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DAMAGES FOR BREACH OF CONTRACT

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This looseleaf service thoroughly examines the principles of law applicable to the remedy of damages for breach of contract. The authors provide a clear, comprehensive treatment of all types of damages including liquidated damages, punitive damages, damages for mental distress, aggravated damages and nominal damages. Individual chapters cover compensation for pecuniary and non-pecuniary loss, valuation of damages, measuring damages, pre-judgment interest, taxation and damages, and practice and procedure.

What's New in This Update:

This release features updates to the case law and commentary in Chapter 7 (Absence of Proven Loss: Declaratory Relief and Nominal Damages) and Chapter 15 (Conversion of Foreign Currency Claims).

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Highlights

Chapter 15 (Conversion of Foreign Currency Claims) – II. Contracts Payable in Foreign Currency – § 15:4. The Judicial Approach since 1975– The following is an excerpt from the updates made to this chapter – In Alberta, the Court of Appeal in Stevenson Estate v. Siewert established that the choice of conversion date is between the date of the breach and the date of the judgment, and depends on which produces "the most equitable result in the circumstances of the particular matter." Further, where the choices present a risk of unfairness to both parties, the greater risk should be borne by wrongdoer. As the Court explained:

> The Court's task is to select the most fair and equitable of the two possible conversion dates. It cannot be expected that either of these will allow perfect justice to be rendered. Given this, if any equities must fall unequally on the parties, they should fall more heavily on the wrongdoer than on the victim.

The above guidance was applied in the subsequent 2019 decision of the Alberta Court of Queen's Bench in Bidell Equipment LP v. Caliber Midstream GP LLC,22 where the defendant general contractor in respect of a large gas compression facility construction project was liable to the plaintiff subcontractor for unpaid invoices. Pursuant to the parties' arrangements, the invoices were payable in U.S. dollars. After offsetting for reasonable mitigation steps that the plaintiff could have but failed to take, the court determined that the defendant owed USD $3,405,973. Pursuant to section 12 of the federal Currency Act, discussed earlier in this chapter, the USD damages figure needed to be converted to Canadian dollars. Between the breach date and trial, the value of the Canadian dollar had weakened considerably, and the parties advanced predictable opposing positions about the appropriate conversion date, with the defendant arguing for the breach date and the plaintiff arguing for the date of judgment. Justice Hunt McDonald agreed with plaintiffs and ordered that the USD damages figure be converted to Canadian dollars as of the date of judgment, observing use of the breach date would have the effect of punishing the non-breaching plaintiff.