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This publication provides an important perspective on the liability of organizations in regulatory and criminal contexts, and deals with issues that are relevant to many areas of the law including occupational health and safety, the environment, competition and securities. Expert guidance and insightful analysis is provided on the basis for regulatory and criminal liability, how regulations apply to organizations and individuals, how the principles of sentencing will impact upon a given scenario, and navigating the regulatory and criminal liability systems in Canada.

This release features an update to the Leading Cases in Sentencing, as well as updates to the Due Diligence Table. We are also pleased to

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provide an updated Index.

- **Due Diligence Table - Occupational Health and Safety Offences - Failing to Ensure as far as Reasonably Practicable the Health and Safety of one of its Employees** - The Crown's arguments about the appeal judge's review of the evidence and interpretation of the trial judge's decision related to the appeal judge's application of the due diligence test. However, its arguments must fail for two reasons. First, the arguments appear to be premised on a misunderstanding that the appeal judge applied the due diligence test and concluded that Precision took all reasonable steps to ensure the worker's health and safety. That was not what happened. The Crown had also focused on alleged factual errors that could not impact the ultimate result reached. While it was not necessary for the appeal judge to consider due diligence given her earlier findings on *actus reus*, she considered it in the alternative. She found that the trial judge made a variety of errors in his assessment of due diligence, which included failing to provide reasons and reaching conclusions that were not supported by the evidence. In coming to her conclusions, the appeal judge reviewed the evidence in detail. While some of the statements may reflect what she would have concluded under due diligence had she been the trial judge, at no time did she set out what the applicable standard of care was in the circumstances nor did she make a finding as to whether Precision met its obligation. Instead, she concluded that the trial judge erred in concluding that Precision had not discharged its burden. Whether there was any merit to the Crown's suggestion that the appeal judge erred in her assessment of the facts or reasons was of no consequence because the appeal judge made a critical finding that was sufficient to dispose of the trial judge's assessment of the due diligence defence. She found that the trial judge committed a palpable and overriding error when he concluded that the interlock device was in place with other industry competitors. This finding was outside the scope of the appeal. Viewed in this context, the Crown had not identified any error in the appeal judge's review of the application of the due diligence defence. The Court of Appeal declined to consider whether the appeal judge imposed an obligation on the Crown to disprove compliance with industry standards and specific government regulation. No arguments were made by the parties on this point, and given the conclusion reached on the first ground of appeal, arguments made about compliance with industry standards and government regulations were best dealt with by the new trial judge: *R. v. Precision Diversified Oilfield Services Corp.*, 2018 ABCA 273, 77 Alta. L.R. (6th) 1, [2018] 12 W.W.R. 246, 151 W.C.B. (2d) 56, 2018 CarswellAlta 1670, [2018] A.W.L.D. 5000 (Alta. C.A.).