



Legal Aspects of Toxic Mould and Indoor Air Quality Problems

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WHAT'S THE PROBLEM?

& Property Damage

- ⌘ Remediation
- ⌘ Contents
- ⌘ Diminished value
- ⌘ Stigma
- ⌘ Loss of use and enjoyment
- ⌘ Loss of rent
- ⌘ General/Special/Punitive Damages



WHAT'S THE PROBLEM?

& Personal Injuries

- ⌘ Sick Building Syndrome
- ⌘ Increased risk to health
- ⌘ General/Special/Punitive Damages



WHOSE PROBLEM IS IT?

& Developers/Vendors

- ⌘ Disclosure statements (*Strata Plan LMS 1463 v. Krahn Bros. Construction (2004)*)
- ⌘ Breach of contract
- ⌘ Warranties
- ⌘ Negligence



WHOSE PROBLEM IS IT?

& Design Professionals/Consultants

- ⌘ Negligent Design (*Bolam v. Friern Hospital Management Committee*, (1957))
- ⌘ Field reviews
- ⌘ Failure to warn (*Surrey v. Carroll-Hatch & Associates* (1979))



WHOSE PROBLEM IS IT?

& Builders

- ⌘ Breach of Contract (*The Owners, Strata Plan NW 3341 et al v. Canlan Ice Sports*)
- ⌘ Faulty construction/materials

& Property Managers

- ⌘ Maintenance
- ⌘ Breach of Contract
- ⌘ Negligence



WHOSE PROBLEM IS IT?

& Landlords

- ⌘ Maintenance
- ⌘ Breach of Contract

& Real Estate Agents

- ⌘ Negligent Misrepresentation
(*Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.*, (1964))
- ⌘ Non-disclosure



WHOSE PROBLEM IS IT?

& Strata Corporations/Service Providers

- ⌘ Non-disclosure
- ⌘ Maintenance

& Employers

- ⌘ Maintenance
- ⌘ Occupational Safety



WHOSE PROBLEM IS IT?

& Public Bodies/Local Government

- ⌘ Policy Decisions (*Anns v. Merton*)
- ⌘ Operational duty (*Kamloops v. Nielsen (1985)*)

& Insurers/Sureties

- ⌘ Coverage issues (*Privest Properties Ltd. et al. v. The Foundation Company of Canada Limited (1991)*; *Axa Pacific Insurance v. Guildford Marquis Towers (2000)*; *Allstate Insurance Co. v. Axa Pacific Insurance (1998)*; *Swagger Construction v. ING Insurance Co. of Canada (2005)*; *Pilot Insurance v. Whiten (2002)*)
- ⌘ Good faith obligations



WHAT IS THE TEST FOR RECOVERY?

- ⌘ Cause and effect (*Donoghue v. Stevenson (1932)*; *Anns v. Merton (1977)*; *Kamloops v. Nielsen (1985)*)
- ⌘ Balance of probabilities
- ⌘ Substantial danger - *Winnipeg Condominium v. Bird Construction et al. (1995)*



SPECIFIC CLAUSES FOR PROTECTION

- & Exclusion of liability (*Photo Productions Ltd. v. Securicor Transport* (1980))
- & Limitation of liability (*RBO Architecture*)
- & Disclaimers (*Wigmar Construction v. Defence Construction* (1997))
- & Indemnities

