



YOU AND THE LAW



What is Tort Law and how does it affect your Home Inspection business?

Consumer Protection

1. Tort Law has been developed for All Canadian Certified Home Inspectors who are CanNACHI members.
2. This course has been developed thanks to the involvement of Kevin Kemp and Associates (barrister and solicitor) as well as the support of Kim Smith (Hub International)
3. Within our home inspection Industry it is vital that a home inspector perform his or her inspection to the CanNACHI Standards of Practice and Code of Ethics to help minimize complaints from the consumer.
4. Consumer protection is considered an area of importance that demonstrates relationships between individual consumers and the home inspector that provides services.
5. We as home inspectors must provide due diligence and proper inspection methodology to insure that the consumer is protected as well as the home inspector.

Tort Liability

What is Tort Law - Summary

- Services performed by the professional, who possesses special skills to provide information and advice without disclaiming responsibility, must accept a legal duty to exercise such care as the circumstances require.
- When **financial loss** results from advice **negligently** given and the professional **ought to have known** that **reliance was being placed** on his or her skill and judgment, a **tort** has been committed.
- For tort actions in Canada, the statutes of limitations is **two years** from the “time the cause of action arose” but can be brought many years later when deficiencies, resulting from negligence, start to appear.
- In tort actions, the **burden of proof** lies with the plaintiff (**client**) to prove that the defendant (**home inspector**) has been negligent.
- A tort is a private or civil wrong or injury, one that is essentially **beyond the scope** of contract law. For the most part tort issues are **negligence claims**. The purpose of tort law is to compensate victims of torts.

TORT LIABILITY

Here are the **five law elements** of tort.

In order to satisfy the court that a tort (negligence) was committed the **plaintiff must prove** that you, the defendant, **were negligent in ALL/MOST** of the following:

1. You owed the plaintiff (client) **a duty of care**.
2. If you **breached** that duty by your conduct - you were negligent.
3. You had a **duty to warn** your client of any adverse consequences and/or your “general “ and “specific” limitations.
4. Circumstances leading to the injury must have been **foreseeable** (also known as **Causation**)
5. Defendant's **conduct caused** (financial) injury to the plaintiff.

Lets break these 5 elements down:

1. You owed the plaintiff (client) a duty of care.

Examples:

- Standards of Practice (CanNACHI)
- Tools (i.e.) flashlight, receptacle testers, ladder
- Proper inspection methodology

2. If you breached that duty by your conduct - you were negligent.

For example:

- You did not have a moisture meter.
- You are not a member of a home inspectors association.
- You performed the complete inspection of a 3,500 sq. ft. -3 bedroom house with an unfinished basement in 75 minutes.

TORT LIABILITY

3. You had a **duty to warn** your client of any adverse consequences and/or your limitations, etc.

Examples:



Duty to warn of your limitations to the inspection:

- The limiting nature of a visual inspection.
- Absence of previous rain fall limited your ability to detect leaks.
- A snow covered roof limited your accessibility.
- Storage of materials in a room limited access.
- Gas was shut off to house limiting your ability to fully review heating system.



Duty to warn the client of consequences of adverse conditions:

- Poor grading could lead to leaky basement.
- Electrical hazard could lead to shock, causing bodily harm or even death.
- Rotting window frames could lead to water penetrations in the walls which could lead to further damage.
- Improperly extended downspouts could lead to leaky basement and damage to foundation walls.

4. **Circumstances leading to the injury must have been foreseeable (causation).**

Examples:

- The defect must have been humanly possible to predict.
- Could a reasonable home inspector have been able to predict the events?
- Was there visible evidence? Did it require x-ray vision to detect?

5. **Defendant's conduct caused (financial) injury to the plaintiff.**

(what the Home Inspector did or did not do or report caused the client's loss)

Examples:

- An unreported, obvious crack (at the time of the inspection) in the foundation wall caused water damage in the basement.
- Bad or incorrect advice given on how to repair a structural defect which caused more damage.
- Nothing in the report about the rotting deck supports which collapsed and cost \$ to fix.
 - ❖ Damages must be quantifiable and reasonable.
 - ❖ Damages must be mitigated. Property damages do not include betterment.
 - ❖ May include resultant and consequential damages.

APPLIED PRINCIPALS OF TORT LIABILITY FOR HOME INSPECTORS

- 1) STANDARD OF CARE
- 2) What is a BREACH of the standards of care?
- 3) The Professional's Duty to Warn
- 4) Causation
- 5) Damages

Understanding the playing field, knowing what is expected of you by your clients and how courts interpret matters of *professional negligence* will be your guide to ultimate success as a Professional Home Inspector.

A crystal clear understanding of "Tort Law" requirements (professional negligence) can provide you with such a road map.

These Tort requirements define the Standards of Care which *supersedes* the Standards of Practice.

- 1) STANDARD OF CARE What exactly is Standard of Care?
 - Your standard of care is discharging your duties as a professional home inspector.
 - It is also possessing a keen level of awareness of what is *expected of you by the public and your peers*.
 - Knowing what the 'Standard of Care' is in your jurisdiction (provincial) provides a yardstick as to how you measure up with your colleagues.

TORT LIABILITY**1) STANDARD OF CARE (cont')**

We can divide 'Standard of Care' into the following 15 categories: (then we'll define them)

- 1. Professional accreditation and affiliation.**
- 2. Inspection Protocols and Methodology (Standards of Practice).**
- 3. Acquired/background knowledge.**
- 4. Diplomas/certificates/accreditations.**
- 5. Continuing education.**
- 6. Technical report writing standards/techniques.**
- 7. Knowledge of applicable law.**
- 8. Awareness of institutional (mortgage, insurance) requirements.**
- 9. Ethical practices/Association Code of Ethics.**
- 10. Tools/inspection equipment.**
- 11. Time spent on site/conducting the inspection process.**
- 12. Previous representations, declarations, advertising.**
- 13. Cost estimates, estimated life spans.**
- 14. Inspection methodology and applied techniques.**
- 15. Professional practices.**

1) STANDARD OF CARE (cont')

The following discuss most (but not all!) factors which would fall under the Standard of Care.

1. Professional accreditation and affiliation.

- Accreditation by a professional association **demonstrates** that the professional has **met basic qualification requirements**, is a member in good standing with the profession and is committed to the standards of the profession. This affiliation also keeps the practitioner up-to-date and provides for exchange among peers.

2. Inspection Protocols and Methodology (Standards of Practice).

- CAHPI / CanNACHI have adopted the ASHI Standards of Practice as the definition of the **minimum required inspection protocols and methodology**. It is important to note that the Standards of Practice, as formulated in 1977, are only **part of the standard of care**. A practitioner will usually need to exceed the minimum standards of practice to competently perform an inspection.

3. Acquired/background knowledge.

- Home inspection is a post -discipline occupation. Upon entering the field the practitioner will be heavily reliant on their previous background experience. That experience is their cornerstone for continuing education and professional excellence.

TORT LIABILITY

1) **STANDARD OF CARE** (cont')

4. Diplomas/certificates/accreditations.

- A good home inspector is a **generalist**. The more applicable certifications a home inspector has, the more **credible and marketable** he or she may be. For example, being a professional engineer, licensed builder, licensed trades-person or an architect, all lend added credibility to your home inspection credentials and knowledge.

5. Continuing Education

- It is a widely accepted requirement of most professionals that they continue their education in order to **keep current with rapidly changing technology**. It is no longer deemed acceptable for a practitioner to remain stagnant in their academic upgrading.

6. Technical report writing standards/techniques.

- A home inspection report must be legible and comprehensible. It must also encompass and clearly convey all that was inspected and what was not inspected. Reports must be fair, impartial and accurate.

1) STANDARD OF CARE (cont')

TORT LIABILITY

7. Knowledge of applicable law.

- Ignorance of the law is **no excuse**. The professional **must be aware of legislation** which affects their practice or has an affect on their client.
 - Retroactive fire safety requirements of multiple dwellings is a good example.
 - What are the requirements for underground oil tanks within your jurisdiction?
- You may be found negligent by ignoring these issues should they result in a financial cost to your client. At the very least, your contract should **advise the client that you will not address these issues** and that the client should seek other advice.
- You should, however, remember that professionals are **expected to be aware of issues that affect their clients** and provide appropriate advice. How long would you visit your doctor, if the doctor was not capable of diagnosing newly discovered diseases?

8. Awareness of institutional (mortgage, insurance) requirements.

- Beyond applicable law, other institutional requirements can have a similar effect. For example:
 - Most mortgage companies have difficulty placing a mortgage to homes with **Urea Formaldehyde Foam Insulation**.
 - Insurance companies have developed a very strict stance with **knob and tube wiring** and **60 amp** services.

9. Ethical practices/Association Code of Ethics.

- Professionals play an important role in society and are in a **position of trust**. Association **Code of Ethics** are established to guide the professional.

1) STANDARD OF CARE (cont')**TORT LIABILITY****10. Tools/inspection equipment.**

- The common practice amongst home inspectors is to bring an arsenal of testing and probing equipment to the site. Moisture meters, bright flashlights, ladders and electrical testers are a must.
- If you don't have the tools how can you do your job?

11. Time spent on site/conducting the inspection process.

- It seems that the average inspection on the average sized house, inclusive of generating the report, takes about two to three hours. A much faster inspection time might suggest to a judge that the inspection was negligently performed.

12. Previous representations, declarations, advertising.

- You are only required to perform to and will be held accountable by the courts to the Standard of Care of a reasonable home inspector. Be aware that you can be held accountable to any representation you made to your client in advance of the inspection.

13. Cost estimates, estimated life spans.

- Although not required under the Standard of Practices some inspectors provide cost estimates and life expectancies. You must be consistent and within the ballpark when expressing these opinions.

14. Inspection methodology and applied techniques.

- Removing the cover from the electrical panel, accessing roofs and attics and actually how you test the operating systems, are all part of the methodology.

15. Professional practices.

- Punctuality, affability, personal presentation, diplomacy and a polished general business approach are all examples of professional practices. Professionals are expected by society to exemplify those attributes.

Breach of Standard of Care

2) WHAT IS A **BREACH** OF **STANDARD OF CARE**?

A breach is when it can be aptly demonstrated that, while discharging your duties as a professional home inspector, you did not meet the reasonable standard as determined by the courts. Once again, that 'standard' is established by "precedent" or evolves from what is the common practice within the profession. The courts will always try to compare what you did to what other home inspectors would do under the same circumstances.

Examples:

- i. Inspector 'A' has been in the business for a few years and does not hold membership in any home inspection organization. In a dispute, the plaintiff's counsel may ask the following stinging questions:**
 - a) How have you benefited from the collective experiences of your peers across the continent/province?
 - b) How do you keep current on changing building technology?
 - c) How do you keep current on changing legislation or regulations as it effects home inspection and real estate? (Applicable law)
 - d) Who do you contact when you have a technical question?

Breach of Standard of Care

2) WHAT IS A BREACH OF **STANDARD OF CARE** *Examples:* (cont')

- ii.** Inspector “A” performed an inspection of a house with a wood burning fireplace. In the report the inspector indicated that it was inspected with no other comments. The plaintiff (client) has experienced major difficulties with the function of the masonry fireplace. The question that the opposing counsel may put forward to Inspector “A” could be the following:
- a) What formal training do you have on fireplace technology?
 - b) Do you have any formal accreditation to express an opinion on fireplaces?
 - c) Did you attend any seminars? Can you provide the court with proof of attendance?
 - d) Did you warn the plaintiffs that you could not fully inspect the chimney flue interior?
 - e) Did you warn the plaintiff that you did not burn a fire and, therefore, cannot provide any assurances as to it’s ability to fully discharge combustion gases up the chimney?

Breach of Standard of Care

2) WHAT IS A BREACH OF **STANDARD OF CARE** *Examples:* (cont')

- iii. The plaintiff experienced significant leakage into their basement. Corrective damages exceeded \$10,000. Questions that the opposing counsel may ask include:**
- a) What methods did you use during the inspection to detect signs of water seepage in the basement?
 - b) Do you have a moisture meter? If so, please bring your purchase order/receipt to court the next day.
 - c) Did you warn the plaintiff that the excessive storage boxes in the basement limited your ability to see the foundation wall let alone detect a leak?

You can see that Inspector 'A' could be exposed on the above issues. If the plaintiff's counsel can demonstrate even a minor breach in **Standard of Care** ***their case is strengthened.***

iv. Can you imagine defending a peer under the following circumstances?

- Defendant (inspector) completed the inspection and issued a report. However, the defendant (your colleague) did not bring any tools to the inspection, did not even look at the roof and completed the total inspection in seventy-five minutes.
- The defendant is not a member of any home inspection organization and cannot provide any proof of formal training.
- The defendant's previous background includes involvement in the carpet cleaning and tree pruning services.

Duty to Warn

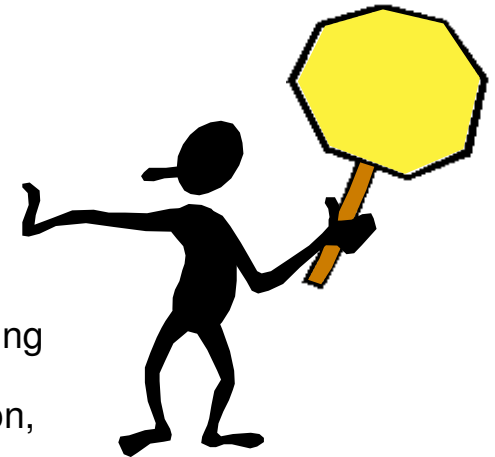
3) THE PROFESSIONAL'S DUTY TO WARN

An awareness of the scope of the professional home inspector 'Standard of Care' will enable you to caution your clients about the *general* and *specific* limitations of the inspection process.

A. Duty to warn of general limitations and specific limitations of the inspection.

General limitations

- Failure to warn your client of the general limitations will probably lead to a *higher client expectation* level of the inspection. For example, your client may expect you to bring to light *every defect of the house*. Remaining silent on this very salient issue may be interpreted by them that you will indeed find all defects.
- Establish a reasonable expectation level in your client's eyes by incorporating some simple, general limitations in your inspection agreement/contract. For example, simply state that you are not providing a guarantee. In addition, all problems will not be discovered with the house.
- Another major challenge for home inspectors is to clearly convey to their client that the inspection is a *"snapshot in time"*, a reasoned opinion on the observed condition of the house at the time of the inspection. It cannot be an evaluation of future performance. Once again, your clients will tend to overestimate your abilities and what you can tell them unless you establish an expectation level for them. A sentence or two regarding the future performance of the house systems, (especially the mechanical systems), must be clearly articulated in your general limitations.



Duty to Warn

3) THE PROFESSIONAL'S **DUTY TO WARN** (cont')

A. General and Specific limitations (cont')

General limitations. (cont')



➤ General limitations are those that pertain to all inspections. Other general limitations will include:

- a) A statement on how you do not move heavy furniture, lift up carpeting, etc.
- b) The limiting nature of a visual inspection.
- c) The inspection is not a code compliance/regulatory inspection.

Duty to Warn3) THE PROFESSIONAL'S **DUTY TO WARN** (cont')**A. General and Specific limitations (cont')****Specific Limitations**

- Limitations of the inspection which are *particular* to that house inspection at that time are referred to as **specific limitations**.
 - For example, excessive storage in the garage is specific to the inspection at hand. Weather conditions on a given day may inhibit your ability to inspect a given system.
 - You must be acutely aware of any unusual circumstances which will *impede* the normal course of your inspection function.
 - Any impediments must be *clearly documented* and *explained* to your client. Otherwise, your client will be totally unaware of your limitations or the extra risk that they must occur.
- ❖ ***Remaining silent on the issue is a breach of your duty to warn.***
- Inspecting the central air conditioning system of the house (with an outside compressor) during the winter months is a specific limitation. However, if you do not warn the client that you could not check the central air conditioning system and, therefore, cannot express an opinion regarding performance, the client may think that you did inspect it and that it is okay. The court usually sees it this way as well.

Duty to Warn3) THE PROFESSIONAL'S **DUTY TO WARN** (cont')**A. General and Specific limitations (cont')****Specific Limitations** (cont')

Some examples of specific limitations include:

- a) The **snow covered roof** limited your ability to inspect the roofing materials..
 - b) **Piled up boxes** limited **your ability to detect a basement** leak.
 - c) **Uncooperative tenant** allowed access to their suite for only ten minutes. The inspection of the suite is, therefore, substantially limited.
 - d) **The broken fan belt** limited the inspection of the blower fan motor and limited switch operation. In addition, the performance of the air duct system could not be reviewed.
- Once again, remaining silent on any item (listed in the SOP) which you could not inspect is an act of omission. It is up to you, not your client, to discern those limitations. Your client must be made fully aware, in writing, that the inspection was limited and why.
 - Failure to warn may result in **you** incurring the risk for future performance.
 - Clearly conveying your limitations shifts the risk to the clients. (owners/buyers)

Duty to Warn3) THE PROFESSIONAL'S **DUTY TO WARN** (cont')**B. Duty to Warn of Adverse Consequences**

- In most cases it is just not good enough to state the observed deficiency in your report. If the situation (risk) warrants, you must go on further to explain what, if any, adverse conditions can result if the defect is left unattended.
- You must also consider how this deficiency could adversely affect the client or the occupants of the house.
 - Imagine if you went to the doctor's office for a complete physical examination. They told you that you have an acute contusion of the aortic muscle. That is all they said. Just a diagnosis? No prognosis? Is it good enough to discover deficiencies or problems? Clearly not.
 - In some cases, we must go further to explain the adverse effects of the defect at hand.

Examples of this premise include the following:

1.*The roofing shingles are in need of immediate repair. Specifically, there are some damaged and missing shingles at the north- east corner of the dwelling.*

It is wise to go on to explain the following:

There are currently no visible signs of roof leakage. However, roof leakage occurrence may result in damage to the attic insulation, the structural members and the interior ceiling and wall finishes. I recommend a roofer to correct this defect to avoid water damage.

Duty to Warn3) THE PROFESSIONAL'S **DUTY TO WARN** (cont')**B. Duty to Warn of Adverse Consequences** (cont')**2. Another example**

....*The down pipe at the south-west corner of the dwelling discharges right at the foundation wall. I recommend it to be extended 4 - 6 feet away from the house...*

Yes, this is an excellent recommendation. However, why are you suggesting this to be done? **It is wise to add the following:**

Insufficiently extended down pipes can lead to soil saturation which in turn, can cause your basement to leak and can also damage your foundation.

- Your report writing comments should always start with the **condition**. Then followed by a **recommendation** (to fix the condition). Then always add a **warning** (what could happen if they ignore the recommendation)

EXAMPLES:

Deteriorated roof shingles - recommend roofing contractor to address - to avoid water leaks.

Missing hand rail – recommend install – for safety on stairways.

Solid Strand Aluminum wires – recommend Electrician to maintain – to avoid fire.

Causation

4) CAUSATION

Causation is the bringing about of a result, and in law it is an element in various tests for legal liability. Most tests for legal liability in criminal and civil law require the defendant to have 'caused' the result of which the plaintiff complains. For example:

- Homicide (criminal law): requires that the accused have caused the victim's death.
- Negligence (civil law): requires that the defendant have caused the harm that befell the plaintiff.
- Breach of contract (civil law): requires that the defendant's breach have caused the plaintiff's loss.

If the plaintiff/prosecution cannot establish the causal link between the defendant's act and the plaintiff's/victim's harm, then liability will not be established.

The courts will always try to find a reasonable benchmark for comparison purposes. They will be attempting to establish what is reasonable under the circumstances. For example:

- a) In the event of a snow covered roof, how would a reasonable inspector perform their inspection?
- b) In the instance of a leak in the basement, would a reasonable home inspector have been able to predict such a leak?
- c) What is a reasonable array of tools that a home inspector should have?
- d) What is a reasonable length of time spent on site actually conducting an inspection?

Causation (cont')

The answers to all these questions are invariably arrived at during a court proceeding.

The overriding question is always

- ❖ Were the events which caused the plaintiff alleged damage foreseeable by you, the defendant?
- ❖ Would a reasonable home inspector be able to foresee such events?
- Invariably, the plaintiff will rely on expert opinion from contractors or trades people during a trial. The difficulty is that these people rarely understand what a pre-purchase home inspection is. The actual inspection conditions can never be recreated. In many cases, the contractor has the luxury of being able to remove building components to aid in their observations. Situations like this can be very frustrating for the home inspector and their preparation for defense.
- Therefore, it is vital for you to have your own expert witnesses. Allowing the insurance adjuster to arrange this for you is usually the best approach.
- You must have confidence in the true meaning behind the term 'causation'.
 - You are not required to have x-ray vision. You are not required by the court to foresee or predict future conditions, which were obviously non-existent at the time of the inspection.
 - Leaks develop in houses for the first time after home inspections, too.
 - Furnace motors break without warning.
- This level of awareness is commonplace. Understanding fully the principles behind causation will help you gain more confidence as a home inspector and also help you defend against complaints.

Damages

5) DAMAGES

In order for a tort to have been committed the complainant/plaintiff must have incurred damages(\$\$\$).

- In most claims against home inspectors, the alleged damages will be financial compensation to correct property damage.
- The term “resultant damages” includes such issues like wall, ceiling and floor damage as a result of roofing failure, for example.
- Consequential damages include loss of income due to the plaintiff's inability to work. It can also include hotel and food bills in the event that the plaintiff had to vacate their house to facilitate the repairs.
- You may be able to greatly reduce or nullify the damage component of a complaint by simply responding quickly and professionally. Don't give anybody an excuse to get upset.
- In many cases, your client has just received "heavy handed" advice from a contractor on how to repair a defect. The call back is an excellent opportunity to use your analytical, diagnostic and value engineering (cost effective repair advice) skills to arrive at a reasonable, low cost solution to their problem. Your complaint could turn into a great public relations exercise.

Contract Law

CONTRACTS – Summary

- The court examines the *specific wording* of the part of the contract in question. The parties to the contract will be bound by the court's determination of the *most reasonable interpretation*. Problems agreed upon *verbally* are not part of the contract.
- The professional must perform with an ordinary and reasonable degree of care and skill and will be liable for *incompetence*, *carelessness* or *negligence*.
- The professional is expected to comply with the common-law principals relating to tort and contract, statutes and regulations applicable to their profession and codes/building regulations.
- If a party to a contract fails to perform obligations specified in the contract, then the defaulting party has breached the contract. The innocent party is entitled to certain remedies, i.e. sue for damages. Damages should flow naturally from the breach or be reasonably foreseeable by both parties at the time of entering into the contract.
- A party that suffers a loss through a breach of contract must take reasonable steps to mitigate (to make less severe) or reduce the amount of damages suffered. The plaintiff is expected to behave in a reasonable manner in mitigating damages.

A contract between a client and a professional must include all the essential contract elements.

Contract Law

FIVE (essential) ELEMENTS OF A CONTRACT

- 1. An offer must be made and accepted.**
 - There must be an *offeree* and an *offerer*.

- 2. There must be a mutual intent to enter into the contract by all parties.**
 - The contract must *clearly specify all essential terms*. A letter of intent is not a contract.

- 3. There must be "consideration".**
 - Something of value that is *exchanged* by contracting parties.
 - *\$\$\$\$ for knowledge*

- 4. All parties must have the capacity to contract.**
 - Cannot be a minor, drunk or lunatic.
 - Must have *authority to act on behalf* of corporation; (i.e.) a trustee, etc.

- 5. The contract must have a lawful purpose.**
 - cannot be *contrary to* statute, act or regulation (cannot be against the law),
 - cannot contain restrictive covenants (agreements) that are contrary to common law.

APPLIED PRINCIPALS OF CONTRACT LAW FOR HOME INSPECTORS

Coupled with your knowledge of tort law, you can weave into your inspection agreement contractual terms which can help **limit your risk** and establish reasonable client expectation levels.

- Contractual terms, which are simple, establish reasonable terms and are readily understood, are mostly upheld by the courts.
- One should exercise caution when including verbose (long, complicated) sentences that are difficult for the average reader to understand. These types of contractual clauses are usually **frowned upon** by the courts and can be easily countered by the plaintiff.

Overly restrictive clauses and restrictive covenants are rarely successful when defending a tort claim or a lawsuit "in contract".

- You may attempt to waive or disclaim all responsibility for your actions contractually. However, home inspectors are usually sued "in tort" or in professional negligence.
- Restrictive covenants such as limiting your liability to the fee may deter complaints or even a lawsuit. However, you should be aware, that restrictive covenants are rarely upheld by the courts and, in most cases, are not considered reasonable.

APPLIED PRINCIPALS OF CONTRACT LAW FOR HOME INSPECTORS (cont')

1. Useful contractual clauses that you can use to fulfill your tort obligations to clearly convey the scope of the inspection and **standard of care** are as follows:
 - a) The inspection is conducted in accordance with a recommended **standard of practice** of the Association.
 - b) You can clearly convey the exclusions by saying that any item not specifically covered in your report is not incorporated within the scope of your inspection.
 - c) A clear indication that the inspection is principally visual and does not include destructive testing, laboratory analysis, etc.
 - d) You should clearly convey to your client, in simple English, that the inspection is not a **warranty**, an **insurance policy** against future conditions. It shall not be misconstrued as a **guarantee** of any kind.

2. Protect yourself against any **breach** or non-fulfillment of your standard of care. During the course of your day-to-day operations as a home inspector there will be times when you cannot discharge your duties according to the standards. That being the case you must do two things:
 - i. Fully disclose, in writing, what items were not performed or where you feel you may fall short of the standard.
 - ii. Take the necessary precautions and have your client sign a special acknowledgement or by initialing your specific notations. By you disclosing and your client's acknowledgement, in writing, you are taking that extra step to avoid potentially damaging evidence, which could be held against you in a dispute.

APPLIED PRINCIPALS OF CONTRACT LAW FOR HOME INSPECTORS (cont')

Some examples:

- a) The City Public Works Department was working on the main water line in the area.**
 - The water was shut-off to the house. Therefore, you could not adequately inspect the plumbing system. You want the clients to understand that you cannot assume any risk whatsoever in conjunction with the plumbing system of the subject property.

- b) The subject property was tenant occupied.**
 - The tenant was not advised that the inspection was to be conducted. The tenant had the right to refuse entry. The tenant allowed you into the premises for one hour only. Consequently, the inspection was not conducted in a complete fashion. As a result the inspector can assume no risk.

- c) On an ethical question, suppose you pulled up to the inspection address and realized that the seller of the subject property is your cousin.**
 - You could be in breach of the Code of Ethics of your Association. You must disclose to your client, up front, that you know the vendor, If they give you the go ahead, then and only then do you proceed.

APPLIED PRINCIPALS OF CONTRACT LAW FOR HOME INSPECTORS (cont')**DUTY TO WARN:**

Quite simply, how many of your colleagues do you feel offer homebuyers strict assurance that all problems with the house will be discovered during the course of their inspection?

Not too many we hope! Sure, purchasers want you to inspect the house to limit their risk. They want to lower the odds of having to assume expensive repairs. There are not too many homebuyers who expect you to assume their entire risk in the house purchase at the outset.

In the professional's duty to warn of any limitations that may arise, ***general contractual clauses are key to managing your risk:***

- 1.** No claim is expressed or given that all problems with the house will be discovered during the course of the inspection.
- 2.** The inspection is designed to limit the risk of buying an older home, however it cannot eliminate your risk. In addition, the inspector cannot assume your risk of buying an older home

APPLIED PRINCIPALS OF CONTRACT LAW FOR HOME INSPECTORS (cont')**CAUSATION:**

Causation is the term used to express whether the issue at hand was foreseeable. It is humanly impossible to review a dynamic system, such as a house, and discover all problems (present and future) and be able to forewarn your client when functioning items will break or malfunction.

As such, the following contractual (warning) clause is reasonable:

Latent defects associated with the subject dwelling will not be discovered due to the restrictive nature of a visual inspection.

DAMAGES:

Certain contractual clauses can be used to your advantage to help mitigate or limit potential damages include:

The right to re-inspect.

Contractually obliging your client to call you should they encounter difficulties with the house is reasonable. You want to have the right to re-inspect in order to help mitigate their damages. A binding arbitration clause can greatly reduce the costs of any legal action.

PROFESSIONAL & ETHICAL RESPONSIBILITIES

Is Home Inspection a PROFESSION??

Today's professional is decided for us by public repute (reputation) and public image. This public perception decides whether an occupation is a profession.

Do we care whether we are regarded as professionals?

We better!

- We must strive for personal satisfaction in doing the best we can.
- The Association must achieve command of the "department of learning" to improve public safety in order to enhance the quality of the future of our profession.
- We must **"THINK BIG"** about what we do.

PROFESSIONAL & ETHICAL RESPONSIBILITIES (cont')
ETHICS AND MORALITY

DUTY OF THE ASSOCIATION TO THE PUBLIC

The advancement of our collective potential can only be nurtured through professionalism.

- We all have an interest, therefore, in the professional and ethical practices of other practitioners.
- We are all **"tarred and feathered"** with the same brush when stories of incompetently completed inspections are perpetuated in the marketplace.
- Home inspection, and the value of our service in society, will only be furthered by professionals, like you, who perform their job admirably, day in and day out, throughout the country.
- It is probably the most fundamental responsibility of an accrediting, professional association to ensure the accredited are truly prepared to do just that.

PROFESSIONAL & ETHICAL RESPONSIBILITIES (cont')

ETHICS AND MORALITY (cont')

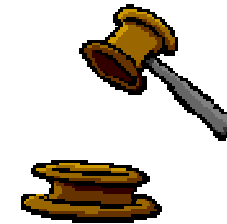
- ❖ Ethics is the **science of morals**. - Ethics is a known and prevailing **code of morality**.
- ❖ Morals are the practice of ethics. Morals can be defined within individual character or disposition.
 - It takes into account the inspector's ability to make the distinction between **right and wrong** or **good and evil**.
 - This can be directly applied to a home inspector in relation to their professional practices.

CODES OF ETHICS: WRITTEN AND UNWRITTEN

In self-regulating professions, a code of ethics is based on tradition and recognition of the trade, profession or common interest as an entity in the community and the authority of the group vis-a-vis its members.

In business groups, commerce and finance the code of ethics is usually unwritten and accepted. In the Home Inspection profession the Code of Ethics helps protect the client as well as the Home Inspector.

Thank you



We hope you found this mini-course interesting, pertinent and informative. Please download the quiz (You and the LAW) on the website, complete and fax, scan/email to CanNACHI in order to be granted 2 continuing education credits (hours) towards your CEC requirement.

Thank you for your support of CanNACHI:

The Voice and the Choice for all Canadian Home Inspectors.