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PROFESSIONAL LIABILITY IN CANADA

Campion & Dimmer
Release No. 7, July 2022

Publisher's Special Release Note 2021

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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“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.

What’s New in this Release

This release features updates to the caselaw and commentary in Chapters 1 (Introduction), 2 (Concurrent Liability), 5 (Real Estate Professionals), 6 (Professionals in the Construction and Building Industry), and 7 (Civil Liability for Lawyers).

Highlights

PROFESSIONALS IN THE CONSTRUCTION AND BUILDING INDUSTRY — LIABILITY OF PUBLIC AUTHORITIES INVOLVED IN THE BUILDING INDUSTRY — CASES WHERE PUBLIC AUTHORITIES HAVE BEEN FOUND LIABLE — NEGLIGENT INSPECTION OF PLANS AND THE ISSUANCE OF A BUILDING PERMIT — In *Breen v. The Corporation of the Township of Lake of Bays*, 2021 CarswellOnt 11753, the defendant township closed its building inspection file relating to the construction of a cottage in June 1993 without ever conducting a final inspection. In 1999, the plaintiffs purchased that cottage only to discover during 2011 renovations that the cottage was structurally unsafe and that Building Code violations existed. The plaintiffs sued the township for damages for negligent building inspections, and breaches of the *Building Code Act* and Code. The Superior Court of Justice allowed the plaintiff’s action, awarding damages of \$346,875.33. The municipality fell “well below the required standard of care” by failing to properly review the application for a building permit, a failure that was inconsistent with the municipality’s duty to enforce the *Building Code* for the public’s health and safety. Citing *Breen v. The Corporation of the Township of Lake of Bays* and *Mortimer v. Cameron*, the Court of Appeal noted in *Tokarz v. Selwyn (Township)*, 2022 CarswellOnt 3882 that a municipality’s failure to properly review a building permit application or building plans could amount to a “marked departure” from the standard of care.

PROFESSIONALS IN THE CONSTRUCTION AND BUILDING INDUSTRY — LAND SURVEYORS — EXAMPLES OF PROFESSIONAL MISCONDUCT — As part of a comprehensive updating Part IV (Land Surveyors) of Chapter 6 (Professionals in the Construction and Building Industry), a new section § 6:55 has been added to the text in this release. The new section, entitled Examples of Professional Misconduct, begins a discussion of the misconduct for which land surveyors may be found professionally culpable by the profession’s professional regulator. This release includes a discussion of two decisions: the Alberta Court of Appeal’s decision in *Lysons v. Alberta Land Surveyors’ Assn.*, 2017 CarswellAlta 8, where a surveyor was found to have engaged in professional misconduct by removing a survey monument without

obtaining consent from the Director of Surveyors and without consulting the surveyor who placed that monument; and the Ontario Divisional Court's decision in *Houghton v. Association of Ontario Land Surveyors*, 2020 CarswellOnt 1590 where cumulative billing irregularities were found to have amounted to professional misconduct.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

