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**GOVERNMENT LIABILITY
LAW AND PRACTICE**

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Release No. 29, May 2018

This looseleaf publication is a practitioner-oriented guide to conducting civil litigation when one of the parties involved is the Crown. With contributions from leading practitioners from the private, public and academic bar, this is the first resource of its kind that is regularly updated, addressing the evolving area of civil government liability. It examines the civil liability of the federal and provincial governments in common-law Canada with respect to the major areas of private law, including: Tort, Restitutions, Contract, Procedure and Fiduciary Duties.

What's New in this Update:

This release features new case law and commentary in Chapter 10, *The Crown as a Fiduciary*.

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Highlights of this release include:

- **Chapter 10 — The Crown as Fiduciary — General Principles of Fiduciary Law** — In 2018, the Supreme Court of Canada considered the question of whether subsequent conduct of the crown can operate to remedy any earlier breach of fiduciary duty. The court answered this in the negative, finding that any of the Crown’s actions taken to attempt to ameliorate a situation found to have resulted from a Crown breach of fiduciary duty did not eliminate the initial breach of fiduciary duty. Rather, the question to be answered was whether the ameliorative actions reduced the loss flowing from the breach: *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4.
- **Chapter 10 — The Crown as Fiduciary — What is Meant by “the Crown”** — The Governor General of Canada’s exercise of discretion in granting royal assent to a bill is not justiciable and does not give rise to fiduciary obligations on the part of the Crown. Accordingly, the Federal Court confirmed a Prothonotary’s decision to strike portions of a First Nation’s Statement of Claim that alleged, among other things, that the Governor General had breached fiduciary obligations to it by failing to consult them in relation to the impact of legislation on their treaty rights before granting royal assent to the bill: *Onion Lake Cree Nation v. Canada*, 2017 FC 1049.
- **Chapter 10 — The Crown as Fiduciary — Expropriation of Indian Reserves** — In this case, the Federal Court considered Canada’s actions in respect of the flooding of part of the Lac Seul First Nation’s Indian reserve following the construction of a dam in 1929. Canada took no steps at any time to legally authorize the “taking” of the flooded reserve lands, though the First Nation received some compensation in 1943. The Federal Court concluded that Canada owed the First Nation a duty “to obtain either a surrender of the affected Reserve land from the LSFN or to expropriate it if consent from the band could not be obtained.” The court concluded that, whether arranging a surrender or expropriating the lands, “Canada had a duty to act in a manner that minimally impaired the band’s interests in the land.”: *Southwind v. Canada*, 2017 FC 906.