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ACCOUNTANTS' LIABILITY IN CANADA

Ron Foerster and Omar Madhany

2026-1

Accountants' Liability in Canada is the only work of its kind that addresses specifically and exclusively the civil liability of accountants in contract, negligence and fiduciary law. This work offers a thorough explanation of the development of the law in Canada, England and the U.S.A., as well as a comprehensive explanation of the current state of the law in Canada.

Since 2021, *Accountants' Liability in Canada* has been undergoing significant chapter updates and revisions. As part of this project, certain chapters will be substantially re-written and multiple chapters will be consolidated. Please note that, during this period of revision, certain cross-references in existing chapters that have not yet been revised may be temporarily inaccurate.

This year's release has been converted into a more user-friendly softbound book. Subscribers will receive two softbound book to replace any relevant revised content within the work. This should greatly improve the reader's experience in terms of filing pages within a limited binder system—allowing the work to easily expand as discussion of the law dictates.

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What's New in this Update:

This release features updates to Appendix IF—Issues in Focus, Appendix SLL—Selected Legal Literature and Appendix WP—Words and Phrases. The appendices have also been revised for clarity and completeness.

Highlights:

Appendix IF—Issues in Focus

- § IF:3—What is the Scope of an Auditor's Liability in Canadian Corporate Law, and What Related Issues Arise? (Current to October 2025).
- § IF:4—When Have the Courts Certified a Class Action Against Auditors When Negligent Misrepresentation Is Claimed? (Current to October 2025).

Appendix WP—Words and Phrases

§ **WP:47—Defalcation—**Defalcation as used in [*Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3], s. 178(1)(d) means wrongful conduct by a fiduciary in relation to money or property that is akin to money under the fiduciary's management or control.

(Wild Rose Meats Inc v. Andres (2025), 88 Alta. L.R. (7th) 159, 2025 CarswellAlta 1945, 2025 ABKB 487 (Alta. K.B.) at para. 22 Colin C.J. Feasby J.).

For The Purposes of Canadian Taxation—In my view, the words "[f]or the purposes of Canadian taxation" must be construed with the rest of the provision and there is nothing in the wording of article XXI(7) [in Convention between Canada and the United States of America with respect to taxes on income and on capital, 1980, C.T.S. 1984/15.1] that leads to the conclusion that U.S. 501(c)(3) entities are deemed to be qualified donees for the purposes of maintaining one's charitable registration. The Gift Provision explicitly states that it is the gift that is to be treated as a gift to a registered charity. It does not mean that the gift is in fact a gift to a qualified donee or that the organization to which the gift was made is deemed a registered charity or a qualified donee.

(Priority Foundation v. Canada (National Revenue) (2025), 2025 FCA 180, 2025 CAF 180, 2025 D.T.C. 5154, 2025 CarswellNat 4113, 2025 CarswellNat 4112 (F.C.A.) at para. 54 Roussell J.A. (Laskin, Locke, JJ.A. concurring)).