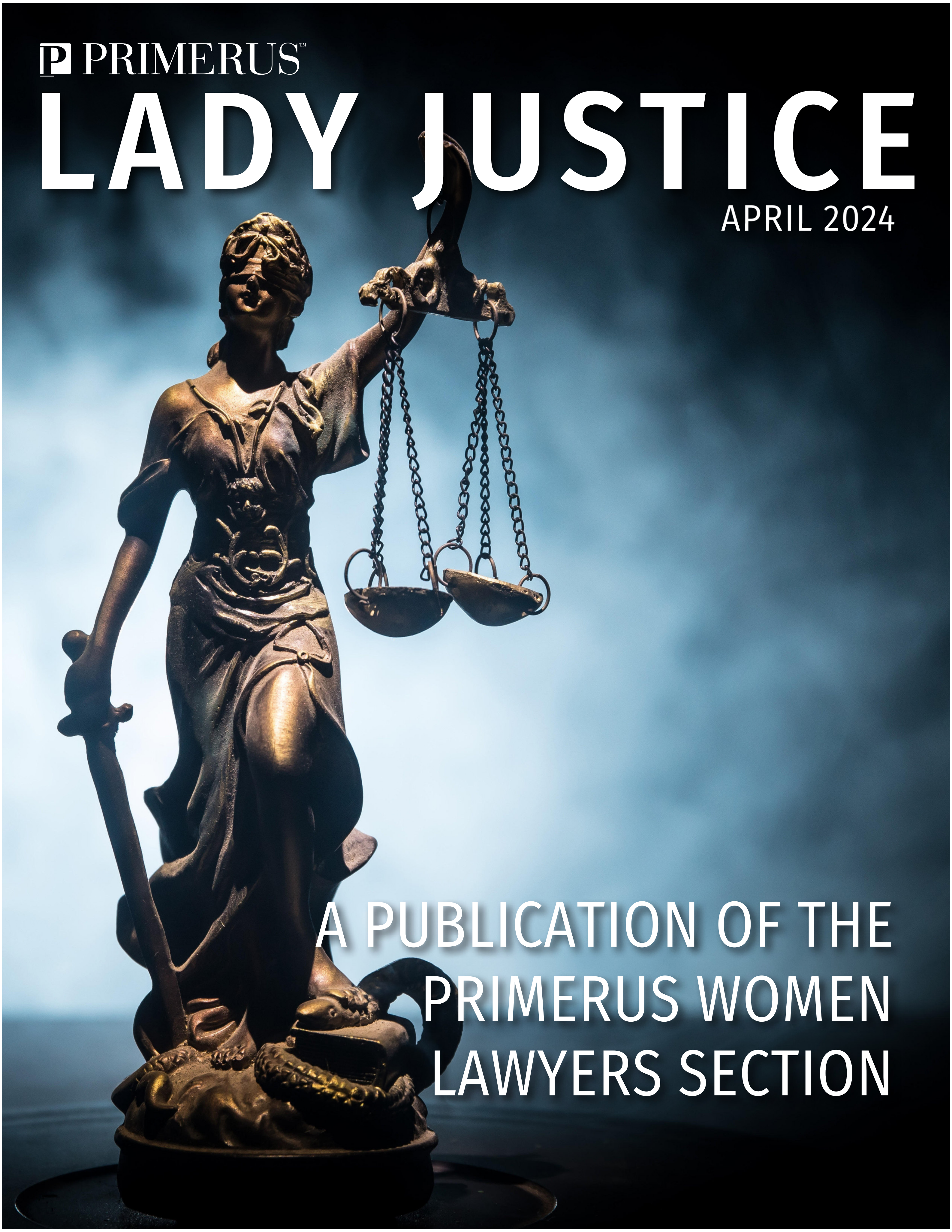

A PUBLICATION OF THE PRIMERUS WOMEN LAWYERS SECTION

CHARITY LAW

Lisanne Meijerhof advises international and national entrepreneurs and family businesses. Lisanne is a member of the corporate litigation group at Russell Advocaten. At Russell Advocaten, Lisanne combines her passion and expertise by regularly providing specialist advice for charitable organizations with a broad range of aims. She specializes in charity law, directors' liability, and art and law. The clients she serves include important business leaders and notable members of the art world.

Ever since I was a kid, I have loved going to museums. I would wander endlessly through large rooms filled with old paintings, white statues, and broken vases. When doing so, I would occasionally notice the small plaques that would sometimes be placed near a certain painting: acquired with the help of foundation so-and-so. Or, upon entering a certain room: the so-and-so wing, connoting that the artworks in the room had either been donated by or been acquired through the donations of the said individual, family, or corporation. Although I did not realize it at the time, these were the first instances where I came into contact with philanthropy; the act of giving, in the form of money, goods, time, or any other thing, with the intention of furthering society.

As I grew older, I started to become more and more aware of, and fascinated by, just how big of a role philanthropy plays in our society. The examples are almost endless; from the foodbanks, which collect money and use this money to buy and distribute food to those who cannot afford to buy it, to the various cancer charities collecting money for cancer research, to the countless mental health charities striving to raise awareness and offer accessible mental health care, to the less visible but not less important foundations focused on providing aid in the form of education, healthcare, and the like to underprivileged or immigrant children. The philanthropic landscape is not only incredibly big but also immensely diverse.

Quite some years later, and as a lawyer now working in the field of charity law, this diversity has become one of my favorite aspects of the sector. I specialized even further in this field by completing the post-graduate training program "Governing Charitable Funds" which was co-founded by Reinier Russell. No two of my clients are alike, and each time, the questions that I am asked are slightly different from the last time. There are, however, some common themes and topics that I have noticed over time.

One common topic concerns the duties and responsibilities of the board of philanthropic organizations and the rules that should be followed by board members. Something that (almost) all of the board members of philanthropic organizations that I have met throughout the years have had in common, is an incredible amount of optimism and heart for the cause – whatever the cause may be. However, they are often not 'professionals', but volunteers, who hold the board membership in addition to their regular jobs. As such, while I would say that the intentions of board members are almost always good, an in-depth knowledge of the workings and responsibilities of a board and more importantly their duties as board members are required, as well as the rules they have to adhere to. For instance, I once spoke to a board member of a Catholic foundation that would organize, among other things, yearly bake sales in churches. They would buy cakes and pies from nearby bakeries and sell them for a small profit. Every year, it became more challenging to find a bakery to deliver baked goods at a price that was low enough to allow them to still make a profit. When I spoke to this board member, the annual bake sale for that year was fast approaching, and she told me that, although they had eventually found a bakery, that bakery had wound up dropping out at the last moment. With time rapidly running out, she had found what seemed like the ideal solution; her sister, a part-time caterer, had offered to make and deliver the cakes and pies that the foundation needed. She was even willing to do so at a price that was significantly lower than that of the bakeries the foundation had worked with in the past. The board member proposed this to the rest of the board, and a majority of the board members ended up voting in favor of the plan to ask her sister to make and deliver the baked goods. The

bake sale made a bigger profit than ever before this year. So far, so good. Or at least, so everyone thought. Because, as the board member that I spoke to would come to find out, when problems arose within the board, and specifically with one board member, and even though she had been unaware of it at the time, her involvement in the board decision to ask her sister to make and deliver the baked goods at a small price, had made the entire board decision voidable and herself potentially liable. She ought to have refrained from voting on the decision due to the involvement of her sister, which constituted a conflicting interest.

Of course, the above example also touches upon another common topic, namely that of the potential liability of the board members. In the Netherlands, we have the doctrine of directors' liability, meaning that the board and its members may in certain circumstances be held liable for certain board decisions and actions, if they can be considered to have acted wrongfully. Board members can be held liable both by external parties and by their own board, both during and after their tenure as board member. The bar for this is quite high. However, if this bar is met, the consequences tend to be disastrous; the board member is then personally liable for the consequences of those decisions and actions.

Take, for instance, the example about the bake sale. In this case, as far as I know, the bake sale ended up being a success and a big profit was made. In other words, no damage was done and on this ground alone it would be hard to see how the board member who had voted to ask her sister to bake and deliver baked goods could be held liable for this. However, suppose that after the bake sale, many visitors had fallen ill, and it had turned out that the sister of the board member was actually a very bad baker, and as a result, had gotten many people sick. And suppose that those sick people had ended up suing the Catholic foundation, which, by that time, had gotten an entirely new board whose members were not keen on paying those people. Arguably, those new board members could then attempt to, in turn, sue the former board member, the sister of the caterer, because she could be considered to have brought them in this position. If successful, this former board member would likely have to pay a significant amount to the Catholic foundation. Especially considering that this board member, like almost all board members of philanthropic foundations, is not a professional, this seems like a far-reaching consequence. This is something that board members of philanthropic foundations are often not aware of.

As a lawyer, I thoroughly enjoy helping board members of philanthropic organizations when these and other questions come up. Nowadays a lot of my work is also related to internationalization or even globalization of charities. Being well-established in their home market also makes charities spread their wings in other countries. How can they control their international operations? My main aim in this is always the same: to ensure that the good intentions that all of these philanthropic foundations and their board members have, are also well executed.