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### GOVERNMENT LIABILITY LAW AND PRACTICE

Gareth Morley and Kathryn McGoldrick  
Release No. 3, December 2025

This looseleaf publication is a practitioner-oriented guide to conducting civil litigation when one of the parties involved is the Crown. With contributions from leading practitioners from the private, public and academic bar, this is the first resource of its kind that is regularly updated, addressing the evolving area of civil government liability. It examines the civil liability of the federal and provincial governments in common-law Canada with respect to the major areas of private law, including: Tort, Restitutions, Contract, Procedure and Fiduciary Duties.

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## **What's New in this Update:**

This release features updates to the case law and commentary in Chapter 6 (Negligence), Chapter 8 (Misfeasance in Public Office) and Chapter 12 (Public Law Issues in Litigation Against the Crown).

## **Highlights of this release include:**

- **Negligence—Anns Stage One: The *Prima Facie* Duty of Care—Establishing Proximity by way of Established Categories—Negligent Building Inspection**—The category of negligent building inspection does not include a “duty to monitor” open building permits until substantial completion of the building. In *Huether v. Sharpe*, 2025 CarswellOnt 2034 (Ont. C.A.), the Ontario Court of Appeal concluded that such a duty would be novel, and that a full *Anns/Cooper* analysis is required to determine whether it should be recognized.
- **Misfeasance in Public Office—Introduction—Generally**—In *British Columbia v. Greengen Holdings Ltd.*, 2025 CarswellBC 1026 (B.C. C.A.), the British Columbia Court of Appeal affirmed – quoting *Powder Mountain Resorts Ltd. v. British Columbia*, 2001 CarswellBC 225 (B.C. C.A.) – that the ambit of the tort of misfeasance in public office is “narrow” and that trial judges must take a “cautious” and “restrained” approach to finding liability: “Otherwise, the courts risk straying into the arena of political decision-making, bypassing the normal restraints associated with judicial review, and becoming the arbiters of the personal thought processes of public officials. ...”
- **Misfeasance in Public Office—Elements of the Tort—Duty/Power Associated with Public Office—Legislative Functions**—In *Dargatz Mink Ranch Ltd. v. British Columbia (Ministry of Agriculture and Food)*, 2025 CarswellBC 2260 (B.C. C.A.), British Columbia applied to strike a claim of misfeasance in public office arising out of an amendment by Order in Council (OIC) to the *Fur Farm Regulation*, B.C. Reg. 8/2015, enacted during the COVID-19 pandemic, the effect of which was to put the plaintiff mink farmers out of business. The claim was pleaded as Category B, with the plaintiffs alleging that the regulation was amended not for reasons related to animal or public health, but for political, social, and public opinion reasons in response to lobbying by public interest groups. The claim was struck on the basis that the plaintiffs could not establish that the OIC was unlawful, as it fell within the scope of authority under the enabling legislation, and it was irrelevant, in a Category B claim, whether its true purposes were as alleged. There was no concern raised by the defendant or expressed by the court that the enact-

ment of subordinate legislation could not constitute the unlawful act for the purposes of a misfeasance in public office claim.