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DAMAGES FOR BREACH OF CONTRACT

Harvin D. Pitch and Ronald M. Snyder

Release No. 1, March 2022

Publisher's Special Release Note 2022

The pages in this work were reissued in June 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the June 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This looseleaf service thoroughly examines the principles of law applicable to the remedy of damages for breach of contract. The authors provide a clear, comprehensive treatment of all types of damages including liquidated damages, punitive damages, damages for mental distress, aggravated damages and nominal damages. Individual chapters cover compensation for pecuniary and non-pecuniary loss, valuation of damages, measuring damages, pre-judgment interest, taxation and damages, and practice and procedure.

What's New in this Update:

This release includes an update to Chapter 1 — Compensation for Pecuniary Loss: General Principles; Chapter 4 — Loss of Chance; Chapter 8 — Liquidated Damages, Penalty and Forfeiture Clauses; Chapter 10 — Mitigation of Damages; Chapter 14 — Prejudgment Interest; and Chapter 18 — Class Actions for Damages for Breach of Contract.

Release Highlights

Chapter 1 — Compensation for Pecuniary Loss: General Principles — Comparing Damages for Breach of Contract, Fraudulent Misrepresentation and Negligent Misrepresentation — Damages for Breach of Honest Performance — The authors have added this new section to the chapter. This section is based on two recent cases, *Bhasin v. Hrynew*, 2014 SCC 71, 2014 CarswellAlta 2046, 2014 CarswellAlta 2047 (S.C.C.) and *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45, 2020 CarswellOnt 18468, 2020 CarswellOnt 18469 (S.C.C.). In these cases, the Supreme Court of Canada recognized a new duty of honest contractual performance: a duty not to deceive (knowingly mislead) a counterparty about one's performance of the contract, including one's exercise of a contractual right. The duty is breached not by failure to perform the underlying contract or the improper exercise of it contractual rights, but by dishonesty about performance or exercise of rights.

Chapter 1 — Compensation for Pecuniary Loss: General Principles — Comparing Damages for Breach of Contract, Fraudulent Misrepresentation and Negligent Misrepresentation — A Novel Claim for Expectation Damages: Loss of Synergies — As discussed above, the usual type of expectancy damages in a commercial breach of contract case involving the sale of goods, shares or real estate are for loss of profits that were reasonably anticipated to be earned by the innocent contracting party had the contract been performed. In a recent decision of the Ontario Superior Court, *Cineplex v. Cineworld*, the Court examined a different type of damages — “loss of synergies” — which illustrates an unusual example of the recovery of the expectancy interest: *Cineplex v. Cineworld*, 2021 ONSC 8016, 2021 CarswellOnt 19087 (Ont. S.C.J. [Commercial List]).

ProView Developments

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