



# 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. Krahm 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

