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### **TOXIC REAL ESTATE MANUAL**

by Frederick Coburn &  
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Release No. 2, December 2021

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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## What's New in this Update:

This release features updates to the case law and commentary in Chapters 1, 2 and 3. Appendix SLL and Appendix W&P have been updated as well.

## Highlights

Recent and significant case law discussed with this release includes the following:

**Minimizing and Resolving Toxic Real Estate Problems: Environmental Insurance — Private Insurance —** The decision was upheld by the Nova Scotia Court of Appeal, which further expanded the scope of coverage afforded by the “sudden and accidental” exception to the pollution exclusion. The Court concluded that although there was a temporal element to the “sudden and accidental”, a sudden and accidental event could continue for a significant period of time and did not depend on discovery. In the absence of time limited language with respect to discovery and reporting, this reasoning from an appellate court may expand the potential scope of coverage in other provinces afforded by policies that include “sudden and accidental” as a limited grant of coverage for pollution events: *Zurich Insurance Company Ltd. v. Halifax Regional Municipality*, 2021 CarswellNS 395, 2021 NSCA 43.

**Specific Real Property Transactions: Class Actions and the Environment — Generally —** Most recently, the Ontario Superior Court took a broad approach to granting certification of a proposed class action seeking damages arising from perfluoroalkylated substances (“PFAS”) contamination in groundwater, and stigma damages arising from the National Research Council of Canada’s National Fire Laboratory. The class of 69 owners included consisted of properties with actual groundwater contamination, and also properties with no groundwater contamination but suffering loss of property value due to stigma.

**Specific Real Property Transactions: Class Actions and the Environment — Generally —** The claim alleged that the defendants experimented with various fire-retardant foams that were permitted to escape into the environment. The Court found that pleadings disclosed causes of action of for strict liability under the doctrine of *Rylands v. Fletcher*, nuisance, negligence, and a claim for damage for breaching s. 95 of the *Environmental Protection Act* and s. 40 of the *Canadian Environmental Protection Act Registry: Egan et al. v. National Research Council of Canada et al.*, 2021 CarswellOnt 9942, 2021 ONSC 4561.

## **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases, Table of Statutes and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
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