

Publisher's Note

2018 — Release 8

Previous release was 2018-7

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Professional Liability in Canada

“Professional Liability in Canada” is a comprehensive resource for practitioners called upon to deal with professional liability issues. Providing an exhaustive treatment of the cases governing this growing area of law, it contains both general context analysis and chapters dealing with the liability of specific professions such as lawyers, doctors, accountants, engineers, architects, financial advisors and bankers, real estate brokers and agents. This work also includes practical precedents such as claims, defences and other pleadings.

This release features updates to the case digests in Chapters: 4 (Remedies), 6 (Professionals in the Construction and Building Industry), 7 (Civil Liability for Lawyers), 9 (Civil Liability for Medical Professionals), and 10 (Financial Advisors: Bankers and Stockbrokers). The Supplementary Table of Cases has also been updated in this release.

Release Highlights

Professionals in the Construction and Building Industry — Architects and Engineers — Contract — In *Greenough v. Maple Ridge Media Inc.*, the court found that an engineer was not liable for failure to do a heat loss calculation for an entire home as part of the overall design of a heating system. After a review of the work order and related proposal, the court accepted the position that the heat loss calculations, as well as the total building heating and ventilation requirements, would be done by someone else. Since the engineer was never asked to do heat loss

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calculations for the entire house, and was no obliged under contract to do them, he was not liable.

Civil Liability for Medical Professionals — The Legislative Scheme — Regulated Health Professions Act — The *RHPA* currently governs the College of Audiologists and Speech Language Pathologists (as of January 1, 2014), and the College of Registered Nurses of Manitoba as of May 31, 2018. As in other jurisdictions, the *RHPA* co-exists with other legislation that governs health professions that are not yet covered.

Financial Advisors: Bankers and Stockbrokers — Negligence — Negligence Performance of Duty — In *Cunningham v. Wiltzen*, the Alberta Court of Appeal confirmed that the standard of care of a financial advisor towards an inexperienced or unsophisticated investor will be higher than the one applied to an investor who is more sophisticated. In that case, the novice investors had made several high-risk investments in two stocks, on the advice and with the assistance of the financial advisor employed by their bank. They were not advised to diversify, and the risks were not explained to them at the time of the initial investment, nor at any subsequent time during their relationship, even when the investment took a turn for the worse. The trial judgment — later affirmed on appeal — confirmed that the financial advisor had been negligent in his failure to properly explain the risks inherent with the particular investment being made, especially in light of the particular experience level of his investor clients. Against this background the Appeal Court endorsed the trial judge’s finding, which had been based on the statutory, regulatory and case law requirements, that a “considerably higher” standard of care is called for when dealing with inexperienced investors.