



# Legal Aspects of Toxic Mould and Indoor Air Quality Problems

John R. Singleton, Q.C.

# WHAT'S THE PROBLEM?

## Property Damage/Economic Loss

 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
-  Breach of contract
-  Warranties
-  Negligence

# WHOSE PROBLEM IS IT?



## ✂ Design

### Professionals/Consultants

- ✎ Negligent Design
- ✎ Field reviews
- ✎ Failure to warn

# WHOSE PROBLEM IS IT?






## Builders

-  Breach of Contract
-  Faulty construction/materials



## Property Managers

-  Maintenance
-  Breach of Contract
-  Negligence



# WHOSE PROBLEM IS IT?



## ✂ Landlords

- ✎ Maintenance
- ✎ Breach of Contract

## ✂ Real Estate Agents

- ✎ Negligent Misrepresentation
- ✎ 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

- ✎ Operational duty
- ✎ Local Government Act
- ✎ Vancouver Charter

## ✂ Insurers/Sureties


- ✎ Coverage issues
- ✎ Good faith obligations
- ✎ Bond Claims

# WHAT IS THE TEST FOR RECOVERY?



- ✂ In personal injury and property damage cases
  - ✎ Cause and effect
  - ✎ Balance of probabilities

# WHAT IS THE TEST FOR RECOVERY?

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- ✂ In pure economic loss cases
    - ✎ Cause and effect
    - ✎ Balance of probabilities
    - ✎ Substantial danger - *Winnipeg Condominium v. Bird Construction et al.*

# SPECIFIC CLAUSES FOR PROTECTION



- ✂ Exclusion of liability
- ✂ Limitation of liability
- ✂ Disclaimers
- ✂ Indemnities

# TYPES OF INSURANCE



- ✂ Professional Liability
- ✂ General Liability
- ✂ Property

# PROFESSIONAL LIABILITY INSURANCE



- ✂ Claim must be “made” during policy period
- ✂ Covers past and present partners, employees

# GENERAL LIABILITY INSURANCE



- ✂ Must be an “occurrence”
- ✂ “Claim” can arise long after occurrence
- ✂ Work Product Exclusion (eg. HVAC)

# PROPERTY INSURANCE



✂ Exclusions

✂ Good faith response (*Ballard* case)



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