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<p>GOVERNMENT LIABILITY LAW AND PRACTICE Karen Horsman and Gareth Morley Release No. 1, June 2024</p>
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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 contains updates to Chapter 1 (Legal Personality of the Crown), Chapter 2 (Legal Personality of Other Government Bodies), Chapter 3 (Crown Liability in Contract), and Chapter 4 (Crown Liability in Restitution/Unjust Enrichment).

Highlights of this release include:

- **Chapter 1 Legal Personality of the Crown — § 1:10 Introduction** — The Crown has two kinds of common law rights. First, like any legal person, it has the general rights of persons under the common law, including the right to own property and exercise the rights attendant on ownership or property, enter into contracts and exercise the rights given by the contract once entered into, and sue to vindicate its private law rights (the “natural law powers” of the Crown). Second, the English common law gave the Crown special rights and powers, not given to the subject (“prerogative rights”).
- **Chapter 1 Legal Personality of the Crown — § 1:13 Legislative Displacement of the Prerogative** — If a statute clearly extinguishes a prerogative right or power or provides express limitations or conditions on how it may be exercised, the legal situation is straightforward. As addressed in Part IV of this Chapter, the most dramatic example of express change to the common law prerogatives of the Crown – and certainly the most important for the purposes of this book – was the wholesale alteration of the Crown’s immunities against being impleaded into court against its will or being liable in tort or other wrong-based causes of action. If a statute abolishes a Crown prerogative, it no longer exists. If it says certain conditions must be complied with, they must be complied with. If it sets out limitations, the common law of the prerogative is modified to the extent of those limitations. In all cases, the legislature is legally sovereign over the executive.
- **Chapter 2 Legal Personality of Other Government Bodies — § 2:4 Introduction** — *LAPP Corporation v. Albertam Corporation* has a narrower holding, that is confined to the statutory context, and a broader holding, that asserts as a principle that Crown agents acting within the scope of their agency necessarily bind the Crown. In *LAPP Corporation*, Justice Lema argued that the precedents relied on in this text for the proposition that that a Crown agent may act on its own account do not stand for that proposition that it may solely act on its own account. We respectfully disagree. It is true that in the foundational case we relied on, *International Railway Co. v. Niagara Parks Commission*, the contract on

which the Crown agent was brought to arbitration was one that it expressly entered into on its own and on the Crown's behalf. On the facts, therefore, there is no doubt that the counter-party could also have sought relief by petition of right against the Crown. But there is no suggestion by the Judicial Committee that because a Crown agent may expressly act both as agent and on its own behalf in a contract, that it *necessarily* does so. Rather, they denied that a Crown agent with separate legal personality is an "emanation" of the Crown and said its contractual capacity was "separate" from that of the Crown and that its own liability was "separate" (i.e. not "joint") from the liability it entered into "on behalf" of the Crown.