

Publisher's Note

2019 — Release 2

Previous release was 2019-1

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Foerster

Accountants' Liability in Canada

Accountants' Liability in Canada is the only work of its kind that addresses specifically and exclusively the civil liability of accountants in contract, negligence and fiduciary law. This work offers a thorough explanation of the development of the law in Canada, England and the U.S.A., as well as a comprehensive explanation of the current state of the law in Canada.

What's New in this Update:

This release features updates to the case law and commentary in Chapter 2 (Duties Owed to Clients), Chapter 3 (Duties Owed to Non-Clients), Chapter 4 (Duties Owed to Specific Third-Party Classes, Shareholders, Investors, and Creditors), Chapter 5 (Standard of Care — General Principles), Chapter 8 (Reliance and Causation), Chapter 10 (Damages), and Chapter 11 (Professional Regulation and Discipline of Accountants).

Commentary Highlights:

Duties Owed to Clients — Contractual Obligation — Privity: Who is the "Client"? — The potential existence of the "near-client" concept has also been raised in some situations, most often involving parent and subsidiary companies represented by the same corporate officer, or groups of small, closely-held family

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companies where one person instructed a professional such as a lawyer on behalf of the several closely-held corporations. In that case, the client-professional relationship exists by way of contract as usual, but another party who is closely related to that actual client may be considered a “near client.” The result is that the professional may not act against that closely-related party on future matters where there have been instructions or communication of information from the “near client” or its corporate representative to the lawyer in some circumstances where the “near-client” had a reasonable expectation of confidentiality or loyalty at the time the instructions or information were imparted: *Spruce Grove Gun Club v. Parkland (County)*, 2018 ABQB 364, CarswellAlta 866, at para. 31, 39.

Professional Regulation and Discipline of Accountants — Jurisdiction of the Courts — Standard of Review — It has been suggested that by referring to an “administrative body making a discretionary decision”, the Supreme Court of Canada may be referring to the nature of what an administrative body does when it determines a matter: *i.e.* by its nature the administrative body is exercising discretion, and it is for that reason that its decision is given deference on review. With that said, in decisions subsequent to *Doré* the Supreme Court has observed that, in some cases, there can be exceptions to the presumption of deference: *Strom v. Saskatchewan Registered Nurses’ Assn.*, 2018 SKQB 110, CarswellSask 182.