



Heal & Co. LLP LAWYERS

ASSISTING CLIENTS IN THE BUILT ENVIRONMENT

OBA Institute – Building your Construction Law Toolkit – A Contractor’s liability to Third Parties – An Indeterminate Liability to An Indeterminate Class?

Andrew J. Heal, LL.M.
aheal@healandco.com
416.583.5901

“I was only ruined but twice... once when I lost a lawsuit...

- *... and once when I won!”*
- *Mark Twain*

Issues:

- kind of a “first principles” topic
- the overlap of contract and tort
- the case was a ‘motion to strike’

Review of *Winnipeg Condo*

“The negligently supplied structure in this case was not merely shoddy; it was dangerous. In my view this is important because the degree of danger to persons and other property created by the negligent construction of a building is a cornerstone of the policy analysis that must take place in determining whether the cost of repair of the building is recoverable in tort”. ((at para. 12) per the Court (La Forest, J.))

“The negligently supplied structure in this case was not merely shoddy; it was dangerous. In my view this is important because the degree of danger to persons *and other property* created by the negligent construction of a building is a cornerstone of the policy analysis that must take place in determining whether the cost of repair of the building is recoverable in tort”. ((at para. 12) per the Court (La Forest, J.))

Concurrent Liability in Tort and Contract

Meeting the threshold

- “real and substantial danger”

Recovery for Other Losses than remediation of the dangerous defect

Toolkit 'take aways'

- consider contractual risk allocations
 - indemnities, warranties, limitations, exclusions
- consider other parties – contribution and indemnity claims
- challenge the claim at its root – deny a duty of care, plead remoteness

Conclusion