

CHALLENGES IN NEGLIGENCE CLAIMS AGAINST MUNICIPAL BUILDING AUTHORITIES

Jonathan de Vries
Partner, Shillingtons LLP
London, Ontario

Challenges in negligence claims

Two competing understandings of what building inspectors do:

- What judges believe building inspectors do
- What building inspectors actually do

Challenges in negligence claims

Litigation tends to confuse the roles of persons involved in construction and real estate transactions

- Builders
- Vendors
- Realtors
- Engineers
- Designers
- Tradespersons
- Home inspectors
- Building inspectors

Duty of a Building Inspector

Building Code Act, 1992, section 3(2):

3 (2) The council of each municipality shall appoint a chief building official and such inspectors as are necessary for the enforcement of this Act in the areas in which the municipality has jurisdiction.

Duty of a Building Inspector

“It is to be expected that contractors, in the normal course of events, will fail to observe certain aspects of the building by-laws. That is why municipalities employ building inspectors. Their role is to detect such negligent omissions before they translate into dangers to health and safety. I think that most ratepayers, were they to give the matter any thought, would justify the increased expense as an investment in peace of mind: ... [They] are justified in saying: "I pay for the provision of an inspection service, and so long as I act in good faith, I should be entitled to rely on the city to exercise reasonable care to ensure that all construction is built according to the standards set out in the by-laws”.

Rothfield v Manalagos (Supreme Court of Canada, 1989)

Building Inspectors ≠ Cops

- Construction is a socially desirable activity, not a social ill to be prevented
- *Building Code* enforcement requires a balance between facilitation and enforcement
- The *Building Code* is not about consumer protection

Building Inspectors ≠ Builders

Scenario: a 1,600 sq ft, detached, single family house:

- 1,337 hours of on-site labour to build
- Comprehensive inspection of the construction is not possible

Building Inspectors ≠ Realtors/Vendors

- The *Building Code* is concerned with health and safety
- The relationship between buyers and vendors/realtors is concerned with whether a buyer received what they bargained for

Building Inspectors ≠ Service Providers

- Building inspectors duties' are imposed by legislation and are owed to the public
- Builders/vendors/buyers can specify the services they want via private contracts

Conclusion: The Challenges

Getting courts to recognize the public role of building inspectors

- Distinguishing this public role from the private relationships between other actors in the industry
- Incorporating this public role into negligence claims against building authorities

Questions?
