



LIABILITY CLAIMS

GOODMANS LLP

June 20, 2019

Goodmans^{LLP}

OCCUPIERS LIABILITY

Old Rule

- Ownership/Control
- Control = Legal Control

New Rule

- Control = Control In Fact
- Commercial Advantage

Lesson

- Don't Be A Good Samaritan?

HARASSMENT

Trial Decision In Merrifield (RCMP)

- New Tort Of Harassment
- No Need To Prove Intent To Harm or to Prove Visible And Provable Illness

Court Of Appeal Decision

- No Tort Of Harassment
- No Compelling Reason To Recognize A New Tort

Lesson

- None – Harassment Still Not Ok

PRIVACY

PIPEDA

- Transfer Of Sensitive Data For Processing Requires Notice
- Transfer Of Sensitive Data For Disclosure Requires Consent

Is Transfer Of Data For Processing Use Or Disclosure?

- Privacy Commissioner's Prior View – Use
- Privacy Commissioner's Current View – Disclosure

Lesson

- Data Protection And Privacy Laws Continue To Evolve And Pose Risks

ENVIRONMENTAL

OLD RULE

- Polluter
 - On or Off Site

- Innocent Owner/Occupier
 - On Site

NEW RULE

- Polluter
 - On or Off Site

- Innocent Owner/Occupier
 - On Site or Off Site

SO FAR

- Investigations Only
- No Reason In Principle Cannot Apply To Clean-Up

LESSON

- More Due Diligence
- Broader Indemnities
- Re-Examine Insurance

WAIVER OF TORT

Old Rule

- No Liability For Tort/Negligence If No Damages

Remedy Election

- Damages v. Disgorgement

New Rule (?)

- Disgorgement Without Damages

Lessons

- Operational Glitches May Have Consequences
- Re-examine insurance

TORT REFORM

Old Rule

- Joint & Several Liability – 1% Rule
- Allocation Of Risk Of Non-Recovery To Other Tort Feasors

New Rule(?)

- Several Liability Only
- Allocation Of Risk Of Non-Recovery To Victim

Lesson

- Be Careful What You Ask For (?)

CONTRACTUAL GOOD FAITH OBLIGATIONS

Old Rule

- Limited To Specific Types Of Relationships And Circumstances

New Rule

- Is A Duty Of Honesty In Performance of Contracts
- Extent Of Duty Varies With Nature Of Contract
- Can Act In Own Self-Interest, But Cannot Lie About Intentions